

Explanatory Statement

Civil Aviation Safety Regulations 1998

Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024

Purpose

The purpose of *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024* (the **new CAO**), which commences on 12 November 2024, is to replace and continue, with various modifications, *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021* (the **old CAO**) which is repealed at the end of 11 November 2024.

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.

Subsection 20AB(1) of the Act provides that a person must not perform any duty that is essential to the operation of an Australian aircraft during flight time unless the person is authorised to do so under a civil aviation authorisation or is authorised by or under the regulations to perform that duty without the civil aviation authorisation.

The old CAO was, and the new CAO is, designed to provide such an authorisation.

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 Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1998 (CASR)*.

Under paragraph 98(5A)(a) of the Act, the regulations may empower CASA to issue instruments in relation to aviation safety. Subparts 11.F and 11.G of CASR empower the issue of instruments of exemption and direction. Civil Aviation Order 95.54 (**CAO 95.54**) is an instrument so empowered and is comprised of exemptions and directions.

Legislation — exemptions

CAO 95.54 is substantially comprised of exemptions and related conditions.

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 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.).

Legislation — directions

Under paragraph 11.245(1)(a) of CASR, for subsection 98(5A) of the Act, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft.

Under subregulation 11.245(2), CASA may issue such a direction only if CASA is satisfied that it is necessary in the interests of safety, only if the direction is not inconsistent with the Act, and only for the purposes of CASA's functions.

Under regulation 11.250, a direction ceases to be in force on a day specified in the instrument or, if no day is specified, 1 year after the instrument commences. Under subregulation 11.255(1), it is an offence to contravene a direction under regulation 11.245 that is applicable to the person.

Background

The old CAO dealt with, among other things, the regulatory and administrative effects of the withdrawal of the Australian Ballooning Federation (the **ABF**) from administration of Part 131 aircraft engaged in Part 131 recreational activity, or a specialised balloon operation (**relevant aircraft**).

The old CAO was, in effect, a legislative mechanism:

- first, to preserve the validity of various, then current, aviation certificates properly issued by the ABF
- secondly, to enable CASA to take over the function of administering and overseeing recreational balloon activities, including *ab initio* pilot training and the granting of recreational pilot authorisations and ratings (private pilot (balloon) permits) in accordance with the *CASA Recreational Ballooning Procedures Manual* (the **procedures manual**) until such time as alternative arrangements might be in place.

The procedures manual (as in force from time to time) sets out the syllabuses of training for the pilot authorisations, and the issue requirements, privileges and limitations of each authorisation. It includes information on continuing airworthiness, incident and accident reporting and advice for visiting overseas pilots.

From 12 November 2024, the new CAO continues these arrangements while also introducing the capacity for CASA to grant the following endorsements:

- an endorsement to operate a gas balloon (in effect, based on recognition of overseas national aviation authority (*NAA*) qualifications)
- an endorsement to operate a hot air airship (in effect, based on recognition of overseas NAA qualifications)
- a night VFR flight balloon endorsement
- an endorsement to operate a hot air balloon that has an envelope capacity greater than 120 000 cubic feet
- an endorsement to carry and release a hang glider.

There is no specific endorsement for parachute descents but guidance will be provided in the procedures manual.

The new CAO will no longer contain an exemption from the provisions of Division 9 of Part 4A of CAR that a balloon must be the subject of a maintenance release. This exemption is now located in *CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024* because the exemption is relevant to all Part 131 aircraft and not only those involved in recreational activities.

New CAO

The new CAO commences on 12 November 2024, at the same time as the *Part 131 (Balloons and Hot Air Airships) Manual of Standards 2024* (the **Part 131 MOS**) commences, some of whose provisions are also the subject of exemptions (see below).

The specific details of the new CAO are technical and are explained in Appendix 1.

Aviation safety

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

CASA is satisfied that, given the nature of the provisions in the new CAO, 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 11 November 2027.

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 new CAO, 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 new CAO 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 new CAO, comprised of exemptions and directions, 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 new CAO 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 new CAO 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 new CAO is repealed at the end of 11 November 2027. Thus, in practice, no sunseting avoidance issues arise and there is no impact on parliamentary oversight 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.

Legislative instruments

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.

