

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX31/25 — Operations by Sport and Recreational Aircraft in Restricted Area R979A (Australian International Airshow and Aerospace & Defence Exposition) Exemption 2025

Purpose

The purpose of *CASA EX31/25 — Operations by Sport and Recreational Aircraft in Restricted Area R979A (Australian International Airshow and Aerospace & Defence Exposition) Exemption 2025* (the *instrument*) is to enable the operation of certain sport and recreational aircraft in a proposed temporary restricted area with the designation “R979A” (*R979A*), in the vicinity of Avalon aerodrome, in accordance with specified conditions. The instrument will also enable some of the aircraft to fly in Class C or D airspace, in the vicinity of Avalon aerodrome (the *relevant airspace*), in accordance with conditions specified in the instrument.

The aircraft will be operating in R979A or the relevant airspace for the purposes of participation or display at the Australian International Airshow and Aerospace and Defence Exposition 2025 (the *airshow*). The airshow will be held at Avalon aerodrome in Victoria between 17 March and 31 March 2025. The Office of Airspace Regulation, an operational unit of the Civil Aviation Safety Authority (*CASA*), has declared R979A in a Notice to Airmen (*NOTAM*), for the period from 1200 17 March until 1800 31 March 2025. The declaration will be made under regulation 6 of the *Airspace Regulations 2007* and will have the effect of restricting the flight of aircraft in R979A to aircraft flown in accordance with specified conditions.

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

Under subsection 20AB(1) of the Act, a person must not perform any duty that is essential to the operation of an Australian aircraft during flight time unless:

- (a) the person holds a civil aviation authorisation that is in force and authorises the person to perform that duty; or
- (b) the person is authorised by or under the regulations to perform that duty without the civil aviation authorisation concerned.

Under regulation 200.025 of CASR, for paragraph 20AB(1)(a) of the Act, a person is taken to hold a civil aviation authorisation that is in force and authorises the person to perform a duty that is essential to the operation of an unregistered Australian aircraft during flight time if:

- (a) the person holds a pilot certificate granted by a sport aviation body (other than an approved self-administered sport aviation organisation (*ASAO*)) that administers aviation activities in the aircraft; and
- (b) the person operates the aircraft in accordance with the sport aviation body’s operations manual.

Under regulation 200.030 of CASR, a person commits an offence if:

- (a) the person pilots an unregistered Australian aircraft; and
- (b) a sport aviation body (other than an ASAO) administers aviation activities in the aircraft; and
- (c) the person does not:
 - (i) hold a pilot certificate granted by the sport aviation body; and
 - (ii) operate the aircraft in accordance with the sport aviation body's operations manual.

Recreational Aviation Australia Limited, Sports Aviation Federation of Australia Limited and Australian Sport Rotorcraft Association Inc (the **relevant sport aviation bodies**) are each a sport aviation body for the purposes of the regulations mentioned above.

Subparagraph 10.1(h) of *Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight Aeroplanes) Instrument 2024 (CAO 95.10)* provides the following flight condition that applies in relation to a relevant aircraft:

- (h) a relevant aircraft may only be flown in:
 - (i) Class E or G airspace; or
 - (ii) subject to paragraph 10.2 — Class A, B, C or D airspace or a restricted area.

Paragraph 10.2 provides that, for the purposes of sub-subparagraph 10.1(h)(ii), a person must not operate a relevant aircraft in Class A, B, C or D airspace, or a restricted area unless the following conditions are satisfied:

- (a) one of the following provisions applies:
 - (i) a certificate of airworthiness under regulation 21.176 of CASR is in force for the aeroplane;
 - (ii) both:
 - (A) an experimental certificate under regulation 21.195A of CASR is in force in relation to the aeroplane; and
 - (B) an approval is in force under regulation 91.045 or 91.050 of CASR authorising flight in the aircraft over a populous area or public gathering, which approval imposes no conditions or limitations that would prevent the flight;
- (b) the aircraft is fitted with a radio capable of two-way communication with air traffic control;
- (c) the person:
 - (i) holds a pilot licence with an aircraft category rating, the valid privileges of which include operating in controlled airspace and at a controlled aerodrome; and
 - (ii) has a valid flight review for the aircraft's class rating, under Part 61 of CASR;
- (e) if the controlled airspace in which the aircraft is operating requires a transponder to be fitted — the aircraft is fitted with a transponder that is suitable for use in the airspace.

