**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**CASA EX42/24 — Maintenance Control (Certain Class A Aircraft Only Engaged in Private Operations) Exemption 2024**

**Purpose**

The purpose of *CASA EX42/24**— Maintenance Control (Certain Class A Aircraft Only Engaged in Private Operations) Exemption 2024* (the ***instrument***) is to enable certain class A aircraft, being larger or more sophisticated aircraft usually engaged in commercial operations, to be engaged in private operations only, without meeting the maintenance controller and maintenance control manual requirements of subregulations 42ZV(1) and 42ZY(1) of the *Civil Aviation Regulations 1988* (***CAR***). These requirements are not necessary for certain class A aircraft only engaged in private operations, provided that other risk mitigators are implemented.

**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***) and CAR.

Part 4A of CAR relates to maintenance of aircraft.

Subregulation 42ZV(1) of Part 4A of CAR provides that the operator of a class A aircraft must appoint a person to be the maintenance controller for the aircraft.

Subregulation 42ZY(1) of Part 4A of CAR provides that the operator of a class A aircraft must prepare a maintenance control manual for the aircraft.

***Class A aircraft*** is defined in subregulation 2(1) of CAR as an Australian aircraft, other than a balloon, that satisfies either or both of the following paragraphs:

(a) the aircraft is certificated as a transport category aircraft;

(b) the aircraft is being used, or is to be used, by the holder of an Australian air transport Air Operator’s Certificate (***AOC***) which authorises the use of the aircraft in scheduled air transport operations.

Subpart 11.F of 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 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 11.175(4) of CASR, in deciding whether to renew an exemption granted to 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 granted 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 of CASR, 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) of CASR, the maximum duration of an exemption is 3 years.

**Background**

Regulations 42ZV and 42ZY of CAR principally apply to operators engaged in commercial air transport operations. CASA considers that the application of these provisions to class A aircraft only engaged in private operations is inappropriate. This position is consistent with the law applicable in the United States of America.

CASA has exempted private operators of class A aircraft from subregulations 42ZV(1) and 42ZY(1) in previous instruments, most recently in *CASA EX91/21 — Maintenance Control (Class A Aircraft Used in Private Operations) Exemption 2021*, which will be repealed at the end of 31 July 2024.

On the commencement of Part 43 of CASR (***Part 43***), it is anticipated that this exemption will no longer be needed. Part 43 is proposed to relate to the maintenance of certain aircraft (***Part 43 aircraft***), including aircraft to which this instrument applies, and Parts 4A to 4D of CAR will not apply to Part 43 aircraft. Part 43 is expected not to require the operator of such an aircraft to appoint a person to be the maintenance controller for the aircraft or provide that the operator of a class A aircraft must prepare a maintenance control manual for the aircraft. Instead, different requirements for the maintenance and inspection of such aircraft will apply under Part 43. CASA currently expects Part 43 to come into operation in late 2024.

**Overview of instrument**

The instrument continues arrangements that currently allow an operator of certain class A aircraft to be engaged in private operations without meeting the requirements in CAR for the aircraft to have a maintenance controller and maintenance control manual.

The exemptions will apply to an operator of a class A aircraft that is certificated as a transport category aircraft and only engaged in private operations. The exemptions will not apply to an aircraft that is being used, or is to be used, by the holder of an Australian air transport AOC which authorises the use of that aircraft in scheduled air transport operations.

The instrument also imposes a condition on the operator of the aircraft to ensure that the aircraft’s approved system of maintenance includes specified matters that, in CASA’s view, adequately mitigate risks associated with the aircraft not having a maintenance controller or maintenance control manual.

CASA considers that the exemptions do not have any adverse effect on aviation safety in relation to the operation of class A aircraft engaged in private operations.

***Content of instrument***

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument. The instrument commences on 1 August 2024 and is repealed at the earlier of:

* the commencement of Parts 1 and 2 of Schedule 1 to the *Civil Aviation Legislation Amendment (Part 43—Maintenance of Aircraft) Regulations 2024*
* the end of 31 July 2027.

If, for any reason, the specified provisions of the named regulations do not commence in 2024, and other regulations that insert Part 43 into CASR that commence after 2024 but before the end of 31 July 2027, the instrument will repeal at the end of 31 July 2027 unless it is repealed earlier by another instrument.

