

## Explanatory Statement

### Civil Aviation Regulations 1988

### Civil Aviation Safety Regulations 1998

### Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2024

#### Purpose

The purpose of *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2024* (the **instrument**) is to continue the operation of certain exemptions granted to operators of sailplanes and towing aircraft by the *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2021* (the **repealed CAO**). The repealed CAO exempted such operators from certain provisions of the *Civil Aviation Regulations 1988* (**CAR**) and the *Civil Aviation Safety Regulations 1988* (**CASR**) so as to maintain the operating environment for sailplanes and towing aircraft that existed immediately before 2 December 2021 when the flight operations regulations commenced.

Historically, sport and recreation aircraft have been regulated by bespoke rules that were legally expressed as conditions on exemptions from the main rules in CAR and CASR. Exemptions of an enduring nature were often contained in a Civil Aviation Order (**CAO**). The rules for sport and recreation operations (except for private ballooning) were to be transferred into a new Part 103 of CASR. This CASR Part was made in late 2019 and commenced on 2 December 2021, but it relies on a *Part 103 Manual of Standards* (the **Part 103 MOS**) to complete the rules and this MOS is still in the development and consultation phase. The repealed CAO, which also commenced on 2 December 2021, was made under the power to grant exemptions in Subpart 11.F of CASR, which limits the duration of an exemption to 3 years.

The exemptions in the repealed CAO are still required to ensure continuity for operators of sailplanes and towing aircraft. The instrument continues their operation on an interim basis, from 2 December 2024 to the end of 1 December 2027. It is expected that, before the exemptions cease to apply, the Part 103 MOS will be made, and appropriate substantive amendments will be made to CASR to achieve the same policy objectives as the exemptions.

The exemptions in the instrument are in substantially the same terms as those in the repealed CAO, subject to the following:

- (a) a new provision expressly requires compliance with *Civil Aviation Order 20.18 – Aircraft equipment – Basic operational requirements* (**CAO 20.18**), as it was in force on 1 December 2021, subject to an exception to avoid the unnecessary replacement of non-ADS-B OUT capable Mode S transponders in aircraft for which ADS-B OUT functionality is not required (see paragraph 8.3); and
- (b) the operation of the existing transitional provision in subsection 11 is extended to save the operation of certificates, approvals and authorisations made under the repealed CAO and still in force when that CAO is repealed.

## **Legislation**

Section 98 of *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 CASR and CAR.

## **Exemptions**

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, the Civil Aviation Safety Authority (*CASA*) may grant an exemption from compliance with a provision of the regulations or a CAO.

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 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 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.

## **Incorporation of documents by reference**

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

Part 103 of CASR was made on 12 December 2019 and commenced on 2 December 2021. Part 103 of CASR sets out operating rules for a wide range of non-registered aircraft, referred to as Part 103 aircraft (regulation 103.005 of CASR), including:

- sailplanes
- powered parachutes
- gyroplanes
- gyrogliders
- hang gliders and powered hang gliders
- paragliders and powered paragliders
- rotorcraft that are prescribed in the Part 103 MOS
- weight-shift-controlled aeroplanes that are prescribed in the Part 103 MOS
- any other aeroplane that is prescribed in the Part 103 MOS — these include very light aeroplanes, covered by a range of certification criteria.

The purpose of Part 103 is to provide regulations for the operation of sport and recreational aircraft administered by an approved self-administering organisation (**ASAO**) under Part 149. A Part 149 ASAO certificate would list functions the organisation administers such as personnel authorisations, training, aircraft airworthiness authorisations and systems, oversight, education and enforcement.

Prior to 2 December 2021, these aircraft were operated according to a suite of exemptions in the 95 series of CAOs. Broadly speaking, pilots were allowed to operate the aircraft outside of the generally applied operating rules in the CAR, as long as they complied with the operations manual of the specified sport aviation body and the conditions in the CAO.

Part 103, at a practical level, sets the operating rules for these aircraft in a similar way, although the link to the sport aviation body is replaced by a link to Part 149 where the responsibility for administering the operations is held by the holder of a Part 149 ASAO certificate.

Regulation 103.015 makes provision for CASA to make a Manual of Standards (MOS) for various matters referred to in the regulations — for example, the kinds of aeroplanes and rotorcraft referred to above.

