**Explanatory Statement**

**Civil Aviation Regulations 1988**

**Civil Aviation Safety Regulations 1998**

**Civil Aviation Order 95.54 Amendment Instrument 2024 (No. 1)**

**Purpose**

The purpose of *Civil Aviation Order 95.54 Amendment Instrument 2024 (No. 1)* (the ***new CAO amendment***)is to amend *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021* (***CAO 95.54***).

An earlier CAO amendment, *Civil Aviation Order 95.54 Amendment Instrument 2023 (No. 1)*, commenced on 2 December 2023. It dealt with the regulatory and administrative effects of the withdrawal of the Australian Ballooning Federation (the ***ABF***) from administration of Part 131 recreational activities for ***relevant aircraft*** (meaning Part 131 aircraft engaged in Part 131 recreational activity or a specialised balloon operation).

That CAO amendment provided for CASA to assume the function of administering and oversighting recreational balloon activities, including *ab initio* pilot training and the granting of recreational pilot authorisations, ratings and endorsements, until such time as alternative arrangements might be in place.

The purpose of the new CAO amendment is to make a number of additional amendments to CAO 95.54, all of which are of a relatively minor or machinery nature further discussed below.

**Legislation — the Act**

The *Civil Aviation Act 1988* (the ***Act***) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Subsection 20AB (1) of the Act provides that a person must not perform any duty that is essential to the operation of an Australian aircraft during flight time unless the person is authorised to do so under a civil aviation authorisation or is authorised by or under the regulations to perform that duty without the civil aviation authorisation.

The CAO amendment was, and the new CAO amendment is, designed to provide such an authorisation.

Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Regulations 1988* (***CAR***) and the *Civil Aviation Safety Regulations* 1998 (***CASR***).

Under paragraph 98 (5A) (a) of the Act, the regulations may empower CASA to issue instruments in relation to aviation safety. Subparts 11.F and11.G of CASR empower the issue of instruments of exemption and direction. CAO 95.54 is an instrument so empowered and is comprised of exemptions and directions.

**Legislation — exemptions**

CAO 95.54 is substantially comprised of exemptions and related conditions.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98 (5A). Subsection 98(5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application or on its own initiative.

Under subregulation 11.170 (3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety.

For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration. CASA also takes account of subregulation 11.170 (3) that an acceptable level of safety must be preserved.

Under regulation 11.205, CASA may impose conditions on an exemption if this is 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 regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230 (1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230 (3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft, etc.).

**Legislation — directions**

Under paragraph 11.245 (1) (a) of CASR, for subsection 98 (5A) of the Act, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft.

Under subregulation 11.245 (2), CASA may issue such a direction only if CASA is satisfied that it is necessary in the interests of safety, only if the direction is not inconsistent with the Act, and only for the purposes of CASA’s functions.

Under regulation 11.250, a direction ceases to be in force on a day specified in the instrument or, if no day is specified, 1 year after the instrument commences. Under subregulation 11.255 (1), it is an offence to contravene a direction under regulation 11.245 that is applicable to the person.

**Amending power**

Under subsection 33 (3) of the *Acts Interpretation Act 1901* where regulations empower the making of an instrument, the power includes a parallel power to amend the instrument. The CAO amendment is made under the same head of power, and in the same manner, as CAO 95.54.

**New CAO amendment**

The specific details of the new CAO amendment are technical and are explained in Appendix 1. Briefly, they are designed to do the following:

1. **To align the repeal date of CAO 95.54 with the commencement date of the Part 131 MOS**

 The *Part 131 (Balloons and Hot Air Airships) Manual of Standards 2024* (the ***Part 131 MOS***) sets out the standards for lighter-than-air aircraft that are intended for free flight under the control of a pilot. It commences on 12 November 2024.

Part 131 of CASR establishes a regulatory model designed to (among other things) consolidate existing requirements for piloted balloon operations, introduce new ballooning concepts, like “balloon transport operations” and “specialised balloon operations” (that replace “charter operations” and “aerial work operations”), and create the concept of a Part 131 recreational activity for private and sporting activities.

When in force, the Part 131 MOS will set out the relatively sophisticated technical requirements and standards needed to support the operational regulations under Part 131.

 CAO 95.54 has been an interim measure designed to regulate recreational ballooning and aspects of it will become redundant when the Part 131 MOS commences. However, CAO 95.54 was expressed to expire at the end of 1 December 2024.