Procedures manual

References to the procedures manual are to the *CASA Recreational Ballooning Procedures Manual*, as in force from time to time. Originally, the procedures manual was a modified version of the former ABF operations manual that was in force immediately before 2 December 2023. It has been updated to the current version as in force on 12 November 2024.

Although it is not itself a legislative instrument, the procedures manual, as in force from time to time, may be applied, adopted or incorporated for the new CAO, by virtue of subsection 98(5D) of the Act which provides for such incorporation.

The procedures manual is available on the CASA website [Civil Aviation Safety Authority \(casa.gov.au\)](https://www.casa.gov.au).

Pilot logbooks

Under subregulation 131.285(1) of CASR, the Part 131 MOS may prescribe certain record-keeping for the flight of a Part 131 aircraft.

Under subsection 6.04(1) of the Part 131 MOS, relevant information includes the following:

- (a) the flight time of the pilot in command;
- (b) the flight time of any other pilot who is permitted under the civil aviation legislation to operate the aircraft during the flight;
- (c) details of any incident relating to the flight that endangered, or could have endangered, the safe operation of the aircraft;
- (d) for a flight that includes balloon flying training — the flight report of the training activity.

Under paragraph 6.04(2)(b), in the case of a flight that is a Part 131 recreational activity, the relevant information must be kept by the operator for the flight in accordance with a pilot logbook or Part 131 approved self-administering aviation organisation (*ASAO*) requirements, as applicable.

An exemption under subsection 10 of the new CAO exempts from this requirement, largely because the relevant ASAO, the ABF, having withdrawn from becoming an ASAO, and no other ASAO having yet assumed the role, there is no facility for Part 131 ASAO requirements.

However, it is a condition of this exemption that the pilot in command must keep the information in a pilot personal logbook or in accordance with the procedures manual.

The information recorded is that already known to, and is recorded for, the pilot and the operator, namely flight time, accidents or incidents, and training flight report.

A pilot personal logbook, and the information in it, is personal to the pilot and is not available for the public.

It would become available to third parties, for example, the Australian Transport Safety Bureau, only for the purposes of accident investigation, or to CASA, only for the purposes of law enforcement.

Privacy

The recording of the information is a necessary safety element in Australian aviation. It falls under principle 3 of the Australian Privacy Principles, being personal information reasonably necessary for the organisation's functions or activities.

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 new CAO will apply to ensure continuity in the administration of Part 131 recreational activities and specialised balloon operations.

CASA has assessed that increased costs will occur in relation to fees for assessment and granting of relevant endorsements. CASA is implementing mechanisms to minimise these added costs to the greatest practicable extent, consistent with aviation safety and CASA's existing fee regime for comparable activities.

Sector risks

Only one sector is involved, namely, Part 131 recreational activities and specialised balloon operations, and the new CAO will not be the cause of greater or lesser risks within the sector.

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 new CAO. 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.

CASA conducted a public consultation on the new CAO from 24 September 2024 to 8 October 2023. There were 5 responses in total. One person did not complete the survey. There were no objections to the proposed amendments to CAO 95.54 that would empower CASA to continue to administer recreational balloon activities. Some of the comments in the feedback were considered in drafting amendments to the procedures manual.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required because the new CAO, as a vehicle for exemptions and directions, 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).

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 new CAO is compatible with human rights, and to the extent that it engages the right to life and the right to privacy it does so in a reasonable and proportionate way to enhance aviation safety.

Commencement and making

The new CAO commences on 12 November 2024 and is repealed at the end of 11 November 2027.

The new CAO 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 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024****1 Name of instrument**

This subsection names the instrument.

A Note explains that the instrument is a modified and expanded remake of *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021* (the *old CAO*) that self-repealed at the end of 11 November 2024.

A provision makes it clear that a reference in a CASA instrument (being an instrument issued by CASA under a statutory power to issue the instrument) to “Section 95.54 of the Civil Aviation Orders” is taken to be a reference to this Civil Aviation Order (*CAO*).

2 Commencement

Under this subsection, the instrument:

- (a) commences on 12 November 2024; and
- (b) is repealed at the end of 11 November 2027.

3 Table of Contents

Under this subsection, the Table of Contents is not part of this CAO. It is for reader guidance only and may be modified or edited in any published version of this CAO.