In consultation with an established industry working group, CASA opted to defer the originally intended commencement of the Part 103 MOS on 2 December 2021 to allow further development of it, which resulted in the sport and recreation Civil Aviation Orders, including *Civil Aviation Order 95.4 Instrument 2011*, needing to be continued in force beyond 2 December 2021, and to include exemptions from CASR Parts 91 and 103, as well as appropriate references to legislation that was repealed on 2 December 2021.

The repealed instrument continued the operation of the exemptions in *Civil Aviation Order 95.4 Instrument 2011* and was required for two main reasons: first, because the Part 103 MOS, which was originally intended to accompany new Part 103 of CASR, did not commence as anticipated on 2 December 2021; and secondly, most of the provisions of CAR were being repealed on that date and as a result, the *Civil Aviation Order 95.4 Instrument 2011* would be ineffective in providing exemptions for operators of relevant aircraft as it referred to the obsolete CAR provisions. This enabled reasonable continuity for operators of such aircraft, whilst creating a bridge to the new flight rules under Part 91 of

CASR and, eventually, to the new rules for sport and recreation aircraft under Part 103 of CASR.

The Part 103 MOS is not yet in effect.

### Overview of instrument

The instrument enables the continuation of exemptions for operators of sailplanes and towing aircraft from certain requirements of CAR and CASR.

The instrument reissues the repealed CAO in substantially the same form, with the changes being minor drafting improvements and the introduction of some new provisions. The commencement of Part 91 of CASR (on 2 December 2021) repealed certain provisions of CAR that impact the operations of sailplanes and towing aircraft. Therefore, provisions to maintain the operating environment have been drafted into the Part 103 MOS. However, because the making of the Part 103 has been deferred, equivalent provisions have been included in this instrument.

To ensure operations of sailplanes and towing aircraft can continue after 2 December 2024, the repealed CAO is being remade with amendments to continue the substance of regulatory exemptions from CAR and the equivalent provisions under CASR, in particular, the provisions of Part 91 of CASR.

Industry and operators should not experience any disruption to operations as a result of this instrument.

<i>Document</i>	<i>Description</i>	<i>Manner of incorporation</i>	<i>Source</i>
Civil Aviation Advisory Publication 149-1	CAAP 149 details aircraft acceptable to CASA for the aerotowing of other aircraft.  Paragraph 9.4(b) of the instrument calls up CAAP 149 as part of the requirements a relevant towing aircraft must meet.	The whole of CAAP 149 is incorporated as existing from time to time.  Subsection 98(5D) of the Act authorises the incorporation of this document as existing from time to time.	This document is available for free on the CASA website ( <a href="http://www.casa.gov.au">www.casa.gov.au</a> ).
SAB manual (Sport Aviation Body manual)	The manual prepared by a sport aviation body and approved by CASA from time to time that contains: (a) the sport aviation body's operational and technical rules; and (b) the sport aviation body's administrative rules; and (c) any associated written directives or documents prepared by the sport aviation body.	The whole of an SAB manual is incorporated as existing from time to time.  Subsection 98(5D) of the Act authorises the incorporation of this document as existing from time to time.	The SAB manual of a sport aviation body is available to operators and pilots who are members of the applicable body. CASA has incorporated the documents in the instrument because aviation safety requires the use of the information and data in the documents by aircraft operators and pilots. Sport aviation bodies administer a wide variety of aircraft types and

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	An SAB manual is called up by various conditions of the instrument.		operations, and to make legislation addressing all the relevant operation and technical aspects would result in lengthy and complex legislation.

The instrument reissues the repealed CAO in substantially the same form, with changes only relating to the commencement and repeal of the instrument, and the updating of the transitional arrangements due to the repeal of that CAO. The instrument retains the same numbering to the extent possible to assist industry stakeholders so they need not update related documentation solely due to changed CAO numbering. CASA would also not have to update its related guidance material for the same reason.

### **Documents incorporated by reference**

In accordance with paragraph 15J(2)(c) of the LA, the following table contains a description of the documents incorporated by reference into the legislative instrument, the organisation responsible for each document and how they may be obtained. The table also states how the document is incorporated.

