

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2024

Purpose

The purpose of *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2024* (the **instrument**) is to continue the operation of certain exemptions granted to operators of hang gliders and paragliders by the *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021* (the **repealed CAO**). The repealed CAO exempted such operators from certain provisions of the *Civil Aviation Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1998 (CASR)* to maintain the operating environment for hang gliders and paragliders that existed immediately before 2 December 2021 when the flight operations regulations commenced.

Historically, sport and recreation aircraft have been regulated by bespoke rules that were legally expressed as conditions on exemptions from the main rules in CAR and CASR. Exemptions of an enduring nature were often contained in a Civil Aviation Order (**CAO**). The rules for sport and recreation operations (except for private ballooning) were to be transferred into a new Part 103 of CASR. This CASR Part was made in late 2019 and commenced on 2 December 2021, but it relies on a *Part 103 Manual of Standards* (the **Part 103 MOS**) to complete the rules and this MOS is still in the development and consultation phase. The repealed CAO, which also commenced on 2 December 2021, was made under the power to grant exemptions in Subpart 11.F of CASR, which limits the duration of an exemption to 3 years.

Those exemptions in the repealed CAO are still required to ensure continuity for operators of hang gliders and paragliders. The instrument continues their operation on an interim basis, from 2 December 2024 to the end of 1 December 2027. It is expected that, before the exemptions cease to apply, the Part 103 MOS will be made and commenced, and appropriate substantive amendments will be made to CASR to achieve the same policy objectives as the exemptions.

The exemptions in the instrument are in substantially the same terms as those in the repealed CAO. The operation of transitional provisions in subsection 12 is extended to save the operation of certificates, approvals or authorisation under the repealed CAO.

The instrument also makes consequential amendments to another legislative instrument that contains a reference to one of the repealed CAO so that it refers instead to the instrument.

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 the CASR and CAR.

Exemptions

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, the Civil Aviation Safety Authority (*CASA*) may grant an exemption from compliance with a provision of the regulations or a CAO.

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 11.175(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.

Incorporation of documents by reference

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.

Amendment of other instruments

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

Part 103 of CASR was made on 12 December 2019 and commenced on 2 December 2021. Part 103 of CASR sets out the operating rules for a wide range of non-registered aircraft, referred to as Part 103 aircraft (regulation 103.005), including:

- sailplanes
- powered parachutes
- gyroplanes
- gyrogliders
- hang gliders and powered hang gliders
- paragliders and powered paragliders
- rotorcraft that are prescribed in the Part 103 MOS
- weight-shift-controlled aeroplanes that are prescribed in the Part 103 MOS
- any other aeroplane that is prescribed in the Part 103 MOS — these include very light aeroplanes, covered by a range of certification criteria.

The purpose of Part 103 is to provide regulations for the operation of sport and recreational aircraft administered by an approved self-administering organisation (**ASAO**) under Part 149. A Part 149 ASAO certificate would list functions the organisation administers such as personnel authorisations, training, aircraft airworthiness authorisations and systems, oversight, education and enforcement.

Prior to 2 December 2021, these aircraft were operated according to a suite of exemptions in the 95 series of CAOs. Broadly speaking, pilots were allowed to operate the aircraft outside of the generally applied operating rules in the CAR, as long as they comply with the operations manual of the specified sport aviation body and the conditions of the CAO.

Part 103 of CASR provides the operating rules for these aircraft in a similar way, although the link to the sport aviation body is replaced by a link to Part 149 where the responsibility for administering the operations is held by the holder of a Part 149 ASAO certificate.

Regulation 103.015 makes provision for CASA to make a Manual of Standards (**MOS**) for various matters referred to in the regulations — for example, the kinds of aeroplanes and rotorcraft referred to above.

