

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2018

Purpose

Australian sport aviation operates under a system of self-administration. This system requires self-administering sport aviation organisations to administer and oversight the operation of various sport and recreational aircraft and sport aviation activities, such as parachuting. All persons partaking in the sport aviation activities are required to hold membership with, and agree to be bound by, the approved organisation's rules. All of these approved organisations are oversighted by CASA. Recreational Aviation Australia Limited (**RAA**) is one of these approved organisations.

The *Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2015* (the **2015 instrument**) expires at the end of 31 January 2018. The purpose of *Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2018* (the **instrument**) is to remake the 2015 instrument before it expires.

CASA has used the renewal process to clarify the legal operation of the exemption and condition provisions, including to accord with Subpart 11.F of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Other changes from the 2015 instrument include the following:

- (a) the instrument incorporates technical drafting changes and drafting-style changes;
- (b) the instrument omits spent and superfluous provisions, including the authorisation for section 20A of the Act that is now given in regulation 200.025 of CASR;
- (c) the instrument relocates several provisions to more appropriate locations in the instrument.

As far as possible, the numbering of the provisions in the 2015 instrument has been replicated in the instrument.

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 Regulations 1988 (CAR)* and CASR. These regulations create a detailed scheme for the safety regulation of aircraft in Australia.

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, CASA may grant an exemption from a provision of the regulations 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 a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.175 (4) of CASR, in deciding whether to renew an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety.

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.

Under regulation 200.025 of CASR, for paragraph 20AB (1) (a) of the Act, a person is taken to hold a civil aviation authorisation that is in force and authorises the person to perform a duty that is essential to the operation of an unregistered Australian aircraft during flight time if:

- (a) the person holds a pilot certificate granted by a sport aviation body that administers aviation activities in the aircraft; and
- (b) the person operates the aircraft in accordance with the sport aviation body's operations manual.

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) 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, if the direction is not inconsistent with the Act and for the purposes of CASA's functions.

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

Under regulation 5 of CAR, if CASA is empowered or required under the regulations to issue a direction, instruction or notification, or give a permission, approval or authority, it may, unless the contrary intention appears in the regulation conferring the power or function or imposing the obligation or duty, issue the direction, instruction or notification, or give the permission, approval or authority, in a Civil Aviation Order.

Subparagraph 14 (1) (a) (i) of the *Legislation Act 2003* (the *LA*) allows a legislative instrument to apply, adopt or incorporate the provisions of another legislative instrument, as the other instrument is in force at a particular time or in force from time to time. The other instrument must be of a type mentioned in subsection 14 (3) of the LA, which relevantly includes a disallowable instrument — paragraph 14 (3) (a).

Subsection 14 (2) of the LA states that, unless a contrary intention appears in the enabling legislation, a 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. This contrary intention appears in subsection 98 (5D)

of the Act, which 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.

Instrument

Subsection 1A gives the instrument its name.

It also states that a reference in a CASA instrument to section 95.55 of the Civil Aviation Orders is taken to be a reference to this instrument. The term **CASA instrument** is defined in paragraph 2.1 of the instrument.

Subsection 1B provides that the instrument commences on 1 February 2018 and is repealed at the end of 31 January 2021.

Subsection 1 states the types of aeroplane the instrument applies to. Each of these types of aeroplane is referred to in the instrument as a **relevant aeroplane**.

Subsection 2 contains key definitions of terms used in the instrument. It also explains what is meant by a reference in the instrument to a Class of airspace.

Subsection 3 states the persons to which the exemptions (the **exemptions**) are granted by CASA under the instrument. The instrument categorises the provisions of the safety regulatory scheme in CAR to which the exemptions apply as **exempted provisions**. Part 4 of CAR has been reinserted as one of the exempted provisions, as it was inadvertently omitted from paragraph 3.1 of the 2015 instrument.

It also states the exemptions are subject to the conditions stated in subsections 4, 6 and 7 of the instrument, to the extent the conditions apply to a person who is granted the exemptions.

Subsection 4 states the conditions of the exemptions that apply in relation to a relevant aeroplane that is an aeroplane mentioned in subparagraph 1.2 (g) or (h) of the instrument.

It also states that CASA or an authorised person may suspend or cancel the special certificate of airworthiness, or experimental certificate, for the aeroplane, if CASA or the authorised person considers it necessary to do so in the interest of aviation safety.

Subsection 6 states the general conditions of the exemptions that apply in relation to a relevant aeroplane.

The instrument recasts paragraph 6.3 of the 2015 instrument as a direction, under regulation 11.245 of CASR, to a person who inspects an aeroplane under subparagraph 6.1 (g) of the instrument to impose any conditions or operational limitations, in relation to the operation of the aeroplane, which the person considers necessary to preserve a level of aviation safety that is at least acceptable.

Subsection 7 states the flight conditions of the exemptions that apply in relation to a relevant aeroplane.

Subsection 8 contains provisions that qualify the flight height conditions stated in subparagraphs 7.1 (a) and (b) of the instrument.

Subsection 9 contains a process for a person who proposes to fly a relevant aeroplane, otherwise than in accordance with any of the flight conditions stated in paragraph 7.1 of the instrument, to apply to CASA for approval of the proposed flight. CASA may grant the approval, for the proposed flight, subject to conditions.

Subsection 10 states that a reference in various stated provisions of the instrument to RAA is taken to include a reference to Recreational Aviation Australia Incorporated (which is the predecessor administering body referred to in the 2015 instrument).