### **Content of instrument**

Subsection 1 sets out the name of the instrument: *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2024*.

Subsection 2 provides that the instrument commences on 2 December 2024.

Subsection 3 provides that the instrument is repealed at the end of 1 December 2027.

Subsection 4 provides that the instrument applies to:

- (a) a **relevant sailplane**, being a sailplane that is employed in private operations; and
- (b) a **relevant towing aircraft**, being:
  - (i) a powered sailplane that is towing a sailplane or hang glider; or
  - (ii) an aeroplane that is towing a sailplane.

Subsection 5 sets out definitions of terms used in the instrument.

Subsection 6 provides that a person performing a duty that is essential to the operation of a relevant aircraft (other than an aeroplane mentioned in sub-subparagraph 4(b)(ii)) during flight time is authorised to do so without a civil aviation authorisation mentioned in paragraph 20AB(1)(a) of the Act. This provision, which replicates that in the repealed CAO, will ensure that pilots of aircraft remain authorised to fly without being licensed by CASA. It also requires that any person making a broadcast on an aeronautical HF frequency be authorised under Part 61 or 64 of CASR.

Subsection 7 specifies the persons to whom the exemptions are granted by CASA under the instrument and sets out which provisions of CAR and CASR that the person are exempt from provided the conditions of the instrument are complied with. The exemptions include an

exemption from regulation 91.190 of CASR to permit the dropping of tow ropes and tow cables, a detachable drag inducing device or water ballast. The exemptions are mostly the same in purpose as they were in the repealed CAO and consistent with the repealed CAO, the exemptions are subject to compliance with the conditions in the instrument.

Subsection 8 sets out the general conditions that apply in relation to relevant aircraft. These include the conditions imposed by paragraph 8.1 that the aircraft must not be used for flying training to enable a person to obtain a pilot certificate from a sport aviation body unless in accordance with the SAB manual. There are also restrictions on operating the aircraft as pilot in command and the use of the aircraft for flying training. Operation of the aircraft must be in accordance with the relevant sport aviation body's manual. Paragraph 8.2 requires particular placarding to be in place in the relevant sailplane.

Paragraph 8.3 is a new provision that requires compliance with CAO 20.18, as it was in force on 1 December 2021. That CAO was always required to be complied with, but was mistakenly left out of the repealed CAO. The only specific exception to the requirements of CAO 20.18 is that aircraft subject to the new instrument should not have to comply with sub-sub-paragraphs 9E.2(c)(ii) and (iii), thereby enabling these aircraft to carry and use Mode S transponders that are not ADS-B OUT capable. This exception is consistent with the policy that will apply in the proposed Part 103 MOS. CASA is aware that many sailplanes may be fitted with Mode S transponders that are not ADS-B OUT capable (such as the Becker 6401). The purpose of this provision is to avoid the unnecessary replacement of non-ADS-B OUT capable Mode S transponders in aircraft for which ADS-B OUT functionality is not required.

Subsection 9 sets out the flight conditions which are the same as those in the repealed CAO. The conditions include flight height, location and airspace restrictions, requirements to fly only in VMC, during daylight hours and in acrobatic flight within certain conditions as contained in paragraph 9.2, not to use radiotelephone equipment (subject to certain qualifications) and restrictions on the towing of aircraft. It includes requirements for the carriage of radio communication equipment in certain circumstances and requirements for flight over a body of water.

Subsection 10 provides for an approval process for persons wishing to fly a relevant aircraft otherwise than in accordance with the instrument. There are no express fetters on the discretionary power. Applications for approvals will be determined on a case by case basis by reference to safety considerations. There may be a range of reasons for an application under this subsection and it would not be practical or necessary for the instrument or this Explanatory Statement to specify the factors that the decision-maker should consider in exercising the discretion. General principles of administrative law would restrict the decision-maker to decisions that are reasonable and have regard to relevant considerations.

An approval under this provision constitutes an authorisation within the meaning of regulation 11.015 of CASR. Item 1 of the Table 201.004 of CASR (see subregulation 201.004(2) of CASR) deems an adverse decision on an authorisation to constitute a reviewable decision on its merits by the Administrative Review Tribunal (**ART**). CASA will include in any such decisions an ART merits review notice.