 CASA has, therefore, taken the opportunity to align the repeal date of CAO 95.54 to the 12 November 2024 commencement date of the Part 131 MOS for a smooth transition of the relevant ballooning rules.

 A new CAO 95.54 will also be made in due course, to commence on 12 November 2024, that will continue to empower CASA to issue private pilot (balloon) permits and endorsements until a full licencing regime for private ballooning is established in CASR.

 Under this proposed new CAO 95.54, the general conditions in CAO 95.54 will be repealed and the operational requirements of the Part 131 MOS will be in force.

The drafting priority for the necessary regulation amendments has not yet been established with the Office of Parliamentary Counsel.

1. **To expressly provide that the CASA Recreational Ballooning Procedures Manual (the *CRBPM*) must be complied with for the issue of a private pilot (balloon) permit**

 CAO 95.54 did not expressly state that an applicant for a ballooning permit must first qualify for the permit in accordance with the requirements under the CRBPM, as in force from time to time. The CRBPM includes theory and practical training in accordance with a syllabus and a process for recognition of overseas qualifications, if applicable.

1. **To recognise a pre-2 December 2023 ABF pilot authorisation to operate below 2 000 ft at, or within 3 NM of, a non-controlled aerodrome**

 Section 5A of CAO 95.54 made no reference to an aerodrome endorsement issued by the ABF to a pilot before 2 December 2023. The absence of a legislative mechanism that provides for the recognition of an ABF-issued aerodrome endorsement means a recreational balloon pilot is currently not endorsed to operate below 2 000 ft. above the aerodrome elevation at, or within 3 NM of, a non-controlled aerodrome. The new CAO amendment makes provision for recognition of the prior endorsements.

1. **To require relevant private pilot (balloon) permit holders to obtain a CASA endorsement if they wish to operate below 2 000 ft. at, or within 3 NM of, a non‑controlled aerodrome**

 Under CAO 95.54, CASA was not expressly empowered to issue a non-controlled aerodrome endorsement to an applicant. This meant that a private balloon pilot who did not previously hold an ABF aerodrome endorsement could not operate below 2 000 ft. above aerodrome elevation at, or within 3 NM of, a non-controlled aerodrome as an endorsement was not available. An amendment rectifies this anomaly.

1. **To remove a misleading reference to the future non-involvement of a ballooning Part 131 approved self-administering aviation organisation (an *ASAO*)**

 CASA’s policy intent is to keep open the possibility of a future Part 131 ASAO for recreational ballooning. Paragraph 7 (2) of CAO 95.54 included a Note to the effect that the definition of a ***Part 131 pilot authorisation*** in the CASR Dictionary would be repealed insofar as it referred a Part 131 ASAO. CASA has no plans to remove the possibility that an ASAO might administer Part 131 recreational activities in the future.

1. **To enable a commercial pilot (balloon) licence (CP(B)L) holder to fly recreationally in controlled airspace**

 CAO 95.54 appeared to allow the holder of a current CASR Part 61 aircraft licence to fly a balloon in controlled airspace on a recreational basis, whether or not they also held a private pilot (balloon) permit. This rule has the inadvertent effect of excluding the holder of a CP(B)L issued under Part 5 of CAR from flying recreationally in such controlled airspace. This was not intended and an amendment corrects the omission.

**Aviation safety**

In determining whether to issue the new CAO amendment, CASA had regard to the safety of air navigation as the most important consideration.

CASA is satisfied that, given the nature of the amendments involved, an acceptable level of aviation safety will be preserved, and the safety of air navigation maintained for the period during which the instrument will be in force, that is, until the end of 11 November 2024.

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

Exemptions under Subpart 11.F of CASR are “for subsection 98 (5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like the new CAO amendment, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The new CAO amendment is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The new CAO amendment, comprised of exemption-related amendments, is generic in nature and applies to classes of persons. It is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under section 15G, and sections 38 and 42, of the LA.

**Sunsetting**

As the CAO amendment relates to aviation safety and is made under CASR, that means that 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*).

The CAO amendment deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators both domestic and international.

In this case, the new CAO amendment amends CAO 95.54 and is almost immediately spent and repealed in accordance with the automatic repeal provisions in Subdivision A in Division 1 of Part 3 of Chapter 3 of the LA.

