

Replacement Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX86/19 — Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2019

Purpose

The purpose of this instrument is to permit specified kinds of pilots to fly certain ultralight aircraft under the control of, or with the authorisation of, a flight training school approved by the Civil Aviation Safety Authority (*CASA*) (an *approved flight training school*):

- (a) in Class D airspace at the controlled aerodrome where the approved flight training school carries out flight training; and
- (b) without meeting certain licensing and competency requirements under Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Class D airspace is controlled airspace that is also used by passenger transport aircraft. However, the removal of the need to meet those licensing and competency requirements is offset by the following:

- (a) conditions imposed in the interests of aviation safety;
- (b) the issue of directions about matters affecting the safe navigation and operation of aircraft.

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 CASR and the *Civil Aviation Regulations 1988 (CAR)*.

Civil Aviation Order 95.55 (*CAO 95.55*) provides exemptions that enable operation of certain ultralight aeroplanes under a less onerous regulatory scheme than the scheme that ordinarily applies under CAR and CASR. Among other requirements, aeroplanes relying on the regulatory scheme in CAO 95.55 must be registered with Recreational Aviation Australia Limited (*RAAus*). Also, the exemptions in CAO 95.55 place a series of conditions on pilots who fly relevant aeroplanes in reliance on those exemptions. In particular, subparagraphs 7.3 (d) and (e) of CAO 95.55 require pilots operating an aeroplane to which CAO 95.55 applies in, relevantly, Class D airspace to hold particular qualifications under Part 61 of CASR.

Division 11.F.1 of CASR provides for the granting of exemptions from particular provisions of, relevantly, Civil Aviation Orders. Paragraph 11.160 (1) (b) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of a Civil Aviation Order in relation to a matter mentioned in that subsection. Paragraph 98 (5A) (a) of the Act mentions, relevantly, “matters affecting the safe navigation and operation, or the maintenance, of aircraft”.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons. Under subregulation 11.170 (3) and 11.175 (4) of CASR, in deciding whether to, respectively, grant or renew an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety.

Regulation 11.205 of CASR provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, 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) of CASR, the maximum duration of an exemption is 3 years.

Subpart 11.G of CASR provides for the issue by CASA of directions in relation to matters affecting the safety of air navigation. Paragraph 11.245 (1) (a) of CASR provides that, 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. However, subregulation 11.245 (2) provides that CASA may issue a direction of that kind:

- (a) only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation; and
- (b) only if the direction is not inconsistent with the Act; and
- (c) only for the purposes of CASA's functions.

CASA's functions are set out in section 9 of the Act. Those functions include, relevantly at paragraph 9 (1) (a), conducting the safety regulation of civil air operations in Australian territory, in accordance with the Act and the regulations.

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 of CASR, it is an offence of strict liability to contravene a direction under regulation 11.245.

The combined operation of subsections 14 (1) and (3) of the *Legislation Act 2003* (the **LA**) enables a legislative instrument to apply, adopt or incorporate the provisions of another legislative instrument as in force from time to time if, relevantly, the other legislative instrument is disallowable.

However, paragraph 98 (5D) (b) of the Act provides that, despite section 14 of the LA, 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.

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

For an aeroplane registered with RAAus to fly in Class A, C or D airspace, subparagraphs 7.3 (d) and (e) of CAO 95.55 require the pilot to meet specified requirements under Part 61 of CASR related to flight crew licensing. There is a limited range of circumstances in which CASA considers it appropriate to relax those Part 61 requirements in relation to the flight in controlled airspace of RAAus-registered aeroplanes. Those circumstances include, subject to conditions, flights in Class D airspace at the controlled aerodrome where an approved flight training school carries out flight training.

