**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**CASA 43/25 — Interception of Civil Aircraft (CASA 73/17) Amendment Instrument 2025**

**Purpose**

This instrument amends instrument *CASA 73/17 — Civil Aircraft in Australian Territory (Interception) Direction 2017* (***CASA 73/17***), which would otherwise expire at the end of 31 July 2025, to continue its operation in relation to foreign registered aircraft. The purpose of the amendment is to continue to enable the enforcement of procedural requirements established by international agreement to be followed by the pilot in command of a foreign registered aircraft operating in Australian territory under a foreign air transport Air Operator’s Certificate (***AOC***) or New Zealand AOC with Australia New Zealand Aviation (***ANZA***) privileges, in the event of an aircraft interception by the Australian Defence Force or Australian Federal Police acting under the authority of the Commonwealth.

**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***).

Section 3A of the *Air Navigation Act 1920* provides for the approval of ratification of the *Convention on International Civil Aviation* (the ***Chicago Convention***) of 1944.

Section 22 of the Act provides for the interception of an aircraft registered in Australia or operated by an Australian operator that is in flight over the territory of a foreign country.

Subpart 11.G of CASR provides for the Civil Aviation Safety Authority (***CASA***) to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245(1)(a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245(2) of CASR provides that CASA may issue such a direction only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, only if the direction is not inconsistent with the Act, and only for the purposes of CASA’s functions.

Under paragraph 11.250(a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255, it is an offence of strict liability (with a maximum penalty of 50 penalty units) to contravene a direction under regulation 11.245.

Regulation 91.695 of CASR makes it an offence if an aircraft is intercepted by another aircraft and the pilot in command does not comply with requirements prescribed in the Part 91 Manual of Standards. Section 23.02 of the Part 91 Manual of Standards prescribes, for that purpose, interception procedures set out in Annex 2 of the Chicago Convention. Under regulation 91.020, regulation 91.965 does not apply in relation to:

(a) a foreign registered aircraft that is operated in Australian territory under a foreign air transport AOC; or

(b) a foreign registered aircraft that is operated in Australian territory under a New Zealand AOC with ANZA privileges that is in force for Australia.

The *Acts Interpretation Act 1901* (the***AIA***)

Under subsection 33(3) of the AIA, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by‑laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13(1) of the LA, subsection 33(3) of the AIA applies to legislative instruments as if each provision of the instrument were a section of an Act.

**Background**

*CASA 33/22 — Interception of Civil Aircraft (CASA 73/17) Amendment Instrument 2022* (***CASA 33/22***) extended the duration of CASA 73/17 from 31 July 2022 to 31 July 2025. Also, CASA 33/22 made some other amendments of CASA 73/17. Those other amendments are described in the Explanatory Statement for CASA 33/22, under the headings “Overview of instrument” and “Content of instrument”.

**Overview of instrument**

The instrument extends by a period of 3 years the duration of CASA 73/17. The instrument also includes a note immediately below paragraph 1(b) specifying that, for regulation 11.250 of CASR, the directions in section 4 continue to be in force until the repeal of CASA 73/17.

The Explanatory Statement for CASA 33/22 includes the following assessment by CASA of the impact of that instrument on aviation safety:

CASA considers that the amended instrument mitigates against any adverse risks to the safety of air navigation by ensuring that interception aircraft follow globally recognised procedures and limitations.

Because the only amendment that the instrument makes to CASA 73/17 extends its duration and includes the note below paragraph 1(b), CASA considers that the assessment mentioned in the preceding paragraph continues to apply.

**Documents incorporated by reference**

The instrument doesn’t include a provision that incorporates any documents by reference.

***Content of instrument***

Section 1 names the instrument.

Section 2 mentions when the instrument commences.

Section 3 mentions that Schedule 1 amends CASA 73/17.

**Schedule 1**— **Amendment**

Item [1] substitutes paragraph 1(b) of CASA 73/17. Substituted paragraph 1(b):

(a) extends the duration of CASA 73/17 to 31 July 2028; and

(b) includes a note below paragraph 1(b) specifying, for regulation 11.250 of CASR, the intended duration of the directions in section 4.

