

## **Explanatory Statement**

### **Civil Aviation Safety Regulations 1998**

#### **CASA EX52/23 – CRS and SM CRS Document to Cover Specialist Maintenance by a Class D AMO – Instrument 2023**

##### **Purpose**

The purpose of this instrument is to allow more flexible and effective use of certain specialist maintenance organisations by aircraft maintenance organisations. The instrument achieves greater consistency between the Civil Aviation Safety Authority (**CASA**) requirements and the equivalent European Union Aviation Safety Agency (**EASA**) requirements.

##### **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 42 of CASR*

Under subregulation 42.725(1) of CASR, if an individual carries out maintenance on an aircraft on behalf of an approved maintenance organisation (**AMO**), the AMO must not release the aircraft to another person unless the organisation has issued a certificate of release to service (**CRS**) for the aircraft in relation to the maintenance. Under subregulation 42.725(2), an AMO commits an offence if the AMO has not issued a CRS for the aircraft in relation to the maintenance before releasing the aircraft to another person.

Under subregulation 42.730(1) of CASR, if maintenance was carried out on an aircraft on behalf of an AMO, the organisation may issue a CRS for the aircraft in relation to the maintenance. Under subregulation 42.730(2), the AMO must ensure that the certificate is issued on behalf of the organisation by an individual who is a certifying employee of the organisation, and whose certification authorisation permits them to issue the certificate for the aircraft in relation to the maintenance.

Under paragraph 42.745(a) of CASR, for the issue of a CRS for an aircraft in relation to maintenance carried out on the aircraft, the certificate must comply with regulation 42.760 of CASR.

Under paragraph 42.760(1)(c), a document is a CRS for an aircraft in relation to maintenance carried out on the aircraft by an AMO only if it includes the AMO's approval certificate reference number and the certification authorisation number of the employee issuing the certificate.

##### *Part 145 of CASR*

A Part 145 organisation is a type of AMO.

Under regulation 145.015, CASA may issue a Manual of Standards for Part 145 (the **Part 145 MOS**) that specifies matters affecting the maintenance or airworthiness of aircraft.

Under subregulation 145.030(1) of CASR, subject to regulation 11.055 of CASR, CASA must approve an applicant as a Part 145 organisation if CASA is satisfied that specified

requirements are met. These include the requirement, in paragraph 145.030(1)(a), that the applicant has an exposition that complies with the requirements specified in the Part 145 MOS.

Under paragraph 145.045(a)(v) of CASR, it is a condition of approval of a Part 145 organisation that the organisation must, at all times, comply with the requirements of the Part 145 MOS.

Under paragraph 145.070(1)(e) of CASR, if a Part 145 organisation provides maintenance services, it must provide the services only in accordance with the privileges that apply to the approval rating, for which it is approved to provide maintenance services, under the Part 145 MOS.

Under paragraph 145.A.50(a) of the Part 145 MOS, an AMO must issue a CRS for an aircraft or aeronautical product for which it provides maintenance services in accordance with Part 42 of CASR.

Under subparagraph 145.A.55(c)1 of the Part 145 MOS, the AMO must keep a copy of all aircraft maintenance records, for 2 years and in accordance with regulation 42.410; and if the records are kept in electronic form, a back-up electronic record of the information must be kept in a location separate to the original.

Under the Part 145 MOS (including clause 5 of Appendix I, and Tables 1 and 2), a Category A rated AMO (a **CAT A AMO**) may carry out aircraft maintenance as specified in accordance with maintenance data for the aircraft. A Category A rating also permits the CAT A AMO to provide maintenance services for specialist maintenance without holding the Category D rating, provided that such maintenance is included under the Category A rating scope of approval. Category A class ratings are subdivided into base or line maintenance and the AMO may be approved for either base or line maintenance or both.

