

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 30/22 — Air Displays (Temora Historic Flight Club) Ongoing Approval Instrument 2022

Purpose

The purpose of *CASA 30/22 — Air Displays (Temora Historic Flight Club) Ongoing Approval Instrument 2022* (the **instrument**) is to provide an ongoing Civil Aviation Safety Authority (**CASA**) approval for the Temora Historic Flight Club Incorporated (**THFC**) to conduct air displays. The air displays must be conducted at the display area at Temora aerodrome, be organised by a THFC nominated air display organiser, and take place by the end of 24 September 2027. The instrument also approves pilots in command of aircraft being operated in such an air display (**participants**) who are mentioned in the program of events for the air display, to conduct aerobatic manoeuvres for flights at the air display, and for flights over a populous area at the air display.

The instrument contains conditions on the approvals, and directions for the organiser, that are imposed by CASA in the interests of the safety of air navigation.

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**).

Part 91 of CASR sets out the general operating and flight rules for Australian aircraft. Regulation 91.045 of CASR provides that if a provision of Part 91 refers to a person holding an approval under the regulation, a person may apply to CASA, in writing, for the approval and, subject to regulation 11.055, the approval must be granted.

Under regulation 11.015 of CASR, an approval of this type is an authorisation under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

Regulation 11.055 of CASR sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation may be granted subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability if the person breaches a condition of an authorisation.

Subregulation 91.180 (1) of CASR provides that a person contravenes the subregulation if the person conducts an air display in Australian territory and does not hold an approval under regulation 91.045 to conduct the air display. Subregulation 91.180 (2) of CASR provides that the operator and pilot in command of an aircraft for a flight contravene the subregulation if the flight is in an air display in Australian territory and the person conducting the air display does not hold an approval under regulation 91.045 to conduct the air display. Subregulation 91.180 (3) states that a person commits an offence of strict liability if the person contravenes subregulation (1) or (2).

Regulation 91.185 of CASR provides for the conduct of acrobatic manoeuvres.

Subregulation 91.185 (1) relates to the conduct of acrobatic manoeuvres in instrument meteorological conditions (*IMC*) and is not relevant for this instrument because THFC does not conduct air displays in IMC.

Subregulation 91.185 (2) provides that the pilot in command of an aircraft for a flight contravenes the subregulation if, during the flight:

- (a) the pilot in command conducts acrobatic manoeuvres:
 - (i) over a populous area; or
 - (ii) at an air display; or
 - (iii) at night; and
- (b) the pilot in command does not hold an approval under regulation 91.045 to conduct the acrobatic manoeuvres:
 - (i) for a flight over a populous area — over the populous area; or
 - (ii) for a flight at an air display — at the air display; or
 - (iii) for a flight at night — at night.

Subregulation 91.185 (3) provides that a person commits an offence of strict liability if the person contravenes subregulation (1) or (2).

Under subregulation 91.265 (2) of CASR, the pilot in command of an aeroplane flown over a populous area or a public gathering commits a strict liability offence if, during the flight, the aeroplane is flown below 1 000 feet above the highest feature or obstacle within a horizontal radius of 600 m of the point on the ground or water immediately below the aeroplane, and none of the circumstances mentioned in subregulation 91.265 (4) applies. The circumstances include that the pilot in command holds an approval for the purposes of regulation 91.180 (air displays in Australian territory).

Under subregulation 91.267 (2) of CASR, the pilot in command of an aircraft flown other than over a populous area or a public gathering commits a strict liability offence if, during the flight, the aircraft is flown below 500 feet above the highest feature or obstacle within a horizontal radius of 300 m of the point on the ground or water immediately below the aircraft, and none of the circumstances mentioned in subregulation 91.267 (3) applies. The circumstances include that the pilot in command holds an approval for the purposes of regulation 91.180 (air displays in Australian territory).

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245 (1) (a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245 (2) provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions.

Under paragraph 11.250 (a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255, it is an offence of strict liability to contravene a direction under regulation 11.245.

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

THFC has conducted flying displays for the Temora Aviation Museum for many years. The flying displays involve the operation of Australia's historic ex-military aircraft, other aircraft that are part of Australia's aviation history, and at times modern aircraft. Further information regarding the Temora Aviation Museum and its history can be found on its website at <https://aviationmuseum.com.au>.

THFC has applied to CASA for an ongoing approval for flying displays that it conducts. A number of approvals have previously been issued by CASA for individual flying displays conducted by THFC. These involved individual applications having to be made by THFC to CASA for approval of each display, with CASA assessing each application, with related financial and administrative costs for both THFC and CASA. CASA considers it appropriate for an ongoing approval to be given to THFC for the conduct of its flying displays, with appropriate safeguards.

As part of the assessment of this application, CASA assessed THFC's proposed ongoing management of change process relevant to its conduct of air displays under such an ongoing approval and found the process to be satisfactory. The process is set out in the Temora Historic Flight Club Air Display Manual, as existing at commencement of this instrument, and is based on the management of change process applicable to operators to which Part 119 of CASR applies. Under the process, a significant change (as described in the manual) requires CASA approval before implementation.

