

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX31/24 — ATC Licence (PARM Endorsement) (Exemptions from Recency and Currency Requirements) Instrument 2024

Purpose

The purpose of *CASA EX31/24 — ATC Licence (PARM Endorsement) (Exemptions from Recency and Currency Requirements) Instrument 2024* (the **instrument**) is to allow the holder of an air traffic controller licence (**ATC licence**) who performs air traffic control duties or functions at Sydney Airport under a precision approach radar monitor endorsement (**PARM endorsement**) to satisfy recency and currency requirements of the *Civil Aviation Safety Regulations 1998* (**CASR**) for the endorsement by performing air traffic control duties in a simulator (the **PRM simulator**) instead of in the live operational environment.

The instrument is required because Sydney Airport offers insufficient opportunities for ATC licence holders to perform the required functions in the live operational environment. This makes it difficult for licence holders to retain the necessary recency and currency for the PARM endorsement.

The instrument is a reissue of *CASA EX06/21 — ATC Licence (PARM Endorsement) — Exemptions from Recency and Currency Requirements Instrument 2021* (**CASA EX06/21**) in substantially identical terms.

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 CASR.

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.

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160(1) provides that, for subsection 98(5A) of the Act, the Civil Aviation Safety Authority (**CASA**) may grant an exemption from compliance with a provision of the regulations. Under subregulation 11.160(2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160(3), an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.170(3) of CASR, in deciding whether to grant an exemption, and under subregulation 11.175(4), 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 or reissue an exemption on its own initiative.

Regulation 11.205 of CASR 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 paragraph 11.245(1)(a), 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 satisfied that it is necessary 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. Regulation 11.255 makes it an offence of strict liability to contravene a direction.

Regulation 65.025 of CASR sets out how the holder of an ATC licence satisfies the recency requirement in relation to an endorsement. Subregulation 65.025(1) provides that the holder of an ATC licence satisfies the recency requirement in relation to an endorsement at a particular time if the holder has performed the duties required by the relevant function at the aerodrome or in relation to the airspace to which the endorsement relates, for at least 5 hours within the previous 21 days.

Regulation 65.030 of CASR sets out how the holder of an ATC licence satisfies the currency requirement in relation to an endorsement. Paragraph 65.030(1)(b) is the second of two limbs of the requirement for the holder of an air traffic control licence to satisfy the currency requirement at a particular time in relation to an endorsement. It requires the holder's performance of the relevant function for the endorsement at the aerodrome, or in relation to the airspace, to have been assessed as satisfactory within the previous 6 months.

Subregulation 65.035(1) of CASR provides that a person may carry out an air traffic control function in Australian territory if, at the time the person carries out the function, he or she holds an ATC licence with a rating for the function and an endorsement for the place where it is carried out, the licence rating and endorsement are in force and the person satisfies the recency and currency requirements for the endorsement.

It is an offence under subregulation 65.045(1) of CASR for a person who is not authorised by subregulation 65.035(1) or (2) to carry out an air traffic control function in Australian territory.

Background

Airservices Australia, as the air traffic services provider at Sydney Airport, manages a precision radar monitoring system (a **PRM system**) to maintain safe separation of aircraft simultaneously using the parallel runways at the airport. Where there is a risk of loss of safe separation, an emergency breakout can be instructed by air traffic controllers to restore separation.

The number of emergency breakout instructions given at Sydney Airport is estimated by Airservices Australia to be less than an average of 2 per year and the PRM system, depending on weather and operational conditions, may not be operated for periods of more than 21 days.

Accordingly, there are restricted opportunities for air traffic controllers to use the PRM system to meet the recency and currency requirements in Part 65 of CASR.

The use of the simulator at Sydney Airport was identified as a risk mitigation factor in the 2002 PRM Safety Case in the case of air traffic controller recency training and emergency operations.

CASA has interpreted the relevant provisions of CASR for the recency and currency requirements for ATC licence endorsements as requiring performance of the relevant endorsement functions in the live operational environment and not on a simulator. The exemptions under the instrument are sought for relief from the requirement for performance to be exclusively in the live operational environment.

CASA has, through a series of instruments dating back to 2008 (most recently CASA EX06/21), granted Airservices Australia exemptions to allow the use of time spent on the simulator in Sydney to count towards the recency requirements of subregulation 65.025(1) of CASR for a PARM endorsement. This instrument reissues CASA EX06/21.

Overview of instrument

The instrument provides exemptions from the CASR provisions for holders of ATC licences who perform air traffic control duties under a PARM endorsement to enable them to regain recency and satisfy currency requirements under CASR by using the PRM simulator instead of the live operational environment.

The instrument includes safeguards in the form of directions issued to Airservices Australia, requiring it, amongst other things, to ensure the suitability of the simulator for its use under the instrument and that no change is made to the PRM simulator, or to Airservices Australia's *ATS Licensing and Certificates Manual (AA Licensing and Certificates Manual)* that affects the ambit of the exemptions under the instrument, without CASA's prior written approval.

CASA has assessed the impact the instrument will have on aviation safety and is satisfied that the use of the simulator for satisfying recency and currency on the PARM endorsement will have no impact on air safety and will lead to benefits and efficiencies that would otherwise not be available in the live operational environment.

