

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX22/25 — ATC Licence (AV Show Endorsements) (Exemptions from Currency Requirements) Instrument 2025

Purpose

The purpose of *CASA EX22/25 — ATC Licence (AV Show Endorsements) (Exemptions from Currency Requirements) Instrument 2025* (the **instrument**) is to enable the holder of an air traffic controller licence (**ATC licence**), who performs air traffic control duties or functions at Avalon Airport during the Australian International Airshow and Aerospace & Defence Exposition (**Avalon Airshow**) under certain endorsements (**AV Show endorsements**) to satisfy the currency requirements of the *Civil Aviation Safety Regulations 1998* (**CASR**) for the AV Show endorsements by performing air traffic control duties in a simulator (the **ML simulator**) instead of in a live operational environment.

The instrument is required because there are insufficient opportunities for ATC licence holders to obtain the AV Show endorsements by performing the required functions in a live operational environment, outside of doing so ‘on the job’, during the Avalon Airshow. Under these circumstances, the Civil Aviation Safety Authority (**CASA**) considers that it would be preferable in the interests of aviation safety to set out a procedure where the AV Show endorsements can be obtained before the commencement of the Avalon Airshow, through the use of the ML simulator.

Legislation

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

Subsection 98(5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

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

Under subregulation 11.170(3) of CASR, in deciding whether to grant an exemption, on application by a person, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety.

Regulation 11.225 of CASR requires an exemption to be published on the internet. Under subregulation 11.230(1), the maximum duration of an exemption is 3 years.

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245(1)(a), CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245(2) provides that CASA may issue such a direction if satisfied that it is necessary in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions. Regulation 11.255 makes it an offence of strict liability (with a penalty of 50 penalty units) to contravene a direction.

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

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

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

Background

CASA has interpreted regulations 65.025 and 65.030 of CASR (the *relevant CASR provisions*), which set out the currency requirements for ATC licence endorsements, as requiring performance of the endorsement functions in the live operational environment and not on a simulator.

The AV Show endorsements are required for an ATC licence holder to be able to perform air traffic control functions at the Avalon Airshow, which usually occurs every 2 years. During the periods when the Avalon Airshow is not occurring, there are insufficient opportunities for ATC licence holders to satisfy the currency requirements for the AV Show endorsements by performing the required functions in a live operational environment. This makes it difficult for ATC licence holders to obtain the necessary currency for the AV Show endorsements in time to be able to exercise their functions under the endorsements during an Avalon Airshow.

Airservices Australia, as the air traffic services provider at Melbourne Airport, operates the ML simulator, which is located in the Melbourne Air Traffic Services Centre. The ML simulator provides a high-fidelity simulated air traffic control environment and replicates the live operational environment for the Avalon Airshow. Simulator exercises enable traffic quantity and complexity to be varied depending on desired outcomes. Except for short periods during upgrades, the simulator uses the software version and data set that are the same as the live operational environment.

Airservices Australia has applied for the exemptions under the instrument for relief from the requirement for performance to be exclusively in the live operational environment. The instrument sets out a procedure for ATC licence holders to be assessed for the AV Show

endorsements by performing the required functions in the ML simulator, which can be done before the commencement of activities related to the Avalon Airshow on 17 March 2025. Due to the 3 year duration of the instrument, this procedure is also intended to be used in preparation for the proposed Avalon Airshow in 2027.

CASA has, through a series of instruments dating back to 2008 (the most recent being *CASA EX31/24 — ATC Licence (PARM Endorsement) (Exemptions from Recency and Currency Requirements) Instrument 2024*) granted exemptions in order that Airservices Australia may allow the use of time spent on a simulator to count towards the recency and currency requirements for an endorsement under the relevant CASR provisions.

Overview of instrument

The instrument provides exemptions from the relevant CASR provisions for ATC licence holders who perform air traffic control duties under an AV Show endorsement, to enable them to satisfy currency requirements under CASR by using the ML simulator instead of the live operational environment.