Similar flight conditions are set out in the following provisions of the following Civil Aviation Orders (**CAOs**) for aircraft to which the CAO applies:

- subparagraph 11.1(i) of *Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2024 (CAO 95.12)*
- subparagraph 12.1K(a) of *Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2024 (CAO 95.12.1)*
- subparagraph 8.1K(b) of *Civil Aviation Order 95.32 (Exemptions from CAR and CASR — Powered Parachutes and Weight-shift-controlled Aeroplanes) Instrument 2024 (CAO 95.32)*
- sub-subparagraph 9.1(j)(ii) of *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2024 (CAO 95.55)*.

Subregulation 11.160(1) of CASR provides that, for subsection 98(5A) of the Act, CASA may grant an exemption from compliance with a provision of the regulations or a civil aviation order.

Under subregulation 11.160(2) of CASR, an exemption may be granted to a person or a class of persons.

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 reissue 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 (with a maximum penalty of 50 penalty units) 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.

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.

Background

Similar instruments have been made for previous Avalon airshows in 2013, 2015, 2017, 2019 and 2023. The last such instrument was *CASA EX23/23 — Operations by Sport and Recreational Aircraft in Restricted Area R979A) (Australian International Airshow 2019 at Avalon Aerodrome) Exemption 2023 (CASA EX23/23)*.

The 95-series CAOs referred to in CASA EX23/23 were made in December 2021 under Part 11 of CASR. Exemptions granted under Part 11 are limited in duration to 3 years. The 95-series CAOs were remade in November 2024. The instrument has, therefore, needed updating to reflect the remade 95-series CAOs.

Overview of instrument

The instrument provides exemptions from specified provisions of CAO 95.10, CAO 95.12, CAO 95.12.1, CAO 95.32 and CAO 95.55 to enable the operation of certain sport and recreational aircraft in R979A, in the vicinity of Avalon aerodrome, during the period from registration to 1 April 2025, subject to specified conditions. The instrument also provides an exemption enabling the operation of aircraft to which CAOs 95.10, 95.12 and 95.12.1 apply in Class C or D airspace, in the vicinity of Avalon aerodrome, subject to specified conditions.

The duration of the instrument enables aircraft in relation to which the instrument applies to be flown in R979A and relevant airspace to and from the airshow, in addition to at the airshow, between the day it is registered and 1 April 2025.

CASA has assessed the impact that the instrument may have on aviation safety. In granting the exemptions in the instrument, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety. In imposing the exemption conditions, CASA has determined the conditions that are necessary in the interests of the safety of air navigation.

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.

Document	Description	Source
<i>Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight Aeroplanes) Instrument 2024, as in force from time to time</i>	A disallowable legislative instrument made under CAR and CASR. This CAO sets out the operating requirements for microlight aeroplanes, including general conditions and flight conditions.	This document is available for free from the Federal Register of Legislation.

Document	Description	Source
<i>Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2024</i> , as in force from time to time	A disallowable legislative instrument made under CAR and CASR. This CAO sets out the operating requirements for gyroplanes not exceeding 250 kg, including general conditions and flight conditions.	This document is available for free from the Federal Register of Legislation.
<i>Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2024</i> , as in force from time to time	A disallowable legislative instrument made under CAR and CASR. This CAO sets out the operating requirements for certain gyroplanes, including general conditions and flight conditions.	This document is available for free from the Federal Register of Legislation.
A NOTAM declaring R979A, as the NOTAM exists from time to time	Notice to Airmen.	Freely available from Airservices Australia at: < http://www.airservicesaustralia.com/flight-briefing/ >. NOTAMs are available from the National Aeronautical Information Processing System (NAIPS) link on that page.
AIP Supplement H01/25, as it exists from time to time	This document contains the procedures for aircraft operating under the visual flight rules at aircraft landing area Avalon aerodrome (YMAV) during the airshow period.	Freely available within the Aeronautical Information Publication (AIP) produced by Airservices Australia, which is accessible at: < https://www.airservicesaustralia.com/aip/aip.asp >.

The Civil Aviation Orders mentioned above are incorporated by reference, as in force from time to time, in accordance with subsection 14(1) of the LA. As noted above, 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.

Content of instrument

Section 1 gives the instrument its name.

Section 2 sets out the duration of the instrument. The instrument commences at the time it is registered and is repealed at the end of 1 April 2025.

Section 3 contains various definitions of terms used in the instrument.

Section 4 states the instrument applies in relation to a CAO 95.10 aircraft, CAO 95.12 aircraft, CAO 95.12.1 aircraft, CAO 95.32 aircraft or CAO 95.55 aircraft. Each of these terms is defined in section 3 of the instrument to mean the aircraft to which the relevant Civil Aviation Order applies.

