

## **Explanatory Statement**

### **Civil Aviation Act 1988**

### **Civil Aviation Order 95.12 Instrument 2011**

#### **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.

Under subregulation 308 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, CASA may exempt aircraft, or persons in, on, or otherwise associated with the operation of the aircraft, from compliance with specified provisions of CAR 1988.

The previous Civil Aviation Order 95.12 contained exemptions to allow the operation of gyroplanes having an empty weight not in excess of 250 kilograms used solely in private operations for recreational purposes, subject to compliance with the conditions mentioned in it.

The *Civil Aviation Order 95.12 Instrument 2011* was made to replace the previous Civil Aviation Order 95.12. It contains a new Civil Aviation Order 95.12 (the *new Order*).

The new Order continues to apply to gyroplanes having an empty weight not in excess of 250 kilograms used solely in private operations for recreational purposes.

Part of the purpose of remaking the Order is to allow the early introduction of changes proposed in draft Part 103 (Sport and recreational aviation operations), the new Part proposed for inclusion in the *Civil Aviation Safety Regulations 1998 (CASR 1998)* for which a Notice of Proposed Rule Making (*NPRM*) has been circulated. The *NPRM* received a favourable response.

Making the changes has involved reviewing the exemptions granted in the previous Order so as to recognise that the aircraft will have more freedom of operation in accordance with the new conditions. This particularly relates to operations in controlled airspace. An aircraft to which the Order applies is permitted to fly in Class A, B, C or D airspace, if the pilot holds a pilot licence (other than a student pilot licence) and satisfies aeroplane flight review requirements under CAR 1988.

The new Order now permits a gyroplane to be used for aerial inspections and aerial stock mustering operations, if conducted as a private operation over land belonging to the gyroplane owner or his or her immediate family. Civil Aviation Order 29.10 (*CAO 29.10*) applies to the conduct of aerial stock mustering operations. Training for stock mustering operations must be conducted in accordance with CAO 29.10 or equivalent requirements issued by the Australian Sport Rotorcraft Association Inc.

The conditions relating to flights over water have been altered. The Order states that flights must be conducted within gliding distance from a suitable landing area, unless each occupant wears a life jacket and the aircraft is equipped with the prescribed safety equipment. If those requirements are met, flights may be conducted up to 25 nautical miles horizontal distance from a safe landing area. Special provision is made

for flights to and from Tasmania to use longer routes to take advantage of safer weather conditions.

The Order now allows a gyroplane that is taking off or landing to be less than 100 metres from a public road, a person not associated with the operation of an aircraft or a private dwelling. However, the gyroplane must be distant enough to avoid endangering any person or causing damage to any property and must be as far as possible from such a person or place, having regard to carrying out a safe take-off or landing.

Other changes have been made in the new Order to make it as uniform as possible with other Orders relating to flights in similar sport and recreational aircraft.

### **Legislative Instruments Act**

Under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the *LIA*), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. Under subsection 95 (5) of the Act, Civil Aviation Orders are declared to be disallowable instruments. The Order is, therefore, a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

### **Consultation**

The changes are consistent with the NPRM for the proposed Part 103 of CASR 1998 as mentioned above. The sport and recreational aviation aircraft industry and users of those aircraft were made aware of the changes included in the new Order and have, through the various associations that regulate those aircraft, prepared for their introduction. None of the changes should adversely affect aviation safety.

The new Order has also been the subject of a NFRM to which no significant adverse comments were received.

### **Office of Best Practice Regulation (OBPR)**

The OBPR does not require a Regulation Impact Statement as the amendments are minor and of a machinery nature.

The instrument commences on the day after it is registered.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Civil Aviation Order 95.12 Instrument 2011]