4 Application

Under this subsection, an exemption under this CAO applies in relation to a relevant aircraft only if the pilot in command:

- (a) holds a relevant permit; and
- (b) complies with the conditions of the exemption.

5 Definitions

Under this subsection, various words and phrases are defined.

In particular:

procedures manual means the *CASA Recreational Ballooning Procedures Manual*, as in force from time to time. The *CASA Recreational Ballooning Procedures Manual* is a modified version of the former Australian Ballooning Federation (***ABF***) operations manual that was in force immediately before 2 December 2023. It is available on the CASA website.

relevant endorsement means a relevant endorsement mentioned in the relevant endorsement table:

- (a) that has not expired, or been cancelled or revoked by CASA; and
- (b) that:
 - (i) before the commencement of this CAO — was issued by CASA, or deemed to be a relevant endorsement, in accordance with *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021*; or

- (ii) before 2 December 2023 — was issued by the Australian Ballooning Federation (*ABF*); or
- (iii) is issued by CASA in accordance with this CAO.

The relevant endorsement table lists the following endorsements:

Item	Relevant endorsement
1	Gas balloon endorsement
2	Hot air airship endorsement
3	Night VFR balloon endorsement
4	Non-controlled aerodrome endorsement
5	Endorsement to operate a balloon that has an envelope capacity greater than 120 000 cubic feet
6	Endorsement to carry and release a hang glider

And in particular:

relevant permit means a permit mentioned in the relevant permit table:

- (a) that has not expired, or been cancelled or revoked by CASA; and
- (b) that:
 - (i) before the commencement of this CAO — was issued by CASA, or deemed to be a relevant permit, in accordance with the old CAO; or
 - (ii) is issued by CASA in accordance with this CAO.

The relevant permit table lists the following permits:

Item	Relevant permit
1	Student pilot (balloon) permit
2	Private pilot (balloon) permit
3	Radio operator (balloon) permit
4	Instructor private pilot (balloon) permit Grade 2
5	Instructor private pilot (balloon) permit Grade 1
6	Examiner private pilot (balloon) permit

PART 2 RELEVANT PERMITS

6 Flight crew licence not required

- (1) Under this provision, holding a relevant permit and complying with this CAO amounts to an authorisation to perform a duty essential to the operation of a relevant aircraft without holding a flight crew licence for paragraph 20AB(1)(b) of the *Civil Aviation Act 1988*.
- (2) Under this provision, if a person makes airborne radio transmissions on aeronautical HF frequencies, the person must:
 - (a) hold a current flight radiotelephone operator licence; or

- (b) hold a radio operator (balloon) permit; or
- (c) be authorised to make the transmissions under Part 61 or Part 64 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

7 Application for, and grant of, a relevant permit

- (1) Under this provision, a person may apply in writing to CASA for a relevant permit in accordance with this CAO.
- (2) Under this provision, CASA may grant the relevant permit, with or without conditions, but:
 - (a) only in accordance with the applicable requirements under the procedures manual; and
 - (b) subject to paragraph (3) — only if the applicant has successfully completed all applicable theory and practical training for the relevant permit in accordance with the syllabus in the procedures manual.
- (3) Under this provision, despite paragraph (2), CASA may issue a relevant permit that is a private pilot (balloon) permit or a radio operator (balloon) permit if the applicant holds an overseas qualification that CASA approves in writing as being equivalent to the relevant permit.
- (4) Under this provision, to avoid doubt, Subparts 11.B and 11.BA of CASR are to be taken to apply for the purposes of an application for a relevant permit, as if the permit were an authorisation.
- (5) Under this provision, for the purposes of this subsection, an applicant is deemed to include a person:
 - (a) who intends to conduct a Part 131 recreational activity in Australia, in a relevant aircraft, over a period not longer than 30 days; and
 - (b) who holds current qualifications equivalent to both a private pilot (balloon) permit and a radio operator (balloon) permit that was granted by the national aviation authority of a Contracting State; and
 - (c) for whom the procedures manual contains specific requirements which the person must satisfy to be granted a private pilot (balloon) permit and a radio operator (balloon) permit under this CAO.

