**Explanatory Statement**

**Civil Aviation Regulations 1988**

**Civil Aviation Safety Regulations 1998**

**CASA EX36/24** **— Carrying Out and Supervising Maintenance (****Ex-Armed Forces, Historic and Replicas of Class B Aircraft) Instrument 2024**

**Purpose**

*CASA EX36/24 — Carrying Out and Supervising Maintenance (Ex-Armed Forces, Historic and Replicas of Class B Aircraft) Instrument 2024* (the ***instrument***) continues to enable a particular class of persons to carry out, or supervise, maintenance on certain aircraft (***relevant class B aircraft***) if related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument have been met. The class of persons, circumstances and conditions are described in more detail under the headings “Overview of Instrument” and “Content of instrument”.

The instrument continues to be necessary because of the unique nature and maintenance requirements of ex-armed forces, historic and replica aircraft. To ensure that those maintenance requirements continue to be met, the instrument is required to remain in force until the new Part 43 of the *Civil Aviation Safety Regulations 1998* (***CASR***) commences in 2024 or 2025.

**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 and the *Civil Aviation Regulations 1988* (***CAR***).

CAR and the Act

Regulation 33B of CAR relates to airworthiness authorities. Under paragraph 33B(1)(a) of CAR, CASA may, in writing and in accordance with the Civil Aviation Orders, issue authorities to carry out maintenance on aircraft. Under subregulation 33B(2) of CAR, an airworthiness authority may be issued subject to conditions specified in the airworthiness authority, in Civil Aviation Orders or in both. Subregulations 33B(4) and (5) of CAR provide, respectively, that a person must not contravene a condition to which an airworthiness authority is subject and that an offence against subregulation (4) is an offence of strict liability.

Regulation 33I of CAR relates to conditions of aircraft welding authorities. Under subregulation 33I(1) of CAR, an aircraft welding authority is subject to any conditions that CASA considers necessary to impose in the interests of the safety of air navigation. Subregulation 33I(2) of CAR provides that a condition must be set out in the aircraft welding authority. Subregulations 33I(3) and (4) of CAR provide, respectively, that the holder of an aircraft welding authority must not contravene a condition set out in the authority and that an offence against subregulation (3) is an offence of strict liability.

Regulation 42ZC of CAR, which relates to the maintenance of Australian aircraft in Australian territory, operates by reference to class A aircraft and class B aircraft.

Under subregulation 2(1) of CAR, a ***class A aircraft*** is defined to mean 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 which authorises the use of that aircraft in scheduled air transport operations.

Under the same subregulation, a ***class B aircraft*** is defined to mean an Australian aircraft that is not a class A aircraft.

Under paragraph 42ZC(4)(e) of CAR, a person may carry out maintenance on a class B aircraft in Australian territory if the person is authorised by CASA under subregulation 42ZC(6) of CAR to carry out the maintenance and the maintenance is carried out in accordance with any conditions subject to which the authorisation is given.

Under subregulation 42ZC(6) of CAR, CASA may, in writing, authorise a person for the purposes of paragraph 42ZC(4)(e).

Under subregulation 42ZC(8) of CAR, an authorisation issued under subregulation 42ZC(6) is subject to any conditions that:

(a) CASA considers are necessary in the interests of air navigation; and

(b) are included in the authorisation.

In addition, regulation 11.015 of CASR provides that an authorisation of that kind is an authorisation under Part 11 of CASR. Therefore, Subpart 11.BA of CASR applies to the authorisation.

Regulation 11.055 sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation may be granted subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability if the person breaches a condition of an authorisation.

CASR

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) 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, 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.

Civil Aviation Order 100.24

Civil Aviation Order (***CAO***) 100.24 is composed of provisions related to the application for, and issue of, a maintenance authority. Subsection 1 of CAO 100.24 sets out the requirements for issue of a maintenance authority that an applicant must meet.

Under paragraph 3.2 of CAO 100.24, a maintenance authority may be issued in respect of a maintenance function to be performed and certified on a particular aircraft, or a type, series or group of aircraft, engine, systems or installations.

Other legislation

Under subsection 14(1) of the *Legislation Act 2003* (the ***LA***), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the LA, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98(5D) of the Act provides that, despite section 14 of the LA, 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.

**Background**

The instrument renews *CASA EX47/21 — Carrying Out and Supervising Maintenance (Ex‑Armed Forces, Historic and Replicas of Class B Aircraft) Instrument 2021* (***CASA EX47/21***), which was in substantially similar terms. In particular, the instrument retains the authorisation and the related exemptions in CASA EX47/21. Like CASA EX47/21, the instrument authorises a person to carry out maintenance on aircraft, defined as ***relevant class B aircraft***, if the person carrying out the maintenance is supervised by the holder of:

(a) an airworthiness authority covering the maintenance; or

(b) an aircraft welding authority covering the maintenance; or

(c) an authorisation under subregulation 42ZC(6) of CAR covering the maintenance.