Subsection 11 includes provisions dealing with transitional issues arising from the transition from the 2015 instrument to the instrument.

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

In subparagraph 1.2 (a) of the instrument, a type of relevant aeroplane is described by reference to Schedule 1 to Civil Aviation Amendment Order (No. R92) 2004 (also known as section 101.28 of the Civil Aviation Orders), as in force from time to time. The Order is a legislative instrument. Under subparagraph 14 (1) (a) (ii) of the LA, subparagraph 1.2 (a) of the instrument applies, adopts or incorporates the Order, as in force from time to time. The Order is freely available, and accessible via the Internet on the following webpage: <https://www.legislation.gov.au/Series/F2007L04661>.

In subparagraphs 1.2 (b) and (c) and sub-subparagraphs 7.3 (a) (i) and (b) (i) of the instrument, a type of relevant aeroplane is described by reference to Schedule 1 to the Civil Aviation Amendment Order (No. R94) 2004 (also known as section 101.55 of the Civil Aviation Orders). The Order is a repealed legislative instrument. Under subparagraph 14 (1) (a) (ii) of the LA, subparagraphs 1.2 (b) and (c) and sub-subparagraphs 7.3 (a) (i) and (b) (i) of the instrument apply, adopt or incorporate the Order, as in force on 31 May 2016. The Order is freely available, and accessible via the Internet on the following webpage: <https://www.legislation.gov.au/Details/F2005B00953>.

In the definition *old section 95.25 aeroplane* in paragraph 2.1 of the instrument, a type of relevant aeroplane is described by reference to Civil Aviation Order 95.25. Under subsection 98 (5D) of the Act, the definition applies, adopts or incorporates the Order, as in force immediately before 28 February 1990. The Order is freely available, and accessible via the Internet on the following webpage: <https://www.casa.gov.au/aircraft/landing-page/sport-aviation>.

In paragraph 2.2 of the instrument, a Class of airspace is defined by reference to the *Determination of airspace and controlled aerodromes etc* instrument (the *airspace instrument*). The airspace instrument is a legislative instrument updated approximately every 6 months. Under subparagraph 14 (1) (a) (ii) of the LA, paragraph 2.2 of the instrument applies, adopts or incorporates the airspace instrument, as in force from time to time. The current version of the airspace instrument is freely available, and accessible via the Internet on the following webpage: <https://www.legislation.gov.au/Series/F2017L01364>.

In paragraph 2.1 of the instrument, the term *active restricted area* is defined by reference to AIP (which term is defined in CASR). In accordance with subsection 98 (5D) of the Act, the AIP is incorporated as it exists from time to time. The AIP is freely available within the Aeronautical Information Package produced by Airservices Australia, which is accessible via the Internet on the following webpage: <https://www.airservicesaustralia.com/aip/aip.asp>.

The definition ***RAA Operations Manual*** refers to a manual issued by RAA. In accordance with subsection 98 (5D) of the Act, the manual is incorporated as it is approved in writing by CASA from time to time. The manual is freely available, and accessible via the Internet on the RAA webpage: <https://www.raa.asn.au/>.

The definition ***RAA Technical Manual*** refers to a manual issued by RAA. In accordance with subsection 98 (5D) of the Act, the manual is incorporated as it is approved in writing by CASA from time to time. The manual is freely available, and accessible via the Internet on the RAA webpage: <https://www.raa.asn.au/>.

Under sub-subparagraph 7.4 (b) (ii) of the instrument, a towing aeroplane must be listed in Civil Aviation Advisory Publication 149 as acceptable to CASA for towing. In accordance with subsection 98 (5D) of the Act, the publication is incorporated as it exists from time to time. The publication is freely available, and accessible via the Internet on the following webpage: <https://www.casa.gov.au/files/149-1.pdf>.

Legislation Act 2003

Subsection 98 (5) of the Act states that the regulations may provide that CASA may issue a Civil Aviation Order containing a direction, instruction, notification, permission, approval or authority. Subsection 98 (5AAA) of the Act states that a Civil Aviation Order issued under a regulation made under subsection (5) is a legislative instrument.

Paragraph 98 (5A) (a) of the Act states that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft. Paragraphs 98 (5AA) (a) and (b) of the Act state that an instrument issued under paragraph 98 (5A) (a) of the Act is a legislative instrument if the instrument is expressed to apply in relation to a class of persons or a class of aircraft. The instrument exempts a person (a class of persons) who has an obligation, under the exempted provisions, in relation to a relevant aeroplane (a class of aircraft) from complying with the obligation.

The instrument is, therefore, a legislative instrument and subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

The instrument affects the operation of particular aeroplanes registered with RAA. CASA has consulted on the instrument with RAA. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for the instrument for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (***RIS***) is not required in this instance, as the exemptions are covered by a standing agreement between CASA and OBPR, under which a RIS is not required for exemptions (OBPR id: 14507).

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 the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on 1 February 2018 and is repealed at the end of 31 January 2021.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2018

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 *Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2015* (the **2015 instrument**) expires at the end of 31 January 2018. The purpose of this legislative instrument is to remake the 2015 instrument before it expires. It is, in substance, the same as the 2015 instrument, and provides a scheme of exemptions, subject to conditions, that facilitates the safe operation of ultralight aircraft administered by Recreational Aviation Australia Limited.

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