

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX81/23 — Exclusion from the Operation of Airworthiness Directives AD 2023-10-02 and AD 2023-11-07 Instrument 2023

Under section 98 of the *Civil Aviation Act 1988* (the *Act*), the Governor-General may make regulations for the purposes of the Act and in the interests of the safety of air navigation.

In accordance with paragraph 39.004(3)(b) of the *Civil Aviation Safety Regulations 1998* (*CASR*), CASA may in writing exclude a particular kind of aircraft or aeronautical product from the operation of an airworthiness directive (*AD*) on its own initiative.

Under Annex 8 to the *Convention on International Civil Aviation*, the State of Design has overall responsibility for continuing airworthiness of an aircraft type and must provide any information necessary to ensure the continuing airworthiness of a type to appropriate States of Registry. ADs (and their equivalents) are the most common form of continuing airworthiness information and are issued by most International Civil Aviation Organisation Contracting States.

The State of Registry of an individual aircraft is responsible for its continuing airworthiness. Under Annex 8, the State of Registry must develop or adopt requirements to ensure the continuing airworthiness of aircraft.

As of 1 October 2009, when a State of Design issues an AD against a type of aircraft on the Australian Register, Part 39 of CASR requires compliance with these State of Design ADs. However, as Australia's national airworthiness authority, CASA can exclude a kind of aircraft or aeronautical product from the operation of an AD.

The Federal Aviation Administration (*FAA*) as the National Aviation Authority for the United States of America issued AD 2023-10-02 with an effective date of 26 May 2023 and AD 2023-11-07 with an effective date of 22 June 2023. The ADs require the incorporation of a flight manual amendment when the aircraft are operated in the contiguous airspace of the United States of America. FAA made a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band). FAA issued these ADs because radio altimeter anomalies that are undetected by the automation or pilot, particularly close to the ground, could lead to loss of continued safe flight and landing.

CASA has excluded Australian registered aircraft from the operation of paragraphs (h), (i)(1) and (i)(2) of FAA AD 2023-10-02 and AD 2023-11-07, when the aircraft are operating outside the contiguous airspace of the United States of America. CASA has monitored and investigated Australian reports of suspected interference from current 5G infrastructure and has no confirmed instances of 5G ground station interference to radio altimeters. Accordingly, the exclusion is made pursuant to paragraph 39.004(3)(b) of CASR because these ADs only require application in the contiguous airspace of the United States of America.

Subregulation 39.004(4) of CASR requires CASA to regard the preservation of a level of aviation safety that is at least acceptable as paramount. CASA considers the ADs relate to operations within the contiguous airspace of the United States of America only. Issuing the exclusion, operating within Australian airspace and within the current Australian 5G environment will provide a level of aviation safety that is at least acceptable will be preserved.

Legislation Act 2003 (the LA)

Subregulation 39.004(3) of CASR provides that an exclusion issued in accordance with paragraph 39.004(3)(b) is issued under subsection 98(5A) of the Act. Subsection 95(5B) provides that an instrument issued under subsection 98(5A) of the Act is a legislative instrument.

Therefore, in accordance with subsection 98(5B) of the Act, an instrument excluding the operation of an AD is a legislative instrument and is subject to tabling and disallowance in the Parliament under Chapter 7 of the *Legislation Act 2003*.

Documents incorporated by reference

Subsection 98(5D) of the Act provides that 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. The following documents are incorporated by reference in the instrument:

- AD 2023-10-02
- AD 2023-11-07

The FAA ADs are incorporated by reference in the instrument as in force immediately before the commencement of the instrument. The FAA ADs are freely available on the FAA's website at <https://drs.faa.gov/browse/ADFRAWD/doctypeDetails>

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*). This is justified as compliance with the ADs by Australian aircraft outside of Australian territory would impose an unnecessary cost on aircraft operators. However, this instrument will be repealed whenever the ADs are cancelled.

Consultation

CASA has not conducted any consultation in relation to the issue of the exclusion as it is providing to aircraft operators an alleviation by not requiring the flight manual amendment to be inserted in aircraft flight manuals nor do these ADs are expressed to have application in Australian airspace.

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 requirements of the instrument apply to all aircraft operators. The instrument will have a beneficial effect on such operators as it will avoid the cost of flight manual amendments to aircraft they operate.

Impact on categories of operations

The instrument is likely to have a beneficial impact on all aircraft operators as it will avoid the cost of flight manual amendments to aircraft they operate.

Impact on regional and remote communities

It is expected that the instrument would have a beneficial effect on aircraft operators in regional or remote communities for the reasons given above.

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*.

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 7 August 2023 and is repealed when the ADs are cancelled.

Statement of Compatibility with Human Rights

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

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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 this legislative instrument is to exclude the operation of paragraphs (h), (i)(1) and (i)(2) of Airworthiness Directives AD 2023--10-02 and AD 2023-11-07 (the **ADs**) pursuant to paragraph 39.004(3)(b) of the *Civil Aviation Safety Regulations 1998 (CASR)*.

The Federal Aviation Administration (**FAA**) as the State of Design for United States of America (**USA**) airspace, issued AD 2023-10-02 with an effective date of 26 May 2023 and AD 2023-11-07 with an effective date of 22 June 2023. The ADs require the incorporation of a flight manual amendment that prohibits certain aircraft or rotorcraft operations in the contiguous airspace of the United States of America. The prohibited operations are due to radio altimeters that cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band). The FAA issued these ADs because radio altimeter anomalies that are undetected by the automation or pilot, particularly close to the ground, could lead to loss of continued safe flight and landing.

Subregulation 39.004(4) of CASR requires CASA to regard the preservation of a level of aviation safety that is at least acceptable as paramount. CASA considers the ADs relate to operations within the contiguous airspace of the USA only. Issuing the exclusion, operating within Australian airspace and within the current Australian 5G environment a level of aviation safety that is at least acceptable will be preserved.

All requirements of the ADs must be complied with when an Australian registered aircraft or rotorcraft is operated in the contiguous airspace of the USA.

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