Instrument

Overview of the instrument

Subject to conditions imposed in the interests of aviation safety, the instrument provides exemptions against the flight crew licensing requirements in subparagraphs 7.3 (d) and (e) of CAO 95.55 in relation to the operation of 2 specified kind of flights in a kind of ultralight aeroplane that is under the control of an approved flight training school (a **relevant aeroplane**). The exemptions are provided to the approved flight training school, if approved for the particular kind of flight (a **relevant solo training flight** or a **relevant private hire flight**) and the following kinds of pilot:

- (a) for a relevant solo training flight — an **RAAus restricted pilot**;
- (b) for a relevant private hire flight — an **RAAus pilot** who is the pilot in command of the relevant private hire flight.

A relevant solo training flight and a relevant private hire flight is each operated in a relevant aeroplane of an approved flight training school in Class D airspace, at the controlled aerodrome where the approved flight training school carries out flight training. However, while a relevant solo training flight is operated by an approved flight training school, a relevant private hire flight is operated with the authorisation of the approved flight training school.

The instrument also issues directions about matters affecting the safe navigation and operation of aircraft, requiring an approved flight training school, its chief flying instructor (**CFI**) or one of its senior instructors (whichever applies) to:

- (a) take particular actions; and
- (b) not to take particular actions unless related requirements have been met.

Part 1 — Preliminary

Section 3 of the instrument repeals 3 legislative instruments that enable specified kinds of pilots to fly certain ultralight aircraft:

- (a) to conduct solo flight training with Pathfinder Aviation Pty Ltd (**Pathfinder Aviation**) in controlled airspace at Archerfield aerodrome (a **solo training flight**) — CASA EX30/17; and
- (b) to conduct solo flight training with Peace Aviation Pty Ltd (**Peace Aviation**) in Class D airspace at Rockhampton aerodrome (a **solo training flight**) — CASA EX55/18; and
- (c) under the control of Peace Aviation in Class D airspace at Rockhampton aerodrome without meeting certain licensing and competency requirements under Part 61 of CASR (a **private hire flight**) — CASA EX55/18; and
- (d) to conduct solo flight training with Sunshine Coast Aero Club Queensland Ltd (**Sunshine Coast Aero Club**) in Class D airspace at Sunshine Coast aerodrome (a **solo training flight**) — CASA EX98/18; and
- (e) under the control of Sunshine Coast Aero Club in Class D airspace at Sunshine Coast Aerodrome without meeting certain licensing and competency requirements under Part 61 of CASR (a **private hire flight**) — CASA EX98/18.

The instrument would apply to each of the flight training schools mentioned in the preceding paragraph after instruments are made, in accordance with section 5 of the instrument, granting an approval to each of those flight training schools. The operation of section 5 of the instrument is described in more detail below. However, for present purposes it is sufficient to mention that the approvals CASA proposes to grant to those flight training schools would

expand the scope of the existing exemptions granted under the legislative instruments mentioned in the preceding paragraph.

Section 4 of the instrument contains definitions.

The intention of the definition of “**relevant aeroplane**, of an approved flight training school” is to limit the scope of the instrument to operations in aircraft that are usually under the control of an approved flight training school and to prevent, for example, the use of any aircraft that might be used from time to time by an approved flight training school for its flying training activities. This limitation avoids arrangements where aircraft that are not usually used by a flight training school are temporarily placed under the control of a school in order for the pilot to take advantage of the exemption.

Part 2 — Approval of flight training schools

Section 5 of the instrument relates to approval by CASA of a flight training school that has been first approved by RAAus in accordance with the RAAus Operations Manual.

Subsections 5 (1) and (2) enable CASA, after receiving a written application from a person that operates a flight training school of the kind described in the preceding paragraph, to approve the flight training school for one or more of the following kinds of flights, each of which is defined in section 4 of the instrument:

- (a) a relevant private hire flight;
- (b) a relevant solo training flight.

Subsection 5 (3) sets out matters that CASA must consider in deciding whether to grant an approval to a person of the kind mentioned in the preceding paragraph, without limiting the matters that CASA may consider in making that decision.

The instrument is intended to operate in conjunction with approvals of flight training schools granted by CASA in accordance with section 5 of the instrument. CASA intends to issue several non-legislative instruments granting approvals of that kind immediately after the instrument is made. As the need for the instrument to cover additional RAAus flight training schools arises in the future, CASA would issue more instruments granting approvals of that kind.