CAO 95.54, as amended, will (by virtue of an amendment in the new CAO amendment) be repealed at the end of 11 November 2024 within the sunsetting period. Thus, in practice, no sunsetting avoidance issues arise and there is no impact on parliamentary oversight in this respect.

**Incorporation by reference**

Under subsection 98 (5D) of the Act, the instrument may apply, adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non‑legislative instrument that does not exist when the legislative instrument is made).

Under paragraph 15J (2) (c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

References to provisions of CASR and CAR are taken to be as they are in force from time to time by virtue of paragraph 13 (1) (c) of the LA. CASR and CAR are freely available online on the Federal Register of Legislation.

References to the procedures manual are to the *CASA Recreational Ballooning Procedures Manual* (the ***CRBPM***), as in force from time to time. The CRBPM is a modified version of the former ABF operations manual that was in force immediately before 2 December 2023.

Although it is not itself a legislative instrument, the CRBPM as in force from time to time may be applied, adopted or incorporated for CAO 95.54, by virtue of subsection 98 (5D) of the Act which provides for such incorporation.

The CRBPM is available on the CASA website [Civil Aviation Safety Authority (casa.gov.au)](https://www.casa.gov.au/).

**Economic and cost impact, and sector risks**

*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.

In terms of economic and cost impacts for subsection 9A (3) of the Act, the new CAO amendment will apply to ensure continuity in the administration of Part 131 recreational activities under CAO 95.54.

CASA has assessed that increased costs will occur in relation to fees for assessment and granting of a relevant aerodrome endorsement. CASA is implementing mechanisms to minimise these added costs to the greatest practicable extent, consistent with aviation safety and CASA’s existing fee regime for comparable activities.

*Sector risks*

Only one sector is involved, namely, Part 131 recreational activities and specialised balloon operations, and the new CAO amendment will not be the cause of greater or lesser risks within the sector.

**Environmental impact**

Under subsection 9A (2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the new CAO amendment. It does not create any new environmental impacts.

**Consultation**

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption.

However, it is CASA’s policy to consult, where possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

Insofar as the new CAO amendment was essentially a minor or machinery matter, it was not considered necessary or appropriate to embark on extensive public consultation. However, CASA did consult the most important industry organisation, namely the ABF, which responded that they had no objections to what CASA was proposing.

**Office of Impact Analysis (*OIA*)**

An Impact Analysis (***IA***) is not required because the new CAO amendment, as a vehicle for exemptions, is covered by a standing agreement between CASA and OIA under which an IA is not required for exemption or direction instruments (OIA id: 14507).

**Statement of Compatibility with Human Rights**

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The new CAO amendment is essentially a minor or machinery instrument only, designed for consistency and to correct the earlier CAO amendment. As such, it does not directly give rise to any human rights issues.

**Commencement and making**

The new CAO amendment commences on 8 July 2024. CAO 95.54, as thus amended, will be repealed at the end of 11 November 2024.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

**Appendix 1**

DETAILS OF:

Civil Aviation Order 95.54 Amendment Instrument 2024 (No. 1)

1 Name of instrument

 This section names the instrument.

2 Commencement

 Under this section, the instrument commences on 8 July 2024.

3 Amendment of Civil Aviation Order 95.54

 Under this section. Schedule 1 amends *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021*.

Schedule 1 Amendments

[1] Subsection 2

Under this amendment, CAO 95.54 is repealed at the end of 11 November 2024 to harmonise with the commencement of the Part 131 MOS on 12 November 2024.

[2] Subsection 5, Definition of *Manual*

Under this amendment, the definition of **Manual** is repealed. Under the following amendment, an identical definition is substituted for the expression “procedures manual”. The purpose is to avoid confusion of terms between the MOS as a “Manual” and the repealed mention of “Manual” as a reference to the CRBPM.

[3] Subsection 5, Definitions

Under this amendment, some key terms are defined, including **non-controlled aerodrome endorsement.**

[4] After subsection 5B

Under this amendment, 3 new subsections are inserted in CAO 95.54

5BA Permits require training

Under this amendment, CASA must not issue relevant ballooning permits unless the applicant has successfully completed all applicable theory and practical training for the permit in accordance with the syllabus in the procedures manual.