Subsection 11 sets out the transitional provisions for the instrument and continues the operation of certificates, approvals and authorisations by a sport aviation body and approvals by CASA under the repealed CAO and the *Civil Aviation Order 95.4 Instrument 2011*.

In renewing or adding to the exemptions under the instrument, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

### ***Legislation Act 2003***

Paragraph 98(5AA)(b) 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 aircraft. The instrument states that it applies to a relevant aircraft and a relevant towing 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 classes of persons from obligations relating to relevant aircraft under specified provisions of CAR and CASR.

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 CAR and 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 1 December 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**

The instrument is a remake of the repealed CAO with only minor or machinery changes and affects the operation of sailplanes and particular aeroplanes listed with a sport aviation body — the Gliding Federation of Australia (***GFA***). The GFA were represented in the industry Technical Working Group (***TWG***) and were present at the meeting of TWG members where the deferral of the making of the Part 103 MOS, and this subsequent legislative solution, was discussed. Consultation specifically related to the renewal of the exemptions in the repealed CAO has been informal, consisting of questions and discussions with both internal and external stakeholders. The GFA was specifically consulted regarding the new provision in this instrument relating to CAO 20.18 and had no objections to its inclusion in this instrument. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for the instrument 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 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.

The economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument; and
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government; and
- (d) a valuation of the impact the different requirements 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; and
- (e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

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.

The instrument will not require the individuals or businesses that benefit from it, to meet new requirements and will be cost neutral.

### **Impact on categories of operations**

The instrument is likely to have a beneficial effect on sailplane and aircraft towing operations by ensuring continuity for operators.

### **Impact on regional and remote communities**

The instrument is not likely to have a specific impact on operators in regional or remote communities in Australia. The exemptions, when initially made, likely had a generalised beneficial effect on regional, remote and urban communities.



There are no identified rural, remote or regional impacts that differ in any really material way from the general economic and cost impacts, or sector risks described above.

**Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required in this case, as the exemptions in the instrument are covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA id: OIA2306252).

**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 2 December 2024 and is repealed at the end of 1 December 2027.

## Statement of Compatibility with Human Rights

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

### Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing 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 purpose of *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2024* (the **instrument**) is to continue the operation of certain exemptions granted to operators of sailplanes and towing aircraft by the *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2021* (the **repealed CAO**). The repealed CAO exempted such operators from certain provisions of the *Civil Aviation Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1988 (CASR)* so as to maintain the operating environment for sailplanes and towing aircraft that existed immediately before 2 December 2021 when the flight operations regulations commenced.

Historically, sport and recreation aircraft have been regulated by bespoke rules that were legally expressed as conditions on exemptions from the main rules in CAR and CASR. Exemptions of an enduring nature were often contained in a Civil Aviation Order (**CAO**). The rules for sport and recreation operations (except for private ballooning) were to be transferred into a new Part 103 of CASR. This CASR Part was made in late 2019 and commenced on 2 December 2021, but it relies on a *Part 103 Manual of Standards* (the **Part 103 MOS**) to complete the rules and this MOS is still in the development and consultation phase. The repealed CAO, which also commenced on 2 December 2021, was made under the power to grant exemptions in Part 11 of CASR, which limits the duration of an exemption to 3 years.

The exemptions in the repealed CAO are still required to ensure continuity for operators of sailplanes and towing. The instrument continues their operation on an interim basis, from 2 December 2024 to the end of 1 December 2027. It is expected that, before the exemptions cease to apply, the Part 103 MOS will be made, and appropriate substantive amendments will be made to CASR to achieve the same policy objectives as the exemptions.

The exemptions in the instrument are in substantially the same terms as those in the repealed CAO, subject to the following:

- (a) a new provision expressly requires compliance with *Civil Aviation Order 20.18 – Aircraft equipment – Basic operational requirements*, as it was in force, on 1 December 2021, subject to an exception to avoid the unnecessary replacement of non-ADS-B OUT capable Mode S transponders in aircraft for which ADS-B OUT functionality is not required (see paragraph 8.3); and

- (b) the operation of the existing transitional provision in subsection 11 is extended to save the operation of certificates, approvals or authorisation under the repealed CAO.

**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**