A decision by CASA to refuse to approve a person under section 5 is subject to merits review by the Administrative Appeals Tribunal under section 31 of the Act or regulation 201.004 (Table 201.004, item 1) of CASR.

Part 3 — Relevant solo training flights by RAAus restricted pilots

The exemption in subsection 6 (1) of the instrument covers each of the following:

- (a) the entity with control of relevant aeroplanes — an approved flight training school, if approved for a relevant solo training flight;
- (b) the RAAus restricted pilot flying the relevant solo training flight.

An RAAus restricted pilot is defined to be the holder of a particular kind of certificate issued by, or under the delegated authority of, RAAus who is authorised by an approved flight training school to fly a relevant solo training flight. The instrument permits relevant solo training flights by RAAus restricted pilots:

- (a) only under the supervision of an approved flight training school; and
- (b) only if criteria specified in the instrument, which are intended to ensure that the flight can be flown safely, have been met.

Under subsection 6 (2) of the instrument, the exemption in subsection 6 (1) is subject to the conditions mentioned in sections 7, 8, 10 and 19 (described below).

Under subsection 6 (3) of the instrument, the exemptions in subsection 6 (1) ceases to be in force at the end of 31 July 2022.

Section 7 of the instrument imposes conditions on an RAAus restricted pilot not to fly a relevant solo training flight unless the RAAus restricted pilot meets specified medical certification and aeronautical radio licensing requirements.

Section 8 of the instrument imposes a condition on an approved flight training school to ensure that an RAAus restricted pilot, in relation to a relevant solo training flight, holds appropriate certificates relating to medical fitness and the use of radios.

Subsection 9 (1) of the instrument provides that the directions in subsections 9 (2), (3) and (4) are made for regulation 11.245 of CASR.

The directions in subsections 9 (2), (3) and (4) of the instrument are issued to the CFI or a senior instructor of an approved flight training school and relate to RAAus restricted pilots.

Subsection 9 (2) of the instrument provides that an approved flight training school's CFI must not authorise a relevant solo training flight by an RAAus restricted pilot within an aerodrome traffic circuit unless the assessment and recordkeeping requirements for controlled aerodrome competence mentioned in paragraphs 9 (2) (a) and (b) have been met.

The table in subsection 9 (2) of the instrument sets out the elements of the competency requirements and the related performance criteria in the Part 61 Manual of Standards (**Part 61 MOS**) that an approved flight training school's CFI or senior instructor must use to assess whether an RAAus restricted pilot has demonstrated each element of the competency requirements for a controlled aerodrome endorsement mentioned in paragraph 9 (2) (a).

Subsection 9 (3) of the instrument provides that an approved flight training school's CFI must not authorise a relevant solo training flight within an aerodrome traffic circuit unless the assessment and recordkeeping requirements for controlled airspace competence mentioned in paragraphs 9 (3) (a) and (b) have been met.

Subsection 9 (4) of the instrument provides that an approved flight training school's CFI must not authorise a relevant solo training flight within an aerodrome traffic circuit unless the assessment and recordkeeping requirements for flight radio competence mentioned in paragraphs 9 (4) (a) and (b) have been met.

Subsection 9 (5) of the instrument provides that the directions in subsections 9 (2), (3) and (4) cease to be in force at the end of 31 July 2022.

Under the condition in section 10, an approved flight training school must not permit an RAAus restricted pilot to commence a relevant solo training flight of the school unless its CFI has:

- (a) authorised the RAAus restricted pilot, in writing, to fly the relevant solo training flight; and
- (b) recorded the authorisation in accordance with section 11.

Subsection 11 (1) of the instrument provides that that subsection is made for regulation 11.245 of CASR.

Paragraphs 11 (1) (a) and (b) direct the CFI of an approved flight training school to make particular records for, respectively, an RAAus restricted pilot's first relevant solo training flight of the school and any subsequent relevant solo training flight of the school by an RAAus restricted pilot.