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

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

Documents incorporated by reference

The instrument incorporates the AA Licensing and Certificates Manual, prepared by Airservices Australia, as existing from time to time. The AA Licensing and Certificates Manual is not freely available to the public, however, CASA will, by prior arrangement, make available for viewing at its offices at least those parts of the AA Licensing and Certificates Manual that are incorporated by reference in the instrument. By way of a safeguard, Airservices Australia is prevented, under paragraph 6(c) of the instrument, from making changes to the AA Licensing and Certificates Manual that affect the ambit of the exemptions under the instrument (including changes to provisions of the AA Licensing and Certificates Manual relating to the currency requirements or the scope or description of the AV Show endorsements) without obtaining CASA's prior written approval.

Content of instrument

Section 1 sets out the name of the instrument: *CASA EX22/25 — ATC Licence (AV Show Endorsements) (Exemptions from Currency Requirements) Instrument 2025*.

Section 2 provides that the instrument commences at the time it is registered and is repealed at the end of 29 February 2028.

Section 3 sets out the definitions for the instrument.

AV Show endorsement is defined as the following endorsements for an ATC licence, as mentioned in the AA Licensing and Certificates Manual:

- (a) an aerodrome control endorsement;
- (b) a surface movement control endorsement;
- (c) a coordinator endorsement.

ML simulator is defined as the Eurocat simulator that is operated by Airservices Australia, located in the Melbourne Air Traffic Services Centre and designed, amongst other things, to simulate a live operational environment for AV Show endorsement functions.

Section 4 sets out the persons to whom the instrument applies, namely, ATC licence holders who perform air traffic control functions at Avalon Airport under an AV Show endorsement for the purposes of the Avalon Airshow, or who have completed training for an AV Show endorsement in order to perform air traffic control functions at Avalon Airport under an AV Show endorsement for the purposes of the Avalon Airshow.

Section 5 sets out the exemptions applying to ATC licence holders to whom the instrument applies. Under section 5, such licence holders are exempt from the currency requirement for an AV Show endorsement, if they have performed the AV Show endorsement functions on the ML simulator for at least 2 hours (or such longer time as may be required for the completion of at least 2 simulator exercises) and their performance has been assessed as satisfactory.

Section 6, consisting of directions issued to Airservices Australia, comprises the safeguards in the instrument. Airservices Australia is directed to ensure the suitability of the ML simulator for its use under the instrument and that no change is to be made to the ML simulator, or the AA Licensing and Certificates Manual, if it affects the ambit of the exemptions under the instrument, without CASA's prior written approval. The directions also direct Airservices Australia to ensure that the assessment process for the AV Show endorsements follows the process set out in the AA Licensing and Certificates Manual for newly created endorsements.

Legislation Act 2003 (the LA)

Paragraph 98(5A)(a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aeroplanes. Additionally, paragraph 98(5AA)(a) of the Act provides that an instrument issued under paragraph 98(5A)(a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument expressly applies in relation to ATC licence holders mentioned in section 4 of the instrument, that is, a class of persons. The instrument is, therefore, a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument, because the instrument relates to aviation safety and is made under CASR (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

However, this instrument will be repealed at the end of 29 February 2028, 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 sunseting does not affect parliamentary oversight of this instrument.

Consultation

Airservices Australia applied for the exemptions in the instrument. The instrument ensures that licensed air traffic controllers will be able to perform their functions under the AV Show endorsements at the Avalon Airshow. CASA anticipates that Part 65 of CASR will eventually be remade, such that there will no longer be any need for the exemptions provided for by the instrument.

Without the instrument, the air traffic controllers would not be able to operate during the Avalon Airshow, which would severely impact the schedule of the Avalon Airshow. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A(3) of the Act states that subject to regarding the safety of air navigation as the most important consideration, in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

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

Impact on categories of operations

The instrument is likely to have a beneficial effect on air traffic control operations at Avalon Airshow by enabling such operations to be carried out during the Avalon Airshow.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on regional and remote communities nearby the Avalon Airshow, insofar as attendance at the Avalon Airshow is beneficial to 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 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 at the time it is registered and is repealed at the end of 29 February 2028.

Statement of Compatibility with Human Rights

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

CASA EX22/25 — ATC Licence (AV Show Endorsements) (Exemptions from Currency Requirements) Instrument 2025

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

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The instrument provides exemptions from the relevant CASR provisions for ATC licence holders who perform air traffic control duties under an AV Show endorsement, to enable them to satisfy currency requirements under CASR by using the ML simulator instead of the live operational environment.

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

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

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