

## **Explanatory Statement**

### **Civil Aviation Act 1988**

#### ***Civil Aviation Order 95.10 Instrument 2017***

##### **Purpose**

The purpose of the *Civil Aviation Order 95.10 Instrument 2017* is to “reissue” the *Civil Aviation Order 95.10 Instrument 2014* which exempts operators of low-momentum ultralight aeroplanes from particular requirements of the *Civil Aviation Regulations 1988 (CAR)* and *Civil Aviation Safety Regulations 1998 (CASR)*. This will ensure the continuation of the appropriate level of regulation of the operations of such aeroplanes that is intended to be given effect in the proposed Part 103 of CASR.

##### **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.

Regulation 200.002 of CASR applies to particular kinds of privately-built single-place aeroplanes. It provides that such aeroplanes are exempt from CASR if conditions in section 95.10 of the Civil Aviation Orders are complied with.

Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations, including CAR in relation to a matter mentioned in that subsection.

Under subregulation 11.160 (2) of CASR an exemption may be granted to a person, or to a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic. An instrument issued under paragraph 98 (5A) (a) of the Act is a legislative instrument if the instrument is expressed to apply to a class of persons or aircraft.

Regulation 11.205 of CASR allows CASA to impose conditions on an exemption. Under regulation 11.210 of CASR, it is a criminal offence if a person does not comply with a condition that applies to the person.

Subregulation 11.230 (1) of CASR operates so that an exemption issued under subregulation 11.160 (1) ceases at the end of the day no longer than 3 years after the day on which the exemption commences.

Regulation 5 of CAR allows CASA to issue a permission, approval or authority, if empowered or required under the regulations in Civil Aviation Orders. This includes issuing an exemption being a permission not to comply with regulatory requirements.

##### **Instrument**

The *Civil Aviation Order 95.10 Instrument 2011* was made under regulation 308 of CAR on 6 April 2011 and commenced on 16 April 2011. It was inadvertently repealed on 19 March 2014 by the *Civil Aviation (Spent and Redundant Instruments) Repeal Regulation 2014*. Due to the repeal of *Civil Aviation Order 95.10 Instrument 2011*, it was unclear whether Civil Aviation Order 95.10 survived. Consequently, to place the issue beyond doubt, *Civil Aviation Order 95.10 Instrument 2014* was made to completely replace *Civil Aviation Order 95.10 Instrument 2011* and contains the same substantive provisions with only minor alterations.

This instrument replaces the *Civil Aviation Order 95.10 Instrument 2014* and contains largely the same substantive provisions as that instrument. The only substantive

change has been to include a reference to subregulations 232 (2) and (5) of CAR in the list of provisions of CAR that are exempted from application to operators of low-momentum ultralight aeroplanes. This is to clarify that the requirements in those provisions should not apply to the operators.

Minor changes of a technical nature have been included in the instrument:

- to update the duration of the instrument; and
- to clarify that the names of documents incorporated by reference into the instrument and that the documents are incorporated as existing or in force from time to time.

The following non-legislative documents are incorporated by reference into the instrument:

- the RAAus OPERATIONS MANUAL which sets out operational requirements relating to the aeroplanes covered by the instrument and registered with Recreational Aviation Australia Incorporated (**RAA**);
- the RAAus TECHNICAL MANUAL which sets out airworthiness, design and maintenance standards relating to aeroplanes covered by the instrument and registered with RAA;
- the HGFA OPERATIONS MANUAL which sets out operational requirements relating to aeroplanes covered by the instrument and registered with the Hang Gliding Federation of Australia Inc (**HGFA**).

The RA-Aus documents are freely available on the RAA website and the HGFA Operations Manual is freely available on the HGFA website.

The instrument applies to low-momentum ultralight aeroplanes. Low-momentum ultralight aeroplanes are a class of sport and recreational aviation aircraft that was created in draft Part 103 (Sport and Recreational Aviation Operations), the new Part proposed for inclusion in CASR for which a Notice of Proposed Rule Making (**NPRM**) was circulated. The NPRM received a mainly favourable response. The main purpose of the instrument is to allow the early introduction of the new class before the introduction of Part 103. To date Part 103 has not been implemented. Accordingly, the substantive provisions of the instrument continue to be required to provide ongoing relief to operators of low-momentum ultralight aeroplanes.

Low-momentum ultralight aeroplanes have low take-off weights and low maximum wing loadings. Privately-built aircraft need to have a certificate issued by the RAA or the HGFA if they are not owned by the original builder and were first registered on, or after, 1 March 1990. Paragraph 2.3 allows CASA to determine that an aircraft can be operated in accordance with the instrument if it meets the criteria for the determination. The HGFA will be able to register low-momentum ultralight aeroplanes, but only if they are weight-shift controlled aeroplanes.

The instrument allows an aircraft 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 dwelling. However, the aircraft must be distant enough to avoid endangering any person or causing damage to any property, and to be as far as possible from such a person or place, having regard to carrying out a safe take-off or landing.

The instrument allows persons flying aircraft, of the types to which the instrument refers, to expand their operations. An aircraft, to which the instrument 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. The instrument states that aeroplanes must generally not be operated above a

body of water at a horizontal distance from a suitable landing area of more than the distance that the aeroplane can glide in case of engine failure. However, flights may be conducted up to 25 nautical miles from a suitable landing area if the pilot is wearing a life jacket and the aeroplane has the specified appropriate radio and locator equipment. However, the aeroplane may exceed the limit of 25 nautical miles if flying between Tasmania and mainland Australia and taking advantage of safer weather conditions.

The instrument permits aircraft to which the instrument applies to be used for aerial inspections if conducted as a private operation over land belonging to the aircraft owner or his or her immediate family.

#### **Legislative instrument**

An exemption issued under regulation 11.160 of CASR is a legislative instrument if it applies to a class of persons, aircraft or aeronautical product under subsection 98 (5AA) of the Act. This instrument applies to all operators of low-momentum ultralight aeroplanes and is accordingly a legislative instrument.

#### **Consultation**

CASA has not undertaken consultation in relation to the instrument as the instrument is a re-issuing of rules which have previously been consulted about and have not been altered significantly. It is essential to re-issue the rules to provide continued relief to the operators of the aeroplanes covered by the instrument which would otherwise be grounded. In these circumstances CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the *Legislation Act 2003*.

#### **Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at Attachment 1.

#### **Office of Best Practice Regulation**

This instrument exempts certain aeroplanes registered with the RAA or HGFA from provisions of CAR and CASR. Accordingly, it does not require the preparation of a Regulation Impact Statement (*RIS*) as it is covered by a standing agreement between CASA and the Office Best Practice Regulation (*OBPR*) under which a RIS is not required for an exemption (OBPR id: 14507).

#### **Making and commencement**

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

The instrument commences on 1 May 2017 and is repealed at the end of 30 April 2020.

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## Statement of Compatibility with Human Rights

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

### Civil Aviation Order 95.10 Instrument 2017

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*.

#### **Purpose of the legislative instrument**

The purpose of the *Civil Aviation Order 95.10 Instrument 2017* is to “reissue” the *Civil Aviation Order 95.10 Instrument 2014* which exempts operators of low-momentum ultralight aeroplanes from particular requirements of the *Civil Aviation Regulations 1988* and *Civil Aviation Safety Regulations 1998*. This will ensure the continuation of the appropriate level of regulation of the operations of such aeroplanes that is intended to be given effect in the proposed Part 103 of CASR.

#### **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**