Subsection 11 (2) of the instrument provides that the direction in subsection 11 (1) ceases to be in force at the end of 31 July 2022.

Subsection 12 (1) of the instrument provides that subsections 12 (2), (3), (4), (5) and (6) are made for regulation 11.245 of CASR.

The directions in subsections 12 (2), (3), (4), (5) and (6) of the instrument are issued to the CFI or a senior instructor of an approved flight training school and relate to RAAus restricted pilots.

The direction in subsection 12 (2) of the instrument requires that the CFI of an approved flight training school must not authorise a relevant solo training flight that involves one or more transitions between Class D and Class G airspace unless the assessment and recordkeeping requirements for controlled aerodrome competence mentioned in paragraphs 12 (2) (a) and (b) have been met.

The table in subsection 12 (2) of the instrument sets out the elements of the competency requirements and the related performance criteria in the Part 61 MOS that an approved flight training school's CFI or senior instructor must use to assess whether an RAAus restricted pilot has demonstrated each element of the competency requirements for a controlled aerodrome endorsement mentioned in paragraph 12 (2) (a).

The direction in subsection 12 (3) provides that an approved flight training school's CFI must not authorise an RAAus restricted pilot to fly a relevant solo training flight involving one or more transitions between Class D and Class G airspace unless each of the following has been met in relation to the RAAus restricted pilot:

- (a) the assessment and recordkeeping requirements for controlled airspace competence mentioned in subsection 9 (3);
- (b) the assessment and recordkeeping requirements for flight radio competence mentioned in subsection 9 (4).

The direction in subsection 12 (4) provides that an approved flight training school's CFI must not authorise an RAAus restricted pilot to fly the RAAus restricted pilot's first relevant solo training flight involving one or more transitions between Class D and Class G airspace unless the recordkeeping requirements mentioned in paragraphs 12 (4) (a), (b) and (c) have been met.

The direction in subsection 12 (5) provides that an approved flight training school's CFI must not authorise an RAAus restricted pilot to fly a relevant solo training flight involving one or more transitions between Class D and Class G airspace unless the following requirements have been met:

- (a) the CFI or a senior instructor of the approved flight training school has conducted with the RAAus restricted pilot the flights mentioned in paragraph 12 (5) (a);
- (b) the RAAus restricted pilot has received the practical training in flight mentioned in paragraph 12 (5) (b);
- (c) if a senior instructor conducts one or more of the flights mentioned in paragraph 12 (5) (a) — the CFI of the approved flight training school is satisfied,

on reasonable grounds, that the RAAus restricted pilot has received the practical training in flight mentioned in paragraph 12 (5) (b).

The direction in subsection 12 (6) sets out a circumstance in which an RAAus restricted pilot is not required to receive the practical training mentioned in paragraph 12 (5) (b) from the CFI or a senior instructor of an approved flight training school.

Subsection 12 (7) of the instrument provides that the directions in subsections 12 (2), (3), (4), (5) and (6) cease to be in force at the end of 31 July 2022.

Part 4 — Relevant private hire flights by RAAus pilots

The exemption in subsection 13 (1) of the instrument covers each of the following:

- (a) the entity with control of relevant aeroplanes — an approved flight training school, if approved for a relevant private hire flight;
- (b) an RAAus pilot who is the pilot in command of the relevant private hire flight.

Under subsection 13 (2) of the instrument, the exemption in subsection 13 (1) is subject to the conditions mentioned in sections 14, 15, 18 and 19.

Under subsection 13 (3) of the instrument, the exemption in subsection 13 (1) ceases to be in force at the end of 31 July 2022.

An RAAus pilot is defined to be the holder of a pilot certificate issued by, or under the delegated authority of, RAAus who is authorised by an approved flight training school to conduct a relevant private hire flight. Pilots of that kind are generally permitted to fly specified kinds of aeroplanes without supervision (but subject to the restrictions in CAO 95.55). Instead, the instrument would permit pilots of that kind to operate a relevant aeroplane in Class D airspace at the controlled aerodrome where an approved flight training school carries out flight training without complying with subparagraphs 7.3 (d) and (e) of CAO 95.55 but only:

- (a) in the circumstances mentioned in the instrument; and
- (b) subject to the conditions mentioned in sections 14, 15, 18 and 19.