Under the Part 145 MOS (including clause 8 of Appendix I, and Tables 1 and 2), a Category D rated AMO (a **CAT D1 or D2 AMO**) may provide maintenance services for specialist maintenance on an aircraft or an aeronautical product without holding a Category A rating for aircraft maintenance or a Category B or C rating for aeronautical product maintenance. The privileges of a CAT D1 or D2 AMO are for non-destructive testing (**NDT**) and welding, respectively, colloquially described as “on-wing maintenance” when these maintenance services are provided to a CAT A AMO.

#### *Exemptions*

Subpart 11.F of the 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, CASA may grant an exemption from compliance with a provision of CASR.

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 renew an exemption on the application of a person, 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 renew 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.

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Under paragraphs 11.245(1)(b) and (c) of CASR, CASA may, by instrument, issue a direction about any matter affecting the maintenance or airworthiness of aircraft. Subregulation 11.245(2) of CASR 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.

## Background

The overall effect of the provisions mentioned above is that a CAT A AMO cannot use a CAT D1 or D2 AMO to issue a CRS for the specialist maintenance in which the CAT D1 or D2 AMO specialises.

This results in a lack of flexibility for a CAT A AMO to use a CAT D1 or D2 AMO, and a lack of ability of a CAT D1 or D2 AMO to be so used for specialist maintenance required during scheduled aircraft line and base maintenance.

No additional aviation safety risks would arise from a properly controlled and accountable use of such a CAT D1 or D2 AMO if a CAT A AMO were to be capable of fully recognising, taking into account and basing its own CRS on, the CAT D1 or D2 AMO's certificate.

This inflexible outcome is at variance with the flexibility provided under equivalent maintenance rules of the EASA. It is CASA's intention that these rules should be more closely harmonised with the EASA equivalents. This is part of a broader reform project.

Given the size and complexity of that project, CASA made *CASA EX60/20 – CRS and SM CRS Document to Cover Specialist Maintenance by a Class D AMO – Instrument 2020 (CASA EX60/20)* to provide appropriate relief on a temporary basis, for 3 years, until relevant amendment regulations and a consequential MOS amendment could be made. The solution adopted was to exempt a CAT A AMO and its contractor CAT D1 or D2 AMO from the provisions of Parts 42 and 145 of CASR which prevent the CAT D1 or D2 AMO's certification process from being fully recognised in the process of the CAT A AMO issuing its CRS for an aircraft after maintenance.

This instrument renews the exemptions, conditions and directions in CASA EX60/20.

## Overview of instrument

To achieve the objective, while preserving appropriate safety, control and accountability for the conduct of aircraft maintenance, and in particular, preserving the integrity of the critical process of issuing a CRS, the exemption instrument is, of necessity technical and intricate. It is explained below.

It is important to note that the respective AMOs are exempted only from the specified provisions, and all of the other relevant provisions of Parts 42 and 145 of CASR and the Part 145 MOS continue to apply according to their terms.

CASA is satisfied that the instrument has no impact on the safety of the aircraft operations.

## Content of instrument

Section 1 of the instrument names the instrument.

Section 2 of the instrument specified the duration of the instrument.

Section 3 of the instrument states that words and phrases in the instrument have the same meaning as in CASR.

Under section 4 of the instrument, its applicability is restricted to a CAT A AMO for whom a CAT D1 or D2 AMO (as appropriate) has carried out specialist maintenance, and it correspondingly applies to that CAT D1 or D2 AMO.

Section 5 of the instrument contains an exemption granted to CAT A AMOs. Under subsection 5(1), a CAT A AMO is exempted from the requirements of the provisions mentioned in subsection 5(2). However, the exemption is only to the extent that the CAT A AMO's CRS for an aircraft in relation to line or base maintenance on the aircraft:

- may be taken to cover any specialist maintenance, in the form of NDT or welding, carried out by a CAT D1 or D2 AMO that has issued a *specialist maintenance certificate of release to service document* (an **SM CRS document**) to the CAT A AMO for that specialist maintenance; and
- may be issued although it may not be a CRS in accordance with regulation 42.760 of CASR only because of its reliance on the SM CRS document.

