

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX65/22 — Maintenance on Limited Category and Experimental Aircraft Exemption 2022

##### Purpose

Instrument *CASA EX65/22 — Maintenance on Limited Category and Experimental Aircraft Exemption 2022* (the **instrument**) allows for the conduct of certain kinds of maintenance on a limited category or experimental aircraft, regardless of whether the maintenance is covered by a design standard. The exemption in the instrument alleviates a burden on industry where, for a unique limited category or experimental aircraft, no design standard exists for the maintenance, such that but for the exemption, maintenance on such aircraft would not be able to be carried out. The instrument replaces, with a minor amendment, instrument *CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020* (**CASA EX55/20**), which would otherwise be repealed at the end of 31 March 2023.

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

Under subsections 98 (5A) and (5AA) of the Act, the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft which, if applicable to a class of persons, would be legislative instruments.

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 a provision of the regulations.

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.

Under regulations 21.189 and 21.195A of CASR, aircraft are not required to meet design standards in order to qualify for the issue of special certificates of airworthiness in the limited category or experimental certificates.

Regulation 42U of CAR provides that a person may modify or repair an Australian aircraft only if the design of the modification or repair has been approved, or taken to be approved, and the modification or repair is in accordance with that design. Paragraphs 42W (2) (b) and (4) (a) and (c) of CAR require a replacement component to be designed, manufactured and modified or repaired in compliance with a design standard.

### **Background**

The provisions of regulations 42U and 42W of CAR have created problems for limited category aircraft and aircraft issued with an experimental certificate of airworthiness (*exempted aircraft*).

Under regulation 42U of CAR, a person may only modify an aircraft if the modification is approved. The nature of an experimental aircraft is that a modification will normally not be approved or approvable until an aircraft has been test flown under a certificate issued for the purpose of paragraph 21.191 (a) of CASR (research and development) or paragraph 21.191 (b) of CASR (showing compliance with regulations). Upon satisfactory completion of a flight test program, including testing of any further modification requirements that were revealed during the flight test program, a modification may then be approved.

For an amateur-built experimental aircraft, there are no design standards against which a modification can be approved.

Paragraph 42W (2) (b) of CAR prescribes requirements for when a replacement component may be installed in an aircraft. In the case of an experimental aircraft, the requirements are not always able to be satisfied as the component being replaced may be part of an experimental design which is not yet approved. In the case of an amateur-built experimental aircraft, there are no applicable design standards against which a component could be approved and if the original builder is no longer the owner or contactable, then no manufacturer approval is available.

In the case of limited category aircraft, particularly warbirds, replacement components are usually salvaged components or military disposal stock. In either case, no design standard or manufacturer approval may be available.

Paragraph 42W (4) (a) of CAR requires a certification of maintenance, and refers to a component manufactured in the course of maintenance (*MITCOM*). The certification effectively certifies that any component installed meets the requirements of subregulation 42W (2), which is not always feasible for exempted aircraft due to the non-existence of approved components that provide a model for a MITCOM component.

Paragraph 42W (4) (c) of CAR requires any component that is fitted to an aircraft, and to which a modification has been made, to have been modified in accordance with approved data. In relation to exempted aircraft, this is not always possible because there are frequently no known design standards against which a modification may be approved.

CASA EX55/20 does not apply to modifications to an exempted aircraft if the exempted aircraft is administered by a limited category organisation. CASA has received feedback from operators of these aircraft that this has removed a mechanism for limited category organisations to approve modification designs for which there is otherwise no mechanism for approval under regulations 42U and 42W of CAR. In consideration of this feedback, CASA has agreed to apply the exemption in the instrument to modifications to an exempted aircraft if the exempted aircraft is administered by a limited category organisation.

CASA intends to incorporate the terms of the exemption in the instrument into a new Part 43 of CASR, which was announced in July 2018. The new Part 43 of CASR is expected to be made in 2022 to commence in about 2023 or 2024.

### **Overview of instrument**

The instrument exempts the registered operator of an exempted aircraft and persons carrying out specified maintenance on exempted aircraft from compliance with the requirements of regulation 42U and paragraphs 42W (2) (b) and (4) (a) and (c) of CAR. The instrument does not apply in relation to the following maintenance activities:

- (a) maintenance of aircraft instruments and equipment specifically required by CASR, CAR or the Civil Aviation Orders (the **CAOs**);
- (b) maintenance to comply with a condition on the special certificate of airworthiness or experimental certificate for the aircraft;
- (c) maintenance specified in an airworthiness directive or a direction issued by CASA applicable to the aircraft;
- (d) maintenance to comply with an instruction specified in the aircraft's approved maintenance data.

Any elevated safety risk that may arise as a consequence of the exemptions is mitigated by the operational limitations applied by Part 132 of CASR and the conditions imposed by the instrument. The conditions include a requirement that if maintenance is a "major design change" (as defined in the instrument) to the exempted aircraft, the registered operator must not allow the aircraft to be operated until:

- (a) information prescribed by the instrument has been provided to a person mentioned in the instrument; and
- (b) the person has informed the registered operator in writing that the design change is acceptable.

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument repeals CASA EX55/20, which is no longer required with the making of this instrument.

### **Documents incorporated by reference**

This instrument incorporates CASA EX55/20 and CAR. As legislative instruments, they are freely available at the Federal Register of Legislation website.

### **Content of instrument**

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument. The instrument commences on the day after it is registered and is repealed at the end of 31 July 2024. The extension of the application of

the exemptions, to include modifications to exempted aircraft administered by a limited category organisation, is prospective from the date of commencement of the instrument.