The authorisation and the related exemptions for supervisors who hold an aircraft welding authority or an airworthiness authority have been in effect for 14 years with no adverse effect on aviation safety.

CASA intends to incorporate the terms of the exemptions in the instrument into a new Part 43 of CASR, which was announced in July 2018. The new Part 43 of CASR is expected to be made in the later part of 2024 and to commence in late 2024 or early 2025.

**Overview of instrument**

The instrument, which replaces CASA EX47/21, continues to authorise a person to carry out maintenance on relevant class B aircraft if the maintenance is carried out under the supervision of a person (a ***supervisor***) on the basis that the supervisor holds:

(a) an aircraft welding authority covering the maintenance; or

(b) an airworthiness authority covering the maintenance; or

(c) an authorisation under subregulation 42ZC(6) of CAR covering the maintenance.

The instrument also continues to:

(a) exempt a supervisor who holds an aircraft welding authority, or an airworthiness authority, covering the maintenance from compliance with, respectively, subregulation 33I(3) of CAR and subregulation 33B(4) of CAR. The supervisor is exempt only to the extent that the related subregulation requires the supervisor to meet a condition in the aircraft welding authority or the airworthiness authority that prohibits them from supervising the carrying out of maintenance on a relevant class B aircraft. The exemption for the supervisor who holds an airworthiness authority is subject to a condition which is required because it applies to a supervisor who holds an airworthiness authority of a particular kind; and

(b) exempt a supervisor from compliance with subregulation 42ZC(8) of CAR, if the supervisor holds an authorisation issued under subregulation 42ZC(6) of CAR that authorises the supervisor to carry out maintenance on a relevant class B aircraft in Australian territory. The supervisor is exempt only to the extent that the related subregulation requires the supervisor to meet a condition in the authorisation that prohibits them from supervising the carrying out of maintenance by a person authorised under subsection 4(1) of the instrument.

CASA has assessed that continuing each of those authorisations and exemptions will not have an adverse effect on aviation safety. Also, to ensure that the unique maintenance requirements of ex-armed forces, historic and replica aircraft continue to be met,the exemptions in the instrument will be needed until the new Part 43 of CASR commences.

**Documents incorporated by reference**

For paragraph 15J(2)(c) of the LA, the instrument incorporates paragraph 3.2 of CAO 100.24, as in force from time to time. CAO 100.24 is a legislative instrument that is freely accessible via the internet on the Federal Register of Legislation webpage at [https://www.legislation.gov.au](https://www.legislation.gov.au/).

**Content of instrument**

Section 1 names the instrument.

Section 2 sets out the duration of the instrument. The instrument commences on the day after it is registered and is repealed at the earlier of the following:

(a) the commencement of Parts 1 and 2 of Schedule 1 to the *Civil Aviation Legislation Amendment (Part 43—Maintenance of Aircraft) Regulations 2024*;

(b) the end of 31 July 2027.

Section 3 contains definitions. In particular, the following provisions signpost several definitions located in the Act, CAR or CASR:

(a) the note below the heading of section 3;

(b) the definition of ***carrying out maintenance on an aircraft***;

(c) the definition of ***supervising***, in relation to maintenance being carried out.

Consistent with paragraph 13(1)(b) of the LA and the definitions of ***enabling legislation*** and ***primary law*** in the LA, each of those definitions has the same meaning as in the Act, CAR or CASR (whichever applies), as in force from time to time.

Paragraph 4(1)(a) authorises, for subregulation 42ZC(6) of CAR, a person to carry out maintenance on a relevant class B aircraft in Australian territory if the maintenance is carried out under the supervision of a supervisor who holds:

 (i) an aircraft welding authority covering the maintenance; or

 (ii) an airworthiness authority covering the maintenance; or

 (iii) an authorisation under subregulation 42ZC(6) of CAR covering the maintenance.

Paragraph 4(1)(b) provides that the authorisation applies if the maintenance is carried out in accordance with any conditions subject to which the authorisation mentioned subparagraph (a)(i), (ii) or (iii) was given, other than a condition compliance with which is exempted under section 5, 6 or 7.

Subsection 4(2) describes, for paragraph 4(1)(a), when an aircraft welding authority covers the maintenance.

The note located immediately below section 4 is intended to assist the reader by describing the operation of paragraph 33D(6)(a) of CAR.

Subsection 5(1) provides that section 5 applies to a person (a ***supervisor***) who supervises the carrying out of maintenance by a person authorised under subsection 4(1), on the basis of holding an aircraft welding authority covering the maintenance.

Subsection 5(2) exempts the supervisor from compliance with subregulation 33I(3) of CAR, to the extent that the subregulation requires the supervisor to meet a condition set out in the aircraft welding authority that prohibits them from supervising the carrying out of maintenance by a person authorised under subsection 4(1).

