

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA 46/19 — Repeal of CASA 44/19 Instrument 2019

##### Purpose

The purpose of *CASA 46/19 — Repeal of CASA 44/19 Instrument 2019* (the **instrument**) is to repeal instrument *CASA 44/19 — Temporary Prohibition of Operations (GippsAero GA8 Airvan) Direction 2019*, that temporarily prohibited the operation of GippsAero GA8 and GA8-TC 320 aircraft in Australian territory and, if Australian-registered, overseas.

##### 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)* and *Civil Aviation Regulations 1988 (CAR)*.

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, for subsection 98 (5A) of the Act, 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 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 ceases to be in force on the day specified in the direction. Under regulation 11.255 it is an offence of strict liability for a person to contravene a direction under regulation 11.245.

Subsection 26 (2) of the Act, read with section 14 of the *Air Navigation Act 1920 (ANA)*, has effect to permit a person to operate a foreign registered aircraft into Australia, and land in Australia, in a non-scheduled flight. However, in giving effect to the Convention on International Civil Aviation (**Chicago Convention**), section 14 of the ANA is subject to clause 9 (b) of the Chicago Convention which preserves for contracting States the right to temporarily prohibit flying over its territory, provided that the prohibition applies without restriction to aircraft of all States.

Under subsection 33 (3) of the *Acts Interpretation Act 1901* (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.

##### Background

The GA8 Airvan aircraft is manufactured in Australia by GippsAero Pty Ltd at Latrobe Valley Airport in Victoria. The aircraft and its variants have been type certificated by CASA under Part 21 of CASR.

On 14 July 2019, a GA8-TC 320 aircraft being operated in parachuting operations lost control and impacted terrain near Umea in Sweden. The aircraft was destroyed and the 9 occupants were all fatally injured.

In the wake of the accident, Swedish aviation authorities, with assistance from the aviation authorities of other countries including Australia, commenced to investigate the causes of the accident.

Based on their initial enquiries, the Swedish aviation authorities were sufficiently concerned about the possible causes of the accident to suspend operations of the GA8 Airvan aircraft in Swedish airspace.

In order to understand the nature of the concerns which led to this decision, and to safeguard the interests of air safety in the meantime, CASA issued instrument CASA 44/19 — *Temporary Prohibition of Operations (GippsAero GA8 Airvan) Direction 2019*. Instrument CASA 44/19 directed the suspension of all operations by persons of GA8 Airvan aircraft within Australian territory or, if Australian registered, outside Australian territory, for a period of 15 days as a precaution.

CASA has now received further information that there is no evidence to presently indicate a potential unsafe condition associated with the aircraft. Accordingly, CASA has determined that instrument CASA 44/19, that imposed the prohibition on operation of the GA8 Airvan aircraft, be repealed.

### **Overview of instrument**

The instrument repeals instrument *CASA 44/19 — Temporary Prohibition of Operations (GippsAero GA8 Airvan) Direction 2019*.

CASA has assessed the impact the instrument will have on aviation safety and is satisfied that Instrument CASA 44/19 is no longer necessary in the interests of safety of air navigation.

### **Content of instrument**

The instrument repeals instrument CASA 44/19.

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

Under paragraph 10 (1) (d) of the LA, an instrument is a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument repeals instrument CASA 44/19, which is a legislative instrument. Therefore, this instrument is also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

### **Consultation**

CASA considers that instrument CASA 44/19 is no longer necessary in the interests of the safety of air navigation. Accordingly, CASA is satisfied that no 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 because this instrument is covered by standing agreements between CASA and OBPR under which a RIS is not required (OBPR id: 24429, 14507).

**Statement of Compatibility with Human Rights**

The instrument is compatible with human rights. A Statement of Compatibility with Human Rights is at Attachment 1.

**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 commenced at the time it was registered, and is automatically repealed in accordance with section 48A of the LA.

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

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

### **CASA 46/19 — Repeal of CASA 44/19 Instrument 2019**

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 purpose of this legislative instrument is to repeal instrument *CASA 44/19 — Temporary Prohibition of Operations (GippsAero GA8 Airvan) Direction 2019*.

#### **Human rights implications**

This legislative instrument promotes the right to work, as it lifts the prohibition on GA8 Airvan aircraft being operated in Australian territory that had the effect of preventing Australians working on or in such aircraft, whether as crew members or ground crew.

#### **Conclusion**

This legislative instrument is compatible with human rights because it promotes the protection of human rights.

**Civil Aviation Safety Authority**