Section 5 grants exemptions to stated persons in relation to a CAO 95.10 aircraft. The exemptions are subject to the conditions stated in subsection 5(6) and Schedule 1.

Section 6 grants exemptions to stated persons in relation to a CAO 95.12 aircraft. The exemptions are subject to the conditions stated in subsection 6(6) and Schedule 1.

Section 7 grants exemptions to stated persons in relation to a CAO 95.12.1 aircraft. The exemptions are subject to the conditions stated in subsection 7(6) and Schedule 1.

Section 8 grants exemptions to the operator, or pilot in command, of a CAO 95.32 aircraft or CAO 95.55 aircraft. The exemptions are subject to the conditions stated in Schedule 1.

The exemptions apply to the extent the aircraft is operated in Class C or D airspace in the vicinity of Avalon aerodrome, or R979A, as stated.

Sections 5 to 7 each contain an exemption from compliance with certain provisions of CAR and the Civil Aviation Orders, in relation to the operation of the aircraft in R979A. Also, sections 5 to 7 each contain an exemption from compliance with paragraph 200.025(b) and subparagraph 200.030(c)(ii) of CASR in relation to a pilot's operation of the aircraft in R979A, to the extent the relevant sport aviation body's operations manual does not allow the pilot to operate the aircraft in R979A.

Sections 5 to 7 each contain an exemption from compliance with the pilot licensing requirements contained in Part 61 of CASR, in relation to the operation of a CAO 95.10 aircraft, CAO 95.12 aircraft, or CAO 95.12.1 aircraft, in R979A. Subsection 5C of CAO 95.32 and CAO 95.55 each provide, in effect, the equivalent exemption for a CAO 95.32 aircraft or CAO 95.55 aircraft.

Without the exemptions, the aircraft could not be lawfully operated in R979A.

Schedule 1 contains conditions imposed on the exemptions. One of the conditions relates to the type of radio that must be fitted to the aircraft and its serviceability. The other conditions impose obligations on the pilot in command of the aircraft, in relation to compliance with AIP Supplement H01/25, and approval of the airshow organiser and relevant sport aviation body.

Legislation Act 2003

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. 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 or a class of aircraft.

Sections 5 to 8 of the instrument apply to stated persons (each a class of persons) in relation to the operation of a CAO 95.10, CAO 95.12, CAO 95.12.1, CAO 95.32 or CAO 95.55

aircraft (each a class of aircraft). 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 (as per 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 April 2025, 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

Initial consultation on the proposed instrument was conducted by CASA with the AMDA Foundation Limited (*AMDA*), the applicant for the instrument, through the airshow display organiser. AMDA consulted with the relevant sport aviation bodies regarding the airshow. The relevant sport aviation bodies are aware that an exemption instrument is required to allow the sport aviation aircraft they administer to be operated in R979A for the purposes of the airshow.

The instrument has been issued at the request of AMDA and is similar to previous instruments issued for the same purpose. CASA is satisfied that no further consultation is appropriate or reasonably practicable for this 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.

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.

The instrument makes no changes to previous arrangements under which sport aviation aircraft may be flown in the vicinity of Avalon aerodrome for the purposes of the airshow. Therefore, there will be no change to the economic or cost impact on individuals, businesses or the community, except the influx of visitors to the airshow may be of economic benefit.

Impact on categories of operations

The instrument will have a beneficial effect on the sport aviation industry as it will enable businesses to promote their aircraft and equipment at the airshow and may encourage the use of aircraft and equipment offered for sale or hire by those businesses.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on the regional community in which Avalon aerodrome is located because it will enable sport aviation aircraft to be displayed in, and pilots of those aircraft to participate in, the airshow. This in turn will lead to participants in, and spectators of, the airshow to visit that community.

Office of Impact Analysis (OIA)

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

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 at the time it is registered and is repealed at the end of 1 April 2025.

Statement of Compatibility with Human Rights

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

CASA EX31/25 — Operations by Sport and Recreational Aircraft in Restricted Area R979A (Australian International Airshow and Aerospace & Defence Exposition) Exemption 2025

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 the legislative instrument is to enable the operation of certain sport and recreational aircraft in a proposed temporary restricted area with the designation “R979A”, in the vicinity of Avalon aerodrome, during a period within which the Australian International Airshow and Aerospace & Defence Exposition 2025 (the *airshow*) is to be held. The airshow is to be held at Avalon aerodrome from 17 March to 31 March 2025.

The instrument will also enable some sport and recreational aircraft to fly in Class C or D airspace, in the vicinity of Avalon aerodrome, in accordance with conditions specified in 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