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

Paragraph 10(1)(d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The instrument amends CASA 73/17 that was registered as a legislative instrument. Therefore, the instrument is also a legislative instrument, 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 (see item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

In this case, the instrument amends CASA 73/17 and is almost immediately spent and repealed in accordance with the automatic repeal provisions in section 48A of the LA. CASA 73/17 is itself repealed at the end of 31 July 2028 by virtue of the terms of paragraph 1(b) of CASA 73/17 (as amended by the instrument). Therefore, in practice, no sunsetting avoidance issues arise and there is no impact on parliamentary oversight.

**Consultation**

Consultation under section 17 of the LA has not been undertaken in this case.

The Explanatory Statement for CASA 33/22 includes the following information about consultation:

The instrument continues the effect of an existing instrument and ensures Australia continues to meet its international obligations under the Chicago Convention regarding the interception of civil aircraft. The instrument does not alter the Part 91 interception procedures but provides a mechanism for the enforcement of those procedures.

The only amendment that the instrument makes to CASA 73/17 extends its duration and includes a note below paragraph 1(b) specifying, for regulation 11.250 of CASR, the intended duration of the directions in section 4. For that reason, CASA considers that the information about consultation continues to apply. Therefore, CASA is satisfied that no further consultation is appropriate or reasonably necessary for this instrument 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.

The instrument only extends an expiring instrument (CASA 73/17) with the same provisions and includes a note below paragraph 1(b) specifying, for regulation 11.250 of CASR, the intended duration of the directions in section 4. Therefore, there will be no change of economic or cost impact on individuals, businesses or the community.

**Impact on categories of operations**

The instrument only extends an expiring instrument (CASA 73/17) with the same provisions and includes a note below paragraph 1(b) specifying, for regulation 11.250 of CASR, the intended duration of the directions in section 4. Therefore, there will be no change of impact on categories of operations.

However, CASA has assessed that if a foreign registered aircraft conducting an operation of a kind mentioned in regulation 91.020 of CASR were intercepted and escorted to a different landing destination, it could result in economic (direct cost) impacts on the operator of the aircraft, or the persons on board the aircraft due to:

(a) increased fuel to the alternative destination and fuel to move the aircraft to a future departure destination, or

(b) increased costs for the persons on board the aircraft to get to their originally intended destination.

However, CASA has assessed that – if incurred – those costs would be a reasonable consequence in the context of the national security concerns that would underpin that kind of interception and escorting of a foreign registered aircraft by an Australian authority.

**Impact on regional and remote communities**

The Explanatory Statement for CASA EX33/22 includes the following information about the impact on regional and remote communities:

CASA assesses that the direction to foreign registered aircraft to comply with interception procedures when operating in Australian territory would not have any negative consequences for regional or rural areas. The normal landing destinations of such aircraft are aerodromes in capital cities. If a significant national security event did necessitate the widespread interception and escort of such aircraft to alternative landing destinations, some of these destinations are likely to be in regional or rural areas (due to the relative scarcity of capital city major aerodromes). This could result in limited but positive economic benefits to the regional or rural area.

The only amendment that the instrument makes to CASA 73/17 extends its duration and includes a note below paragraph 1(b) specifying, for regulation 11.250 of CASR, the intended duration of the directions in section 4. Therefore, CASA considers that the assessment mentioned in the preceding paragraph continues to apply.

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

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

**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 that it is registered, and is automatically repealed in accordance with section 48A of the LA.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**CASA 43/25 — Interception of Civil Aircraft (CASA 73/17) Amendment 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**

The instrument extends by a period of 3 years the duration of *CASA 73/17 — Civil Aircraft in Australian Territory (Interception) Direction 2017* (***CASA 73/17***). The instrument also includes a note immediately below paragraph 1(b) specifying that, for regulation 11.250 of CASR, the directions in section 4 continue to be in force until the repeal of CASA 73/17.

The purpose of the amendment is to continue to enable the enforcement of procedural requirements established by international agreement to be followed by the pilot in command of a foreign registered aircraft operating in Australian territory under a foreign air transport Air Operator’s Certificate (***AOC***) or New Zealand AOC with Australia New Zealand Aviation privileges, in the event of an aircraft interception by the Australian Defence Force or Australian Federal Police acting under the authority of the Commonwealth.

**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**