Overview of instrument

The instrument applies in relation to THFC, the organiser and participants, in relation to any THFC air display. The effect of the instrument is to approve THFC to conduct air displays until the end of 24 September 2027. The instrument also grants approvals for participants to conduct aerobatic manoeuvres for flights at the THFC air displays, and for flights over a populous area at the THFC air displays.

THFC air display is defined as an air display conducted in the display area, that is organised by the organiser, including specified air displays (e.g. the September 2022 Aircraft Showcase). **Display area** is defined to mean the area, at Temora aerodrome, that is described

as the display area in the Temora Historic Flight Club Air Display Manual, as it exists from time to time.

organiser is defined to mean the person nominated by THFC to be the air display organiser for the THFC air display, and named as the air display organiser in the program of events for the THFC air display.

Each approval is subject to conditions. For example, THFC must comply with any requirement, mentioned in a relevant document, that applies to THFC and relates to the THFC air display.

A **relevant document** is defined to mean any the following documents, as the document exists from time to time:

- Temora Historic Flight Club Air Display Manual
- Temora Historic Flight Club Standard Operating Procedures
- Temora Historic Flight Club Safety Management System
- Warbirds Downunder Safety Management & Operational Plan.

The instrument allows authorised passengers to be carried in aircraft flown in THFC air displays, provided certain safeguards are met. The carriage of such passengers must be essential for the safe operation of the aircraft, and the onus is on the organiser to determine this. Such persons might, for example, be required to sit in the co-pilot seat and clear the flight path for a formation display when the pilot cannot see in that direction, or be on board for mentoring or coaching purposes during a display when the pilot has not yet been assessed as able to carry out displays solo.

The instrument includes the direction that the organiser must be satisfied that the carriage of a passenger is required for the safe operation of the aircraft before naming the passenger in the program of events for the air display as a passenger of the aircraft for the flight.

Other directions are also given to the organiser. The organiser must comply with any requirement, mentioned in a relevant document, that relates to the THFC air display. The organiser must also provide CASA with a completed *CASA Post Display Report* form within 14 days after the THFC air display is completed. This requirement was in the previous approval instruments and ensures CASA is aware of any occurrences at an air display that may adversely affect the safety of future events so that appropriate action may be taken. For example, depending on the occurrence, a surveillance event may be raised to investigate the matter.

CASA has assessed THFC's application for the instrument, including the documents submitted by THFC setting out the procedures for their operations at Temora aerodrome which are referenced in the instrument. Based on that assessment, CASA is satisfied that there are no adverse safety implications in relation to granting the approvals and issuing the direction set out in the instrument.

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
Temora Historic Flight Club Air Display Manual, as existing from time to time	Contains the processes and procedures to be used and complied with by THFC to organise and conduct air displays at Temora aerodrome	Freely available on request from the Temora Aviation Museum or CASA
Temora Historic Flight Club Standard Operating Procedures, as existing from time to time	Contains the standard operating procedures for the conduct of THFC flying operations	Freely available on request from the Temora Aviation Museum or CASA
Temora Historic Flight Club Safety Management System, as existing from time to time	Contains the THFC safety management system for THFC activities, including the flying of aircraft participating in THFC activities, including required safety training and emergency procedures	Freely available on request from the Temora Aviation Museum or CASA
Warbirds Downunder Safety Management & Operational Plan, as existing from time to time	Contains the health and safety procedures to safely run the Warbirds Downunder Airshow, or any airshow with more than 20 participating aircraft, including requirements for ground and air safety	Freely available on request from the Temora Aviation Museum or CASA
Program of events for a THFC air display, as existing from time to time	Contains the program of events for a THFC air display, including the names of the organiser, the participants, any crew or passengers accompanying a participant, the types of aircraft to be flown, and the kind of display flights	Freely available on request from the Temora Aviation Museum or CASA

The Temora Aviation Museum website at <https://aviationmuseum.com.au> states how requests may be made to the museum for a copy of any incorporated document.

As at commencement of this instrument, the flying displays page of that website (at <https://aviationmuseum.com.au/upcoming-events>) stated that the latest versions of each document are freely available on request to info@aviationmuseum.com.au or via CASA at regservices@casa.gov.au.

As mentioned previously, 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 names the instrument.

Section 2 sets out the duration of the instrument.

Section 3 contains definitions for the instrument.

Section 4 of the instrument sets out the application of the instrument. The instrument applies in relation to THFC, the organiser and participants, in relation to any THFC air display.

Section 5 contains approvals granted by CASA. Subsection 5 (1) provides that for subregulation 91.180 (1) of CASR, THFC is approved to conduct the THFC air display.

Subsection 5 (2) provides that, for regulation 91.180 of CASR, each participant mentioned in the program of events for the THFC air display is approved. A note is included for information that lists the CASR provisions for which this approval is required.