Documents incorporated by reference

The instrument incorporates the *ATS Licensing and Certificates Manual (AA Licensing and Certificates Manual)*, prepared by Airservices Australia, as existing from time to time. The terms **PARM endorsement**, **Sydney TCU** and **Sydney Tower** are defined in section 3 of the instrument by reference to the AA Licensing and Certificates Manual. Subsection 98(5D) of the Act authorises the incorporation of the AA Licensing and Certificates Manual, as existing from time to time. The AA Licensing and Certificates Manual is not freely available to the public, however, CASA will, by prior arrangement, make available for viewing at its offices at least those parts of the AA Licensing and Certificates Manual that are incorporated by reference in the instrument. By way of a safeguard, Airservices Australia is prevented, under subsection 6(c) of the instrument, from making changes to the AA Licensing and Certificates Manual that affect the ambit of the exemptions under the instrument (including changes to provisions of the AA Licensing and Certificates Manual relating to the recency or currency

requirements or the scope or description of the PARM endorsement) without obtaining CASA's prior written approval.

Content of instrument

Section 1 sets out the name of the instrument: *CASA EX31/24 — ATC Licence (PARM Endorsement) (Exemptions from Recency and Currency Requirements) Instrument 2024*.

Section 2 provides that the instrument commences on 1 June 2024 and is repealed at the end of 31 May 2027.

Section 3 sets out the definitions for the instrument. **PARM endorsement** is defined as the precision approach radar monitor endorsement for an ATC licence referred to in the AA Licensing and Certificates Manual. **PRM simulator** is defined as the Eurocat simulator used for precision radar monitoring that is operated by Airservices Australia, located in the Sydney Air Traffic Services Centre and designed to simulate a live environment for PARM endorsement functions. **Sydney TCU** and **Sydney Tower** are defined by reference to the AA Licensing and Certificates Manual.

Section 4 sets out the persons to whom the instrument applies, namely, ATC licence holders who perform air traffic control functions at Sydney Airport under a PARM endorsement and who satisfy the recency and currency requirements on another endorsement within Sydney TCU or Sydney Tower.

Section 5 sets out the exemptions applying to ATC licence holders to whom the instrument applies. Under subsection 5(1), such licence holders are exempt from the recency requirement for the PARM endorsement in the manner specified in that subsection (see subregulation 65.025(1) of CASR) if they have performed the PARM endorsement functions on the PRM simulator for at least 30 minutes within the previous 21 days. Under subsection 5(2), such licence holders are exempt from the currency requirement for the PARM endorsement in the manner specified in that subsection (see paragraph 65.030(1)(b) of CASR) if, within the previous 6 months, the licence holder's performance of the PARM endorsement functions, as carried out on the PRM simulator, has been assessed as satisfactory.

Section 6, consisting of directions issued to Airservices Australia, comprises the safeguards in the instrument. Airservices Australia is directed to ensure the suitability of the PRM simulator for its use under the instrument and that no change is to be made to the PRM simulator, or its Licensing and Certificates Manual if it affects the ambit of the exemptions under the instrument, without CASA's prior written approval.

Legislation Act 2003 (the LA)

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 aeroplanes. 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 expressly applies in relation to ATC licence holders mentioned in section 4 of the instrument, that is, a class of persons. 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 31 May 2027, which will occur before the sunset 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 ensures that licensed air traffic controllers will be able to continue to perform their duties under the PARM endorsement. CASA anticipates that Part 65 of CASR will be remade within the next 3 years and at such time there will no longer be any need for the exemptions provided for by the instrument.

The instrument continues existing arrangements in relation to recency requirements for the PARM endorsement and no concerns have been raised by stakeholders about those arrangements. 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(3) of the Act states that subject to regarding the safety of air navigation as the most important consideration, in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, 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.

This instrument provides for exemptions from provisions of CASR in a way that will create efficiencies for ATC licence holders who wish to satisfy the recency and currency requirements on their PARM endorsement. There will be no economic or cost impact on individuals, businesses or the community as a result of this measure.

Impact on categories of operations

The instrument is likely to have a beneficial effect on air traffic control operations by continuing an arrangement under which licensed air traffic controllers will be able to continue to perform their duties under the PARM endorsement.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on regional and remote communities insofar as air traffic to and from Sydney Airport services 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 does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

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 June 2024 and is repealed at the end of 31 May 2027.

Statement of Compatibility with Human Rights

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

CASA EX31/24 — ATC Licence (PARM Endorsement) (Exemptions from Recency and Currency Requirements) Instrument 2024

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 instrument provides exemptions from the *Civil Aviation Safety Regulations 1998 (CASR)* for holders of air traffic controller licences who perform air traffic control duties at Sydney Airport under a precision approach radar monitor endorsement (***PARM endorsement***) to enable them to satisfy the recency and currency requirements under CASR by using a simulator instead of the live operational environment.

Safeguards are provided for this measure in the form of directions issued to Airservices Australia in the interests of aviation safety. Airservices Australia is directed to ensure the suitability of the PRM simulator (defined in the instrument) for its use under the instrument and that no change is to be made to the PRM simulator, or its *ATS Licensing and Certificates Manual* if it affects the ambit of the instrument, without the Civil Aviation Safety Authority's prior written approval.

The use of the simulator for satisfying recency and currency on the PARM endorsement will have no impact on air safety and will lead to benefits and efficiencies that would otherwise not be available in the live operational environment. The instrument continues the operation of previous similar exemptions in relation to satisfying the recency provisions of CASR, and extends the exemption to the currency provisions of CASR to ensure a consistency of approach.

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