Subsection 5(2) lists the provisions of CASR to which the exemption applies. Those provisions are:

- (a) subregulations 42.725(1) and (2) of CASR (which would otherwise prevent any adoption, by the CAT A AMO, of the CAT D1 or D2 AMO's certificate);
- (b) regulation 42.730 (which would prevent the CAT A AMO from relying on the CAT D1 or D2 AMO certificate);
- (c) paragraph 42.745(a) — but only in relation to paragraph 42.760(1)(c) in respect of the employees of the CAT D1 or D2 AMO who carried out the specialist maintenance (which would otherwise prevent the CAT A AMO from relying on the CAT D1 or D2 AMO's certificate);
- (d) paragraph 42.760(1)(c) — but only in respect of the employees of the CAT D1 or D2 AMO who carried out the specialist maintenance (which would otherwise prevent the CAT A AMO from relying on the CAT D1 or D2 AMO's certificate);

- (e) paragraph 145.030(1)(a), subparagraph 145.045(a)(v) and paragraph 145.070(1)(e) of CASR to the extent that they require compliance with subparagraph 145.A.55(c)1 of the Part 145 MOS, but only in respect of aircraft maintenance records to which subsection 7(2) applies (which relieves the CAT A AMO from the obligation to retain certain documents because an equivalent obligation is provided in the exemption instrument under a CASA direction).

Section 6 of the instrument contains an exemption granted to CAT D1 or D2 AMOs. A CAT D1 or D2 AMO is exempted from the requirements of the provisions mentioned in subsection 6(2). However, the exemption is only to the extent that, in accordance with this instrument, the AMO issues a CAT A AMO with an SM CRS document in relation to the specialist maintenance mentioned in paragraph 5(1)(a).

Subsection 6(2) lists the provisions of CASR to which the exemption applies. Those provisions are:

- (a) subregulations 42.725(1) and (2) of CASR (which would otherwise prevent the CAT D1 or D2 AMO from releasing an aircraft after specialist maintenance to the CAT A AMO);
- (b) paragraph 145.030(1)(a), subparagraph 145.045(a)(v) and paragraph 145.070(1)(e) of CASR to the extent that they require compliance with paragraph 145.A.50(a) of the Part 145 MOS (which would otherwise prevent the CAT D1 or D2 from issuing an SM CRS document).

Under section 7 of the instrument, each of the mutually involved AMOs must retain a copy of any document it issues, gives or receives under this instrument for a period of at least 24 months after the creation of the document. To avoid any doubt, a note explains that these documents include the relevant maintenance contract between the parties, SM CRS documents, specialist maintenance records and Adverse Matters Reports (see Conditions, below under Schedule 1).

The mutually involved AMOs must also retain, for a period of at least 12 months after expiry or termination of the maintenance contract, a copy of its approved procedures and the other party's approved procedures.

Section 8 of the instrument imposes the conditions, set out in Schedule 1, on the exemptions in sections 5 and 6.

Section 9 of the instrument contains a savings provision in relation to approvals granted under CASA EX60/20. Such approvals that were in force immediately before the commencement of this instrument are taken to be the corresponding approval under this instrument, so that relevant AMOs do not need to apply for a new approval under this instrument. Also, references in documents to CASA EX60/20 are taken to be references to this instrument, unless a contrary intention appears. This is particularly relevant to an AMO's exposition, which will not need to be updated to refer to this instrument instead of CASA EX60/20.

#### *Schedule 1 — Conditions*

Schedule 1 sets out the conditions on the exemptions in sections 5 and 6 of the instrument.

Clause 1 of Schedule 1 requires a CAT A AMO and a CAT D1 or D2 AMO to each be approved in writing by CASA before they can obtain the benefit of the exemptions in this instrument.

In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to approve a person under clause 1 of Schedule 1 is subject to merits review by the Administrative Appeals Tribunal. The decision to approve, or refuse to approve, a person must be made by a delegate of CASA in a position with an area of responsibility that includes the subject matter. When considering whether to approve a person, CASA must regard the safety of air navigation as the most important consideration.