Subsection 5 (3) provides that, for subparagraph 91.185 (2) (b) (i) of CASR, each participant mentioned in the program of events for the THFC air display as conducting aerobatic manoeuvres over a populous area, is approved to do so for a flight over a populous area at the air display.

Subsection 5 (4) provides that, for subparagraph 91.185 (2) (b) (ii) of CASR, each participant mentioned in the program of events for the THFC air display as conducting aerobatic manoeuvres, is approved to do so for a flight at the air display.

Subsection 5 (5) provides that the approval of THFC is subject to the condition mentioned in section 6.

Subsection 5 (6) provides that the other approvals of participants are subject to the conditions mentioned in section 7.

Subsection 5 (7) provides that section 5 ceases to be in force at the end of 24 September 2027. This means that the last THFC air display that may be conducted during the duration of the instrument must be conducted by the end of 24 September 2027, and that the conditions on the approvals in section 5 also cease to be in force at the end of 24 September 2027.

Section 6 provides a condition on the THFC approval. THFC must comply with any requirement, mentioned in a relevant document, that applies to THFC and relates to the THFC air display. A note states that this includes that THFC must follow the management of change process set out in the Temora Historic Flight Club Safety Management System document.

Section 7 provides conditions for participants. Participants must ensure that they do not carry any passengers in aircraft they pilot in a THFC air display unless the passenger is named in the program of events for the THFC air display as a passenger of the aircraft for the flight. Participants must comply with requirements in the program of events, which is defined to be as the program exists from time to time, and the Temora Historic Flight Club Air Display Manual, as the manual exists from time to time.

Section 8 provides the directions to the organiser that have been previously described in the instrument overview.

Legislation Act 2003

The instrument is registered on the Federal Register of Legislation as a legislative instrument. Under subsection 8 (3) of the LA, 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.

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 8 October 2027, 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

THFC has applied for the instrument, and approval instruments have previously been issued in relation to individual air displays conducted by THFC. CASA has received no adverse comment in relation to those previous approval instruments.

CASA also provided copies of the draft instrument to THFC for comment in May 2022 and again in June 2022 and its comments were taken into account when preparing the final draft.

In these circumstances, 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) 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.

CASA has assessed that the economic and cost impact of the instrument is not significant. The ongoing approvals provided by the instrument would save THFC the cost of making individual applications to CASA for each THFC air display to be held until the end of 24 September 2027. The instrument does not impose any requirements on THFC in relation to the conduct of air displays that are not already required under THFC processes and procedures set out in the relevant documents. The requirements that would apply to participants of the THFC air displays under the instruments are also not new requirements.

Impact on categories of operations

The instrument is likely to have a beneficial effect on the operation of the Australian historic ex-military aircraft by providing certainty regarding CASA's approval of air displays conducted by THFC at Temora aerodrome until the end of 24 September 2027.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on the regional community of Temora, New South Wales because it will provide certainty regarding CASA approval of air displays conducted by THFC at Temora aerodrome until the end of 24 September 2027. This would benefit local businesses preparing for upcoming air displays, and provide certainty for potential participants and spectators planning to visit that community that the air display is approved.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for approvals and directions (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 8 October 2027.

Statement of Compatibility with Human Rights

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

CASA 30/22 — Air Displays (Temora Historic Flight Club) Ongoing Approval Instrument 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 provides ongoing approval for Temora Historic Flight Club Incorporated (**THFC**) to conduct air displays at the display area at Temora aerodrome that are organised by the organiser, as defined in the instrument, until the end of 24 September 2027. The instrument also approves participants in an air display conducted by THFC (**THFC air display**) to conduct aerobatic manoeuvres for flights at the air display, and for flights over a populous area at the air display.

The approvals are granted subject to conditions. The instrument also issues directions to the organiser. The conditions and directions are imposed by the Civil Aviation Safety Authority in the interest of the safety of air navigation.

Human rights implications

The legislative instrument engages the right to protection against arbitrary and unlawful interferences with privacy (Article 17 of the International Covenant on Civil and Political Rights (the **ICCPR**)). The right to protection against arbitrary and unlawful interference with privacy, contained in Article 17 of the ICCPR, provides that no-one shall be subjected to arbitrary or unlawful interference with their privacy.

The right to privacy is engaged by the definition of **program of events** in the instrument, which is prepared by the organiser of a THFC air display, and must include the names of participants in the air display, the names of any authorised passengers or crew accompanying a participant, and the name of the display organiser. This is required because of the approvals given under the instrument to participants, and because of the directions given under the instrument to the display organiser. The names of participants, authorised passengers and crew members, and the organiser, are also required to be identifiable for aviation safety reasons.

Apart from the impact on the right to privacy, the instrument is beneficial in purpose and content, and does not adversely affect the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

This legislative instrument is compatible with human rights. To the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate in order to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

Civil Aviation Safety Authority