In consultation with an established industry working group, CASA opted to defer the originally intended commencement of the Part 103 MOS on 2 December 2021 to allow further development of it, which resulted in the sport and recreation Civil Aviation Orders, including *Civil Aviation Order 95.8 Instrument 2011* needing to be continued in force beyond 2 December 2021, to ensure operations of hang gliders and paragliders can continue after 2 December 2021, the repealed instrument remade the exemptions in *Civil Aviation Order 95.8 Instrument 2011*.

The repealed instrument continued the operation of the exemptions in *Civil Aviation Order 95.8 Instrument 2011* and was required for two main reasons: first, because the Part 103 MOS, which was originally intended to accompany new Part 103 of CASR, did not commence as anticipated on 2 December 2021; and secondly, most of the provisions of CAR were being repealed on that date and as a result, the *Civil Aviation Order 95.8 Instrument 2011* would be ineffective in providing exemptions for operators of relevant aircraft as it referred to the obsolete CAR provisions. This enabled reasonable continuity for operators of such aircraft, whilst creating a bridge to the new flight rules under Part 91 of

CASR and, eventually, to the new rules for sport and recreation aircraft under Part 103 of CASR.

The Part 103 MOS is not yet in effect.

Overview of instrument

The instrument enables the continuation of exemptions for operators of hang gliders and paragliders from certain requirements of CAR and CASR.

The instrument reissues the repealed CAO in substantially the same form, with the changes being minor drafting improvements. The commencement of Part 91 of CASR (on 2 December 2021) repealed certain provisions of CAR that impact the operations of hang gliders and paragliders. Therefore, provisions to maintain the operating environment have been drafted into the Part 103 MOS. However, because the making of the Part 103 MOS has been deferred, equivalent provisions have been included in this instrument.

To ensure operations of hang gliders and paragliders can continue after 2 December 2024, the repealed CAO is being remade with amendments to continue the substance of regulatory exemptions from CAR and the equivalent provisions under CASR, in particular, the provisions of Part 91 of CASR.

The intent of the changes is to maintain the operating environment for hang gliders and paragliders that existed immediately before 2 December 2021.

The instrument reissues the repealed CAO in substantially the same form, with changes only relating to the commencement and repeal of the instrument, and the updating of the transitional arrangements due to the repeal of that CAO. The instrument retains the same numbering to the extent possible to assist industry stakeholders so they need not update related documentation solely due to changed CAO numbering. CASA would also not have to update its related guidance material for the same reason.

Documents incorporated by reference

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.

<i>Document</i>	<i>Description</i>	<i>Manner of incorporation</i>	<i>Source</i>
Operations manual (of a Sports Aviation Body)	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.	The whole of an operations manual is incorporated as existing from time to time. Subsection 98(5D) of the Act authorises the incorporation of this document into the instrument as existing from time to time.	The document is available to members of the relevant Sports Aviation Body. The operations manual of a Sports Aviation Body (<i>SAB</i>) is available to operators and pilots who are members of the applicable SAB. CASA

<i>Document</i>	<i>Description</i>	<i>Manner of incorporation</i>	<i>Source</i>
	Various provisions of the instrument call up an operations manual.		has incorporated the documents in the instrument because aviation safety requires the use of the information and data in the documents by aircraft operators and pilots. SABs administer a wide variety of aircraft types and operations, and to make legislation addressing all the relevant operation and technical aspects would result in lengthy and complex legislation.
Technical manual (of a Sports 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;</p> <p>by which the relevant sport 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.</p>	<p>The whole of a technical manual is incorporated 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 document is available to members of the relevant Sports Aviation Body.</p> <p>The technical manual of a Sports Aviation Body is available to operators and pilots who are members of the applicable SAB. CASA has incorporated the documents in the instrument because aviation safety requires the use of the information and data in the documents by aircraft operators and pilots. SABs administer a wide variety of aircraft types and operations, and to make legislation addressing all the relevant operation and technical aspects would result in lengthy and complex legislation.</p>

Content of instrument

Subsection 1 sets out the name of the instrument: *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2024*.