A note explains that it is unlikely that the requirements of aviation safety, including for effective coordination and control of relevant maintenance activities, could be achieved by a CAT D1 or D2 AMO without a permanent facility. CASA's website provides more information on acceptable means of compliance, explanatory materials and guidance.

Clause 2 of Schedule 1 requires that there must be a written contract between the CAT A AMO that is carrying out the line or base maintenance, and the CAT D1 or D2 AMO, with respect to the specific specialist maintenance that the CAT D1 or D2 AMO is expected to deliver as part of that line or base maintenance.

Clause 3 of Schedule 1 requires that, on completion of the specialist maintenance, the CAT D1 or D2 AMO must make a detailed specialist maintenance record containing the information specified in that clause.

Clause 4 of Schedule 1 confirms that the CRS issued by the CAT A AMO must comply with the requirements of regulation 42.760, other than paragraph 42.760(1)(c).

Clause 5 of Schedule 1 requires a relevant SM CRS document issued by the CAT D1 or D2 AMO to comply with regulation 42.745 and subregulation 42.760(1) of CASR as if the provisions applied to the AMO.

Clause 6 of Schedule 1 requires the CAT D1 or D2 AMO to comply with subregulation 42.750(1) of CASR as if it applied to the AMO and the reference in that subregulation to a CRS was a reference to an SM CRS document.

Clause 7 of Schedule 1 contains requirements for the form of the SM CRS document issued by the CAT D1 or D2 AMO.

Clause 8 of Schedule 1 requires both the CAT A AMO and the CAT D1 or D2 AMO to have procedures that ensure that the conditions of this instrument are complied with and that there is proper coordination and control of the relevant maintenance activities. Those procedures must be approved in writing by CASA.

In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to approve procedures under clause 8 of Schedule 1 is subject to merits review by the Administrative Appeals Tribunal. The decision to approve, or refuse to approve, procedures must be made by a delegate of CASA in a position with an area of responsibility that includes the subject matter. When considering whether to approve the procedures, CASA must regard the safety of air navigation as the most important consideration.

Clause 9 of Schedule 1 contains requirements in relation to the specialist maintenance that must be met before a CAT D1 or D2 AMO can issue a SM CRS document to a CAT A AMO. It also requires that any SM CRS document issued by the CAT D1 or D2 AMO includes the specialist maintenance record made under clause 3 and is signed by the certifying employee responsible for the specialist maintenance.

Clause 10 of Schedule 1 contains requirements for the contract between a CAT A AMO and a CAT D1 or D2 AMO, referred to in clause 2. The contract must include specified details of how the specialist maintenance must be carried out and for the reporting of adverse matters by the CAT D1 or D2 AMO to the CAT A AMO. It must also require each party to the contract to give the other party a copy of its approved procedures mentioned in clause 8.

Under clause 11 of Schedule 1, the contract is taken to include the terms of each work order from the CAT A AMO to the CAT D1 or D2 AMO.

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

Paragraph 98(5A)(a) of the Act provides that the regulations may empower CASA to 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. The instrument applies to classes of persons, being certain categories of AMO. 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 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 30 April 2026, 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**

Before making CASA EX60/20, CASA consulted through an initial industry-wide survey which identified relevant issues for remediation. This was followed by further consultation through the CASA Aviation Safety Advisory Panel, which endorsed the industry representatives technical working group's (***TWG***) unanimous earlier approval of what CASA had proposed. The TWG was also consulted on a draft of CASA EX60/20, and on relevant acceptable means of compliance, explanatory materials and related guidance.

The content of this instrument is essentially the same as CASA EX60/20.

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.

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.

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

This instrument provides for more flexible access to the work of specialist maintenance organisations. Therefore, it may allow for specialist maintenance to be completed sooner, and aircraft may become available for operations sooner. The instrument is relevant to the operation of aircraft to which Part 42 of CASR applies, especially registered aeroplanes that are used to conduct scheduled air transport operations.

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

By providing for more flexible access to the work of specialist maintenance organisations, specialist maintenance may be completed sooner, aircraft may become available for operations sooner and employment opportunities for specialist maintenance organisations and their employees may become available. To the extent that AMOs are located in regional and remote communities, and the aircraft on which they carry out maintenance are operated in regional and remote communities, the instrument is likely to have a beneficial effect on those communities.