Section 3 repeals CASA EX55/20.

Section 4 sets out definitions for the instrument. Key definitions include:

**exempted aircraft**, which means an aircraft that is a limited category aircraft or an aircraft in relation to which an experimental certificate is in force.

**exempted aircraft maintenance**, which means maintenance on an exempted aircraft that is not the following:

- (a) maintenance of instruments and equipment on the exempted aircraft required by CASR, CAR or the CAOs;
- (b) maintenance to comply with a condition on the special certificate of airworthiness or experimental certificate for the exempted aircraft;
- (c) maintenance specified in an airworthiness directive or in a direction issued by CASA;
- (d) maintenance to comply with an instruction specified in the exempted aircraft's approved maintenance data.

Section 5 states that the instrument applies to the registered operator of an exempted aircraft and to each person carrying out exempted aircraft maintenance.

Section 6 sets out the exemptions. It provides that, in relation to exempted aircraft maintenance, the registered operator of the aircraft and the person carrying out the maintenance are exempt from compliance with the following provisions of CAR:

- (a) regulation 42U;
- (b) paragraphs 42W (2) (b) and (4) (a) and (c).

Subsection 6 (2) provides that for the registered operator, the exemptions are subject to the condition in subsection 7 (1).

Section 7 sets out the conditions on the exemption. Subsection 7 (1) provides that, if the exempted aircraft maintenance involves a major design change, the registered operator of the exempted aircraft must not operate the aircraft or allow the aircraft to be flown after the maintenance until the following requirements are satisfied:

- (a) the registered operator has provided the information mentioned in subsection (2) in writing to:
  - (i) CASA's Airworthiness and Engineering Branch; or
  - (ii) an authorised person who holds power to make decisions under regulations 21.006A and 21.009 and the provisions of Subpart 21.M of CASR; or
  - (iii) a person who is authorised to issue a certificate of airworthiness in the category of the exempted aircraft; or
  - (iv) an approved design organisation;
- (b) the person to whom the information is provided informs the registered operator in writing that the major design change is acceptable.

Subsection 7 (2) provides that, for paragraph (1) (a), the information is the following:

- (a) a description of the maintenance that involves the major design change;

- (b) if the maintenance has been carried out, photographs that provide supplementary explanation of the key steps of the description mentioned in paragraph (a);
- (c) the reasons for making the major design change;
- (d) how the maintenance may affect each of the matters mentioned in the definition of *major design change*, which include the weight, balance, structural strength, performance and operational characteristics of the aircraft;
- (e) why the major design change will not adversely affect the safety of the exempted aircraft.

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

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. This instrument repeals instrument CASA EX55/20 that was registered as a legislative instrument and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

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 31 July 2024, which will occur before the sunsetting 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 sunsetting does not affect parliamentary oversight of this instrument.

### **Consultation**

The instrument removes unnecessary burden on industry in relation to the exempted requirements and substantially reflects the effect of CASA EX55/20, with an amendment requested by industry operators as outlined in the “Background” section above. There are no new requirements applicable under the instrument. CASA is continuing to work with industry to develop regulatory provisions that resolve the issues caused by the provisions of CAR that are the subject of the exemption.

In these circumstances, it is CASA’s view that it is not necessary or appropriate to undertake any further consultation under 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 repeals and effectively replaces an existing instrument with largely the same provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

#### **Impact on categories of operations**

The instrument is likely to have a beneficial effect on operations of experimental and limited category aircraft and related businesses by promoting the operation of those aircraft.

#### **Impact on regional and remote communities**

The instrument is likely to have a beneficial effect on the regional communities in which maintenance and operations of the aircraft will be carried out.

#### **Office of Best Practice Regulation (OBPR)**

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

#### **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 the day after it is registered and is repealed at the end of 31 July 2024.

## Statement of Compatibility with Human Rights

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

### CASA EX65/22 — Maintenance on Limited Category and Experimental Aircraft Exemption 2022

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 legislative instrument exempts the registered operator of an exempted aircraft and persons carrying out specified maintenance on exempted aircraft from compliance with the requirements of regulation 42U and paragraphs 42W (2) (b) and (4) (a) and (c) of the *Civil Aviation Regulations 1988 (CAR)*. These provisions relate to modification and repair of aircraft and the installation and use of aircraft components. The instrument does not apply in relation to the following maintenance activities:

- (a) maintenance of aircraft instruments and equipment specifically required by the *Civil Aviation Safety Regulations 1998 (CASR)*, CAR or the Civil Aviation Orders;
- (b) maintenance to comply with a condition on the special certificate of airworthiness or experimental certificate for the aircraft;
- (c) maintenance specified in an airworthiness directive or a direction issued by the Civil Aviation Safety Authority applicable to the aircraft;
- (d) maintenance to comply with an instruction specified in the aircraft's approved maintenance data.

Any elevated safety risk that may arise as a consequence of the exemptions is mitigated by the operational limitations applied by Part 132 of CASR and the conditions imposed by the instrument. The conditions include a requirement that if maintenance involves a "major design change" (as defined in the instrument) to the exempted aircraft, the registered operator must not allow the aircraft to be operated until:

- (a) information prescribed by the instrument has been provided to a person mentioned in the instrument; and
- (b) the person has informed the registered operator in writing that the design change is acceptable.

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument repeals *CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020*, which is no longer required with the making of this 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**