Subsection 2 provides that the instrument commences on 2 December 2024.

Subsection 3 provides that the instrument is repealed at the end of 1 December 2027.

Subsection 4 provides that the instrument applies to hang gliders, powered hang gliders, paragliders and powered paragliders that are employed in private operations and listed with a sport aviation body (other than an ASAO).

Subsection 5 provides for definitions of terms used in the instrument. Some of the terminology has been updated since the repealed CAO, including the terms single-place aircraft and two-place aircraft.

Subsection 6 provides that a person performing a duty that is essential to the operation of a relevant aircraft during flight time is authorised to do so without a civil aviation authorisation mentioned in paragraph 20AB(1)(a) of the Act. This is a new provision to ensure pilots of aircraft that were previously encompassed by Subpart 200.B (which has been repealed) remain authorised to fly without being licensed by CASA. It also requires that a person making a broadcast on an aeronautical HF frequency must be authorised to do so under Part 61 or Part 64 of CASR.

Subsection 7 provides that the relevant aircraft is not required to be issued with a certificate of airworthiness.

Subsection 8 states the persons to which the exemptions are granted by CASA under the instrument and sets out which provisions of CASR from which those persons are exempt, if the conditions of the instrument are abided by. The exemptions include an exemption from regulation 91.190 of CASR to permit the dropping of tow ropes and tow cables. The exemptions are mostly the same in purpose as they were in the repealed CAO and consistent with the repealed CAO, the exemptions are subject to compliance with the conditions in the instrument.

Subsection 9 sets out the general conditions that apply in relation to relevant aircraft. These include that the aircraft must not be used for commercial purposes and must be operated in accordance with the relevant sport aviation body's operations manual and technical manual. Maintenance on aircraft must be performed in accordance with the relevant sport aviation body's technical manual. Apart from that, the subsection is in substantially the same form as it was in the repealed CAO, with minor updates and drafting improvements.

Subsection 10 sets out the flight conditions which are mostly the same as those in the repealed CAO. The conditions include flight height, location and airspace restrictions, requirements to fly only in VMC, during daylight hours and not in acrobatic flight (over a populous area) or over a populous areas or public gatherings (subject to certain requirements), not to use radiotelephone equipment (subject to certain qualifications), conditions regarding flight over a body of water, in various classes of airspace and the requirement to carry and use VHF radio communications equipment.

Subsection 11 provides for an approval process for persons wishing to fly a relevant aircraft otherwise than in accordance with the instrument. The subsection is in substantially the same form as in the repealed CAO. There are no express fetters on the discretionary power. Applications for approvals will be determined on a case by case basis by reference to safety considerations. There may be a range of reasons for an application under this subsection and it would not be practical or necessary for the instrument or this Explanatory Statement to specify the factors that the decision-maker should consider in exercising the discretion. General principles of administrative law would restrict the decision-maker to decisions that are reasonable and have regard to relevant considerations.

An approval under this provision constitutes an authorisation within the meaning of regulation 11.015 of CASR. Item 1 of the Table 201.004 of CASR (see subregulation 201.004(2) of CASR) deems an adverse decision on an authorisation to constitute a reviewable decision on its merits by the Administrative Review Tribunal (*ART*). CASA will include in any such decisions an ART merits review notice.

Subsection 12 sets out the transitional provisions for the instrument and continues certificates, approvals and authorisations by RAAus or SAFA and approvals by CASA under subsection 9 of the repealed CAO (as well as under the *Civil Aviation Order 95.8 Instrument 2011*).

Subsection 13 gives effect to Schedule 1, which amends another legislative instrument. Schedule 1 amends *CASA EX60/22 — Hang Gliding and Paragliding Operations Within Active Restricted Airspace (Hooley Dooley) Exemption 2022* to update a reference to the repealed CAO.

In renewing, amending to equivalent provisions or adding the exemptions under the instrument, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

Legislation Act 2003

Paragraph 98(5AA)(b) of the Act 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 aircraft. The instrument states that it applies to relevant aircraft.