PART 3 RELEVANT ENDORSEMENTS

8 Application for, and grant of, a relevant endorsement

- (1) Under this provision, a person who holds a relevant permit to operate may apply in writing to CASA for a relevant endorsement in accordance with this CAO.
- (2) Under this provision, CASA may grant the relevant endorsement, with or without conditions, but:
 - (a) only in accordance with the applicable requirements under the procedures manual; and
 - (b) only if the applicant has successfully completed all applicable theory and practical training for the relevant endorsement in accordance with the syllabus in the procedures manual.
- (3) Under this provision, to avoid doubt, Subparts 11.B and 11.BA of CASR are to be taken to apply for the purposes of an application for a relevant endorsement, as if the endorsement were an authorisation.

- (4) Under this provision, for the purposes of this subsection, an applicant is deemed to include a person:
- (a) who intends to conduct a Part 131 recreational activity in Australia, in a relevant aircraft, over a period not longer than 30 days; and
 - (b) who holds current qualifications equivalent to a relevant endorsement that was granted by the national aviation authority of a Contracting State; and
 - (c) for whom the procedures manual contains specific requirements which the person must satisfy to be granted a relevant endorsement under this CAO.
- (5) Under this provision, CASA must not grant an endorsement to operate a balloon that has an envelope capacity greater than 260 000 cubic feet unless the applicant:
- (a) holds a relevant permit; and
 - (b) either:
 - (i) holds a commercial pilot (balloon) licence (**CP(B)L**) with a restricted Class 2 (R) endorsement (but limited to an envelope capacity of not greater than 400 000 cubic feet); or
 - (ii) holds a CP(B)L with an unrestricted Class 2 (U) endorsement.

A Note explains that a **Class 2 (R) endorsement** means a restricted Class 2 balloon endorsement. A **Class 2 (U) endorsement** means an unrestricted Class 2 balloon endorsement. Further information is referenced at paragraph 2.2 of Civil Aviation Order 40.7 and section 27.05 of the *Part 131 (Balloons and Hot Air Airships) Manual of Standards 2024*.

PART 4 EXEMPTIONS

9 Exemption — pilot maintenance on relevant aircraft

Under this provision, for a relevant aircraft, a person is exempted from compliance with a requirement of subparagraph 42ZC(4)(db)(i) of the *Civil Aviation Regulations 1988 (CAR)*.

Regulation 42ZC relevantly deals with the prescribed qualifications required to carry out maintenance on an Australian balloon in Australian territory.

The exemption is subject to the condition that the person who may carry out maintenance in Australian territory on a balloon that is both a relevant aircraft and a class B aircraft – in effect, any balloon – must be the holder of one of the following that is valid for the aircraft:

- (a) a commercial pilot (balloon) licence;
- (b) a relevant permit to operate the aircraft, other than a student pilot (balloon) permit.

A first Note explains the requirements of subparagraphs 42ZC(4)(db)(ii) and (iii) of CAR must also be complied with, namely:

- (a) the maintenance is specified in Part 2 of Schedule 8 of CAR; and
- (b) the maintenance (often colloquially referred to as pilot maintenance) is carried out in accordance with any conditions prescribed by legislative instrument issued by CASA for the purposes of this subparagraph.

A second Note explains that under regulation 2 of CAR, a class B aircraft is one that is not a class A aircraft. The class A aircraft definition excludes balloons. The effect of the subsection then is that a private pilot (balloon) permit *without a relevant*

endorsement is limited to a Part 131 aircraft with an envelope size of no greater than 120 000 cubic feet. Consequently, for such a pilot, pilot maintenance under the subsection is limited to a Part 131 aircraft with an envelope size of no greater than 120 000 cubic feet. However, if the pilot has an endorsement for a Part 131 aircraft with an envelope size of greater than 120 000 cubic feet, then the pilot may carry out pilot maintenance on that larger aircraft.

10 Exemptions — Part 131 pilot authorisation

Under this provision, the pilot in command of a relevant aircraft in a Part 131 recreational activity is exempted from compliance with the requirement, in certain provisions of CASR (and the Part 131 MOS), to hold a Part 131 pilot authorisation from a Part 131 approved self-administering aviation organisation (*ASAO*). As described above, this requirement is currently inoperative because the ABF, having withdrawn from becoming the relevant ASAO, and no other ASAO having yet assumed the role, there is no facility for Part 131 pilot authorisations from a Part 131 ASAO.