Subsection 6(1) provides that section 6 applies to a person (a ***supervisor***) who supervises the carrying out of maintenance by a person authorised under subsection 4(1), on the basis of holding an airworthiness authority covering the maintenance.

Subsection 6(2) exempts the supervisor from compliance with subregulation 33B(4) of CAR, to the extent that the subregulation requires the supervisor to meet a condition in the airworthiness authority that prohibits them from supervising the carrying out of maintenance by a person authorised under subsection 4(1).

Subsection 6(3) provides that subsection (4) applies to a supervisor who holds an airworthiness authority issued, in accordance with paragraph 3.2 of CAO 100.24, in respect of a maintenance function to be performed on the particular aircraft, or a type, series or group of aircraft, engine, systems or installations, mentioned in paragraph 6(3)(a) or (b).

Subsection 6(4) provides that a supervisor (who holds a particular kind of airworthiness authority mentioned in subsection 6(3)) must not supervise the carrying out of maintenance by a person authorised under subsection 4(1), unless the person is performing a maintenance function on:

(a) a particular relevant class B aircraft, in respect of which the airworthiness authority was issued to the supervisor; or

(b) a type, series or group of relevant class B aircraft, in respect of which the airworthiness authority was issued to the supervisor; or

(c) an engine, system or installation of a relevant class B aircraft, in respect of which the airworthiness authority was issued to the supervisor.

The note located immediately below section 6 is intended to assist the reader by describing the operation of subregulation 33B(2) of CAR.

Subsection 7(1) provides that section 7 applies to a person (a ***supervisor***) who supervises the carrying out of maintenance by a person authorised under subsection 4(1), on the basis of holding an authorisation under subregulation 42ZC(6) of CAR covering the maintenance.

Subsection 7(2) exempts the supervisor from compliance with subregulation 42ZC(8) of CAR, to the extent that the subregulation requires the supervisor to meet a condition in the authorisation that prohibits them from supervising the carrying out of maintenance by a person authorised under subsection 4(1).

***Legislation Act 2003***

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) 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 exempts a class of persons from complying with subregulations 33B(4), 33I(3) and 42ZC(8) of CAR. The class of persons is composed of persons (supervisors) who supervise the carrying out of maintenance by a person authorised under subsection 4(1) of the instrument, on the basis of holding an authority or authorisation of a particular kind. 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 and CAR (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 latest, at the end of 31 July 2027, 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**

Although CASA has not consulted on the instrument, CASA has consulted with the relevant section of the aviation industry about the new Part 43 of CASR and CASA EX75/15, *Authorisation — to carry out maintenance on WHR aircraft; Exemption — to allow supervision of maintenance on WHR aircraft* (***CASA EX75/15***). CASA EX75/15 was made after CASA received representations from a section of the aviation industry involved in the maintenance of those aircraft to issue an instrument that relaxes the related restrictions. The instrument replaces CASA EX47/21, which expired at the end of 30 April 2024 and is made in substantially similar terms as CASA EX47/21 and CASA EX75/15.

The authorisation and the exemptions in the instrument are beneficial to industry and are intended to maintain the status quo until the new Part 43 of CASR replaces the need for the instrument. In those circumstances, it is CASA’s view that it is not necessary or appropriate to undertake any consultation under 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**

The instrument is likely to have a beneficial effect on relevant class B aircraft operations and related businesses by enabling maintenance to be carried out on those aircraft.

**Impact on regional and remote communities**

The instrument is likely to have a beneficial effect on regional and remote communities insofar as maintenance and operations involving relevant class B aircraft are carried out in, or service, 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: OAI23-06252).

**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*.

**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 the day after it is registered and is repealed on the earlier of the following:

(a) the commencement of Parts 1 and 2 of Schedule 1 to the *Civil Aviation Legislation Amendment (Part 43—Maintenance of Aircraft) Regulations 2024*;

(b) 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 EX36/24 — Carrying Out and Supervising Maintenance (Ex-Armed Forces,
Historic and Replicas of Class B Aircraft) 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 facilitates the carrying out of maintenance on ex‑armed forces aircraft, historic aircraft and replicas of class B aircraft. The instrument is in substantially similar terms to an instrument that was previously made (*CASA EX47/21 — Carrying Out and Supervising Maintenance (Ex-Armed Forces, Historic and Replicas of Class B Aircraft) Instrument 2021*). The operation of aircraft to which the instrument applies is subject to special operating rules and CASA holds the view that continuing the authorisations and the related exemptions in the instrument is appropriate.

The instrument continues to enable a particular class of persons to carry out, or supervise, maintenance on certain aircraft (***relevant class B aircraft***) if related circumstances mentioned in the instrument exist and related conditions mentioned in the instrument have been met.

The instrument continues to be necessary because of the unique nature and maintenance requirements of ex-armed forces, historic and replica aircraft. To ensure that those maintenance requirements continue to be met, the instrument is required to remain in force until the new Part 43 of the *Civil Aviation Safety Regulations 1998* commences.

**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**