However, CASA may issue the permit if the applicant holds an overseas qualification that CASA approves in writing as being equivalent to the particular permit.

5BB Private pilot (balloon) permit condition

Under this amendment, it is a condition of the private pilot (balloon) permit of the pilot in command of a relevant aircraft that the aircraft may only fly below 2 000 ft. above the elevation of a non-controlled aerodrome, at or within 3 NM of the aerodrome, if the permit is endorsed for such flight.

5BC Aerodrome endorsements

Under this amendment, if immediately before 2 December 2023, a person held an ABF aerodrome endorsement to operate a relevant aircraft below 2 000 ft. above the elevation of a non-controlled aerodrome at, or within 3 NM of, a non-controlled aerodrome, and still held it on and after 2 December 2023, then on and after 8 July 2024, the person is deemed to hold a non-controlled aerodrome endorsement, unless that endorsement expires or is revoked by CASA.

In addition, CASA may issue a non-controlled aerodrome endorsement to a grandfathered applicant mentioned above, or to a person who holds a private pilot (balloon) permit.

[5] Paragraph 7 (2), the Note

This amendment modifies a Note to remove a misleading mention of repeal of the potential future role of a Part 131 ASAO.

[6] Subparagraph 9 (1) (b)

This amendment is consequential on the definition of **procedures manual**.

[7] Subparagraph 9 (2) (c)

Under existing paragraph 9 (2), the pilot in command of a relevant aircraft must not operate in Class A, B, C or D airspace, or in a restricted area, unless a series of safety conditions are met, including that:

(c) the pilot in command holds a current pilot licence with an aircraft category rating, the valid privileges of which include operating in controlled airspace and at a controlled aerodrome.

As expressed, while including the pilot on a manned aircraft, this condition inadvertently excludes from the flight privilege a pilot who holds a current commercial pilot (balloon) licence (a CP(B)L) or a certificate of validation issued under Part 5 of CAR. The amendment extends the privilege to such qualified balloon pilots.

[8] Subparagraph 9 (2) (d)

Under existing paragraph 9 (2), the pilot in command of a relevant aircraft must not operate in Class A, B, C or D airspace, or in a restricted area, unless a series of safety conditions are met, including that:

(d) the pilot in command has a valid flight review for the aircraft’s class rating under Part 61 of CASR.

As expressed, this is in effect a manned aircraft qualification, and inadvertently excludes an equivalently qualified balloon pilot who has a valid flight review and recent experience in accordance with regulations 5.143 and 5.144 of CAR (as in force from time to time). The amendment extends the privilege to such qualified balloon pilots.

[9] Sub-subparagraph 12 (b) (i)

This amendment is consequential on the definition of **procedures manual**.

[10] Subparagraph 13 (2) (b)

This amendment is consequential on the definition of **procedures manual**.

[11] Subparagraph 13 (4) (c)

This amendment is consequential on the definition of **procedures manual**.

**Appendix 2**

**Statement of Compatibility with Human Rights**

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

**Civil Aviation Order 95.54 Amendment Instrument 2024 (No. 1)**

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 *Civil Aviation Order 95.54 Amendment Instrument 2024 (No. 1)* (the ***new CAO amendment***)is to amend *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021* (the ***CAO 95.54***).

An earlier CAO amendment, *Civil Aviation Order 95.54 Amendment Instrument 2023 (No. 1)*, commenced on 2 December 2023. It dealt with the regulatory and administrative effects of the withdrawal of the Australian Ballooning Federation from administration of Part 131 recreational activities for ***relevant aircraft*** (meaning Part 131 aircraft engaged in Part 131 recreational activity, or a specialised balloon operation).

That CAO amendment provided for CASA to assume the function of administering and oversighting recreational balloon activities, including *ab initio* pilot training and the granting of recreational pilot authorisations, ratings and endorsements, until such time as alternative arrangements might be in place.

The purpose of the new CAO amendment is to make a number of additional amendments to CAO 95.54, all of which are of a relatively minor or machinery nature as discussed in detail above in the 6 matters listed under the heading New CAO amendment.

**Human rights implications**

The new CAO amendment is essentially a minor or machinery instrument designed to make the additional amendments to CAO 95.54 mentioned above. As such, it does not directly give rise to any human rights issues.

**Conclusion**

The CAO amendment is compatible with human rights.

**Civil Aviation Safety Authority**