### **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 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*. The instrument is compatible with human rights and, to the extent that the instrument engages certain of these rights, it does so in a way that is reasonable, necessary and proportionate, does not adversely affect aviation safety and, as far as practicable, promotes rather than limits those rights.

**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 1 May 2023 and is repealed at the end of 30 April 2026. It is intended that, as soon as is practicable before 30 April 2026, the exemption instrument will be replaced with amendments to Parts 42 and 145 of CASR and consequential amendments to the Part 42 and Part 145 Manuals of Standards.

## Statement of Compatibility with Human Rights

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

### **CASA EX52/23 – CRS and SM CRS Document to Cover Specialist Maintenance by a Class D AMO – Instrument 2023**

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**

This legislative instrument allows more flexible and effective use of certain specialist maintenance organisations by approved maintenance organisations (**AMO**) carrying out maintenance on aircraft.

The effect of certain provisions in Parts 42 and 145 of the *Civil Aviation Safety Regulations 1998 (CASR)* and the Part 145 Manual of Standards is that a Category A rated AMO (a **CAT A AMO**) cannot use a Category D rated AMO (a **CAT D1 or D2 AMO**) to issue a certificate of release to service (**CRS**) for the specialist maintenance that the CAT D1 or D2 AMO specialises in (that is, non-destructive testing and welding). This results in a lack of flexibility for a CAT A AMO to use a CAT D1 or D2 AMO, and a lack of ability of a CAT D1 or D2 AMO to be so used for specialist maintenance required during scheduled aircraft line and base maintenance. This inhibits the flexible use of the specialist maintenance organisations.

The lack of flexibility in use of the specialist maintenance organisations is at variance with the flexibility provided under equivalent maintenance rules of the European Union Aviation Safety Agency (**EASA**). It is the intention of the Civil Aviation Safety Authority (**CASA**) that its rules should be more closely harmonised with the EASA equivalents. The outcome of this instrument is to achieve greater consistency between the CASA requirements and the equivalent EASA requirements.

No additional aviation safety risks would arise from a properly controlled and accountable use of such a CAT D1 or D2 AMO if a CAT A AMO can fully recognise, take into account and base its own CRS on, the CAT D1 or D2 AMO's certificate.

The solution adopted has been to exempt a CAT A AMO and its contractor CAT D1 or D2 AMO from those provisions of CASR which prevent the CAT D1 or D2 AMO's certification process from being fully recognised in the process of the CAT A AMO issuing its CRS for an aircraft after maintenance.

## Human rights implications

The instrument may engage the following human rights:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights
- the right to work under Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (the **ICESCR**)
- the right to safe and healthy working conditions under Article 7 of the ICESCR.

The lack of flexibility which prevents the early deployment of specialist maintenance organisations capable of safely conducting relevant maintenance may delay aircraft operator access to certain specialist maintenance, may delay the availability of certain aircraft for operations and may restrict the employment opportunities of specialist maintenance organisations and their employees.

By providing for more flexible access to the work of specialist maintenance organisations, specialist maintenance may be completed sooner, aircraft may become available for operations sooner and employment opportunities for specialist maintenance organisations and their employees may become available.

While the nature and quality of the maintenance activity carried out will not be any safer than it would otherwise be, the 3 rights listed above may be engaged. First, the right to life may be engaged as aircraft of certain operators may become available for important operations, including emergency, medical or other safety flights, sooner than might otherwise be the case. Second, the rights to work and to safe and healthy working conditions may be engaged as certain specialist maintenance organisations and their employees might not otherwise have the opportunity to be engaged in this professionally enhanced way.

## Conclusion

The 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*. To the extent that the instrument engages certain of these rights, it does so in a way that is reasonable, necessary and proportionate, does not adversely affect aviation safety and, as far as practicable, promotes rather than limits those rights.

**Civil Aviation Safety Authority**