There are a large number of provisions affected in this way, including some in the Part 131 MOS. However, while the practicalities of the circumstances require these technical exemptions, subsections 11 and 12 substitute a range of compensating safety conditions. The relevant provisions are the following:

- (a) subparagraph 91.155(1)(b)(iv) (concerning authorisation to the manipulate flight controls);
- (b) subparagraph 91.155(2)(b)(iv) (concerning authorisation to manipulate flight controls);
- (c) subparagraph 91.625(1)(b)(iv) (concerning use of a radio);
- (d) subparagraph 91.640(1)(b)(iv) (concerning radio listening watch);
- (e) the chapeau of paragraph 91.715(2)(c) (concerning authorisation to simulate instrument failure) — a Note references the safety condition in paragraph 12(1);
- (f) subregulation 105.100(3) (but only to the extent that section 5.57 of the Part 105 MOS requires compliance with an ASAO exposition for safe parachute descents; such expositions are no longer available following the ABF's withdrawal from becoming an ASAO) — a Note references the safety condition in paragraph 11(1)(b);
- (g) subregulation 105.105(1) (concerning use of restraints in parachute operations);
- (h) subparagraph 105.155(2)(b)(i) (concerning parachute descent from balloons);
- (i) subregulation 131.245(2) (concerning pilot authorisation);
- (j) subregulation 131.285(1) (but only to the extent of the requirement under paragraph 6.04(2)(b) of the Part 131 MOS about keeping a pilot logbook) — a Note references the safety condition in paragraph 12(2);
- (k) subparagraph 131.315(2)(b)(ii) (concerning flights at night) — a Note references the safety condition in paragraph 12(3);
- (l) paragraphs 131.353(1)(b), (c) and (d) (but only to the extent of paragraphs 15.06(1)(c) and 15.08(1)(c) of the Part 131 MOS (concerning controlled aerodromes, etc.)) — a Note references the conditions under paragraph 11(2) (for required qualifications) and paragraph 12(4) (regarding the radio and transponder requirements that apply under Chapter 26 of the Part 131 MOS);

- (m) subregulation 131.360(2) (but only to the extent of the requirement under paragraph 17.02(3)(c) of the Part 131 MOS (concerning non-controlled aerodromes)) — a Note references the safety condition in paragraph 12(5);
- (n) subparagraph 131.565(2)(a)(iii) (concerning pilot qualifications);
- (o) paragraph 131.565(2)(b) (but only to the extent of the requirement under subsection 27.02(3) of the Part 131 MOS (concerning training and checking requirements — CP(B)L holder)) — a Note references the safety condition in paragraph 12(6);
- (p) paragraph 131.565(2)(b) (but only to the extent of the requirement under subsection 27.03(2) of the Part 131 MOS (concerning training and checking requirements — recreational pilot)) — a Note references the safety condition in paragraph 12(7);
- (q) paragraph 131.565(2)(c) (but only to the extent of the requirement under subparagraph 27.06(1)(a)(ii) of the Part 131 MOS (concerning VFR recency requirements for night VFR flight)) — a Note references the safety condition in paragraph 12(8);
- (r) paragraph 131.565(2)(c) (but only to the extent of the requirement under paragraph 27.06(2)(b) of the Part 131 MOS (concerning instructor qualifications for night VFR check)) — a Note references the safety condition in paragraph 12(9);
- (s) paragraph 131.580(1)(b) (concerning Part 131 activities to be authorised);
- (t) paragraph 131.580(3)(b) (concerning Part 131 activities to be authorised);
- (u) regulation 131.585 (but only to the extent that the regulation requires a person to hold the authorisation of a Part 131 ASAO in order to carry outside a Part 131 aircraft, and release, a hang glider) — a Note references the safety condition in paragraph 12(10).