Additionally, paragraph 98(5AA)(a) of the Act 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 exempts classes of persons from obligations relating to relevant aircraft under specified provisions of CAR and CASR.

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. *CASA EX60/22 — Hang Gliding and Paragliding Operations Within Active Restricted Airspace (Hooley Dooley) Exemption 2022* is amended by Schedule 1 to the instrument to update a reference to the repealed CAO, meaning that the instrument is a legislative instrument.

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

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 CAR and CASR (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

However, this instrument will be repealed at the end of 1 December 2027, which will occur before the sunseting 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 sunseting does not affect parliamentary oversight of this instrument.

Consultation

The instrument is a remake of the repealed CAO with only minor or machinery changes and affects the operation of hang gliders and paragliders listed with a sport aviation body — the Sports Aviation Federation of Australia (*SAFA*) formerly known as the Hang Gliding Federation of Australia. The SAFA were represented in the industry Technical Working Group (*TWG*) and were present at the meeting of TWG members where the deferral of the making of the Part 103 MOS, and this subsequent legislative solution, was discussed. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for the instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A(3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

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

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

As the instrument replaces an expiring instrument with the same (or largely the same) provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

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

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

- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government; and
- (d) a valuation of the impact the different requirements 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; and
- (e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

As the instrument replaces an expiring instrument with the same (or largely the same) provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

The new instrument will not require the individuals or businesses that benefit from it, to meet new requirements and will be cost neutral.

Impact on categories of operations

The instrument is likely to have a beneficial effect on hang glider and paraglider operations by ensuring continuity for operators.

Impact on regional and remote communities

The instrument is not likely to have a specific impact on operators in regional or remote communities in Australia. The exemptions, when initially made, likely had a generalised beneficial effect on regional, remote and urban communities.

There are no identified rural, remote or regional impacts that differ in any really material way from the general economic and cost impacts, or sector risks described above.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the exemptions in the instrument are covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA id: OIA2306252).

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 a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

The instrument commences on 2 December 2024 and is repealed at the end of 1 December 2027.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021

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 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2024* (the **instrument**) is to continue the operation of certain exemptions granted to operators of hang gliders and paragliders by the *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021* (the **repealed CAO**). The repealed CAO exempted such operators from certain provisions of the *Civil Aviation Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1988 (CASR)* to maintain the operating environment for hang gliders and paragliders that existed immediately before 2 December 2021 when the flight operations regulations commenced.

Historically, sport and recreation aircraft have been regulated by bespoke rules that were legally expressed as conditions on exemptions from the main rules in CAR and CASR. Exemptions of an enduring nature were often contained in a Civil Aviation Order (**CAO**). The rules for sport and recreation operations (except for private ballooning) were to be transferred into a new Part 103 of CASR. This CASR Part was made in late 2019 and commenced on 2 December 2021, but it relies on a *Part 103 Manual of Standards* (the **Part 103 MOS**) to complete the rules and this MOS is still in the development and consultation phase. The repealed CAO, which also commenced on 2 December 2021, was made under the power to grant exemptions in Part 11 of CASR, which limits the duration of an exemptions to 3 years.

Those exemptions are still required to ensure continuity for operators of hang gliders and paragliders. The instrument continues their operation on an interim basis, from 2 December 2024 to the end of 1 December 2027. It is expected that, before the exemptions cease to apply, the Part 103 MOS will be made, and appropriate substantive amendments will be made to CASR to achieve the same policy objectives as the exemptions.

The exemptions in the instrument are in substantially the same terms as those in the repealed CAO. The operation of transitional provisions in subsection 12 is extended to save the operation of certificates, approvals or authorisation under the repealed CAO.

The instrument also makes consequential amendments to another legislative instrument that contains a reference to one of the repealed CAO so that it refers instead to the instrument.

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