Section 3 provides that the instrument applies to the operator of an Australian aircraft that:

(a) is a class A aircraft because it satisfies paragraph (a) of the definition of ***class A aircraft*** in subregulation 2(1) of CAR; and

(b) does not satisfy paragraph (b) of the definition mentioned in paragraph (a); and

(c) is only engaged in private operations within the meaning of CAR.

***Private operations*** is not defined in CAR, although ***commercial operations*** is defined in section 2 of CAR as meaning civil air operations other than private operations. ***Private operation*** is defined in Part 1 of the Dictionary of CASR. This definition would apply for the purposes of CAR due to subregulation 1.004(4) of CASR which states that “Unless the contrary intention appears, the definition or explanation of an expression in these Regulations applies to each use of the expression in these Regulations.”. “These Regulations” is defined in Part 1 of the CASR Dictionary as “including CAR”. See also regulation 2C of CAR.

Section 4 provides that the operator is exempt from complying with subregulations 42ZV(1) and 42ZY(1) of CAR. The exemptions are subject to the condition stated in section 5.

Section 5 sets out the condition on the exemptions. It provides that the operator must ensure that the aircraft’s approved system of maintenance states the name of the person who is responsible for each of the matters listed in the section. There may be a different person who is responsible for each of the matters.

***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 aircraft. Additionally, paragraph 98(5AA)(a) 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 exempts a class of persons, being operators of class A aircraft, from complying with the provisions in regulations 42ZV and 42ZY of CAR. 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**

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 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**

Consultation under section 17 of the LA has not been undertaken in this case. The instrument continues previous arrangements that industry has requested, and that are beneficial to industry, in circumstances where the arrangements have not been the subject of adverse feedback. No adverse comment has been received in relation to the previous instruments, including in relation to compliance with the exemption conditions imposed in the interests of the safety of air navigation.

In these circumstances CASA is satisfied that no consultation on the instrument is appropriate, or necessary, 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 largely the same provisions, there will be no change of economic or cost impact on individuals, businesses or the community.

**Impact on categories of operations**

The instrument will have a beneficial effect on Class A aircraft only engaged in private operations as it will not require operators of such aircraft to appoint a person to be the maintenance controller for the aircraft or prepare a maintenance control manual for the aircraft, provided they comply with the specified risk mitigators set out in the instrument in the exemption conditions.

**Impact on regional and remote communities**

Operators of Class A aircraft engaged in private operations in regional and remote communities will also benefit from only having to source an appropriately qualified maintenance provider without the need to also source a maintenance controller and prepare a maintenance control manual for the aircraft.

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

An Impact Analysis (***IA***) is not required in this case as the exemptions are covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA reference number: OIA23‑06252).

**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 August 2024 and is repealed at the earlier of: the commencement of Parts 1 and 2 of Schedule 1 to the *Civil Aviation Legislation Amendment (Part 43—Maintenance of Aircraft) Regulations 2024* and the end of 31 July 2027.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**CASA EX42/24 — Maintenance Control (Certain Class A Aircraft Only
Engaged in Private Operations) Exemption 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**

*CASA EX42/24 — Maintenance Control (Certain Class A Aircraft Only Engaged in Private Operations) Exemption 2024* (*the* ***instrument***)enables certain class A aircraft, being larger or more sophisticated aircraft usually engaged in commercial operations, to be engaged in private operations only without meeting the maintenance controller and maintenance control manual requirements of subregulations 42ZV(1) and 42ZY(1) of the *Civil Aviation Regulations 1988* (***CAR*)**.

The instrument applies to certain class A aircraft that are only engaged in private operations. The instrument also imposes a condition on the operator of the aircraft to ensure that the aircraft’s approved system of maintenance includes specified matters that, in CASA’s view, adequately mitigate risks associated with the aircraft not having a maintenance controller or maintenance control manual.

CASA anticipates that the instrument will not be required when proposed Part 43 of the *Civil Aviation Safety Regulations 1998* (***Part 43***) commences. Part 43 and not CAR will deal with the maintenance of the aircraft to which this instrument applies.

**Human rights implications**

The instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

The instrument is compatible with human rights as it does not raise any human rights issues.

**Civil Aviation Safety Authority**