PART 5 CONDITIONS ON EXEMPTIONS

11 General conditions

- (1) Under this provision, each exemption under subsection 10 is subject to the condition that the operator and the pilot in command, as applicable, of a relevant aircraft must comply with the following requirements:
 - (a) subject to paragraph (2), and paragraph 12(6), the relevant aircraft may only be operated by a person who holds one of the following to operate the aircraft in a Part 131 recreational activity:
 - (i) a CP(B)L;
 - (ii) a certificate of validation issued under Part 5 of CAR;
 - (iii) a relevant permit to operate the aircraft, including the relevant endorsements applicable for the activity;
 - (b) subject to subparagraph (c), the pilot of a relevant aircraft must conduct the Part 131 recreational activity in accordance with any applicable procedures under the procedures manual — a Note explains that this includes, for example, procedures for carriage of hang gliders, VFR flight by night, recency requirements;

- (c) the relevant aircraft may only be operated in accordance with the rules, regulations and directions that:
 - (i) are specified in the procedures manual; and
 - (ii) apply to the operation of the aircraft.
- (2) Under this provision, for the exemption under subparagraph 10(3)(l) (concerning controlled aerodromes, etc.), the relevant aircraft may only be operated by a person who holds:
 - (a) a relevant permit to operate, including the relevant endorsements applicable for the activity; and
 - (b) a current pilot licence with an aircraft category rating, under Part 61 of CASR, with privileges that include operating at a controlled aerodrome or in a controlled area or a control zone; and
 - (c) a valid flight review for the aircraft's class rating under Part 61 of CASR.

12 Particular conditions

- (1) Under this provision, it is a condition of the exemption under subparagraph 10(3)(e) (simulating instrument failure) that the pilot in command must otherwise comply with the requirements in subparagraphs 91.715(2)(c)(i) and (ii) of CASR, concerning simulating instrument failure.
- (2) Under this provision, it is a condition of the exemption under subparagraph 10(3)(j) (concerning keeping a pilot logbook) that the pilot in command must keep the information in a pilot personal logbook or in accordance with the procedures manual.
- (3) Under this provision, it is a condition of the exemption under subparagraph 10(3)(k) (concerning flights at night) that the pilot in command must hold a night VFR balloon endorsement.
- (4) Under this provision, it is a condition of the exemption under subparagraph 10(3)(l), (concerning controlled aerodromes, etc.) that to operate a relevant aircraft at a controlled aerodrome, or in a controlled area or a control zone, the operator and the pilot in command must comply with the applicable requirements under Chapter 26 of the Part 131 MOS (which deal with radio and transponder requirements).
- (5) Under this provision, it is a condition of the exemption under subparagraph 10(3)(m) (concerning non-controlled aerodromes) that the pilot in command must hold a non-controlled aerodrome endorsement.
- (6) Under this provision, it is a condition of the exemption under subparagraph 10(3)(o) (concerning training and checking requirements) that the pilot in command must hold a CP(B)L or a certificate of validation, and comply with the applicable training and checking requirements in the procedures manual.
- (7) Under this provision, it is a condition of the exemption under subparagraph 10(3)(p) (concerning training and checking requirements for recreational pilot) that the pilot in command must comply with the applicable training and checking requirements in the procedures manual.
- (8) Under this provision, it is a condition of the exemption under subparagraph 10(3)(q) (concerning VFR recency requirements for night VFR flight) that the pilot in command must comply with the applicable VFR recency requirements in the procedures manual.
- (9) Under this provisions, it is a condition of the exemption under subparagraph 10(3)(r) (concerning instructor qualifications for night VFR flight) that the instructor must hold a night VFR balloon endorsement issued by CASA.

- (10) Under this provisions, it is a condition of the exemption under subparagraph 10(3)(u) that the pilot in command must hold an endorsement to carry and release a hang glider.
- (11) Under this provisions, to avoid doubt, subject to the effect of any exemption under this CAO, this CAO does not otherwise affect any applicable requirements that an operator or pilot in command of a relevant aircraft must comply with in accordance with CAR or CASR, as is in force from time to time.

A Note references applicable provisions under CASR Part 91 and the Part 91 MOS and CASR Part 131 and the Part 131 MOS. If there is a conflict between any of the provisions in the procedures manual and a provision under CAR or CASR, the latter takes priority.

PART 6 DIRECTION

13 Part 131 recreational activity

Under this provision, the operator and the pilot in command of a Part 131 aircraft must not operate the aircraft in a Part 131 recreational activity unless the operation is conducted under and in accordance with this CAO.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024

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 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024* (the **new CAO**) which commences on 12 November 2024, is to replace and continue, with various modifications, *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021* (the **old CAO**) which is repealed at the end of 11 November 2024.

The old CAO dealt with, among other things, the regulatory and administrative effects of the withdrawal of the Australian Ballooning Federation (the **ABF**) from administration of Part 131 aircraft engaged in Part 131 recreational activity, or a specialised balloon operation (**relevant aircraft**).

The old CAO was, in effect, a legislative mechanism:

- first, to preserve the validity of various, then current, aviation certificates properly issued by the ABF
- secondly, to enable CASA to take over the function of administering and overseeing recreational balloon activities, including *ab initio* pilot training and the granting of recreational pilot authorisations and ratings (private pilot (balloon) permits) in accordance with the *CASA Recreational Ballooning Procedures Manual* (the **procedures manual**) until such time as alternative arrangements might be in place.

The procedures manual (as in force from time to time) sets out the syllabuses of training for the pilot authorisations, and the issue requirements, privileges and limitations of each authorisation. It includes information on continuing airworthiness, incident and accident reporting and advice for visiting overseas pilots.

From 12 November 2024, the new CAO continues these arrangements while also introducing the capacity for CASA to grant the following endorsements:

- an endorsement to operate a gas balloon (in effect, based on recognition of overseas national aviation authority (**NAA**) qualifications)
- an endorsement to operate a hot air airship (in effect, based on recognition of overseas NAA qualifications)
- a night VFR flight balloon endorsement

- an endorsement to operate a hot air balloon that has an envelope capacity greater than 120 000 cubic feet
- an endorsement to carry and release a hang glider.

There is no specific endorsement for parachute descents but guidance will be provided in the procedures manual.

The new CAO will no longer contain an exemption from the provisions of Division 9 of Part 4A of the *Civil Aviation Regulations 1988* that a balloon must be the subject of a maintenance release. This exemption is now located in *CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024* because the exemption is relevant to all Part 131 aircraft and not only those involved in recreational activities.

Human rights implications

The new CAO is essentially a reissue of exemptions and directions for the purposes of Part 131 recreational activities. As such, it does not directly give rise to any human rights issues.

However, to the extent that it requires appropriately trained pilots of Part 131 balloons engaged in recreational activities to hold prescribed authorisations to fly the balloons, and directs operators to ensure that their pilots comply with this obligation, the legislative instrument engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the *ICCPR*)
- the right to privacy under Article 17 of the *ICCPR*.

Right to life under the ICCPR

This engagement is in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework is to uphold aviation safety by prescribing the conduct of individuals and organisations involved in civil aviation operations, including flight operations. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety.

Right to privacy under the ICCPR

Pilot logbooks

Under subregulation 131.285(1) of the *Civil Aviation Safety Regulations 1998*, the Part 131 MOS may prescribe certain record-keeping for the flight of a Part 131 aircraft.

Under subsection 6.04(1) of the Part 131 MOS, relevant information includes the following:

- (a) the flight time of the pilot in command
- (b) the flight time of any other pilot who is permitted under the civil aviation legislation to operate the aircraft during the flight
- (c) details of any incident relating to the flight that endangered, or could have endangered, the safe operation of the aircraft
- (d) for a flight that includes balloon flying training — the flight report of the training activity.

Under paragraph 6.04(2)(b), in the case of a flight that is a Part 131 recreational activity, the relevant information must be kept by the operator for the flight in accordance with a pilot logbook or Part 131 approved self-administering aviation organisation (*ASAO*) requirements, as applicable.

An exemption under subsection 10 of the new CAO exempts from this requirement, largely because the ABF, having withdrawn from becoming an ASAO, and no other ASAO having yet assumed the role, there is no facility for Part 131 ASAO requirements.

However, it is a condition of this exemption that the pilot in command must keep the information in a pilot personal logbook or in accordance with the procedures manual.

The information recorded is that already known to, and is recorded for, the pilot and the operator, namely flight time, accidents or incidents, and training flight report.

A pilot personal logbook, and the information in it, is personal to the pilot and is not available for the public.

It would become available to third parties, for example, the Australian Transport Safety Bureau, only for the purposes of accident investigation, or to CASA, only for the purposes of law enforcement.

The recording of the information is a necessary safety element in Australian aviation. It falls under principle 3 of the Australian Privacy Principles, being personal information reasonably necessary for the organisation's functions or activities.

Conclusion

The new CAO is compatible with human rights, and to the extent that it engages the right to life and the right to privacy, it does so in a reasonable and proportionate way to enhance aviation safety.

Civil Aviation Safety Authority