In effect, section 13 of the instrument permits flights in Class D airspace by RAAus pilots (even though pilots of that kind are not supervised for the flight by an approved flight training school) only if criteria specified in the instrument, which are intended to ensure that the flight can be conducted safely, have been met. The instrument will permit RAAus pilots to hire and operate a relevant aeroplane for private use within Class D airspace at the controlled aerodrome where an approved flight training school carries out flight training, subject to the approved flight training school's checks and control.

Under the condition in section 14, an approved flight training school must not permit an RAAus pilot to commence a relevant private hire flight of the approved flight training school, unless its CFI has authorised the RAAus pilot, in writing, to conduct the flight.

Section 15 of the instrument imposes conditions on an RAAus pilot not to fly a relevant private hire flight unless the RAAus pilot meets specified medical certification and aeronautical radio licensing requirements.

Subsection 16 (1) of the instrument:

- (a) provides that the direction in that subsection is made for regulation 11.245 of CASR; and
- (b) directs the CFI of an approved flight training school not to authorise a relevant private hire flight of the school unless the CFI is satisfied that the RAAus pilot who is the pilot

in command of the relevant private hire flight holds appropriate certificates relating to medical fitness and the use of radios.

Subsection 16 (2) of the instrument provides that the direction in subsection 16 (1) ceases to be in force at the end of 31 July 2022.

Subsection 17 (1) of the instrument provides that the directions in subsections 17 (2), (3), (4), (5) and (6) are made for regulation 11.245 of CASR.

The directions in subsections 17 (2), (3), (4), (5) and (6) of the instrument are issued to the CFI of an approved flight training school and relate to RAAus pilots.

The direction in subsection 17 (2) of the instrument requires that the CFI of an approved flight training school must not authorise an RAAus pilot's first relevant private hire flight that involves one or more transitions between Class D and Class G airspace unless the CFI:

- (a) is satisfied, on reasonable grounds, that the RAAus pilot has received the practical training in flight mentioned in paragraph 17 (2) (a); and
- (b) has conducted with the RAAus restricted pilot one or more flights of the kind mentioned in paragraph 17 (2) (b).

The direction in subsection 17 (3) of the instrument sets out a circumstance in which an RAAus pilot is not required to receive the practical training mentioned in paragraph 17 (2) (a) from the CFI of an approved flight training school.

The direction in subsection 17 (4) of the instrument provides that the CFI of an approved flight training school must not authorise an RAAus pilot's first relevant private hire flight in a relevant aeroplane of the school unless the assessment and recordkeeping requirements for controlled aerodrome competence mentioned in paragraphs 17 (4) (a) and (b) have been met.

The table in subsection 17 (4) of the instrument sets out the elements of the competency requirements and the related performance criteria in the Part 61 MOS that an approved flight training school's CFI must use to assess whether an RAAus pilot has demonstrated each element of the competency requirements for a controlled aerodrome endorsement mentioned in paragraph 17 (4) (a).

The direction in subsection 17 (5) of the instrument provides that the CFI of an approved flight training school must not authorise an RAAus pilot's first relevant private hire flight in a relevant aeroplane of the school unless the assessment and recordkeeping requirements for controlled airspace competence mentioned in paragraphs 17 (5) (a) and (b) have been met.

The direction in subsection 17 (6) of the instrument provides that the CFI of an approved flight training school must not authorise an RAAus pilot's first relevant private hire flight in a relevant aeroplane of the school unless the assessment and recordkeeping requirements for flight radio competence mentioned in paragraphs 17 (6) (a) and (b) have been met.

Subsection 17 (7) of the instrument provides that the directions in subsections 17 (2), (3), (4), (5) and (6) cease to be in force at the end of 31 July 2022.

Under the conditions in subsection 18 (1), an approved flight training school must not permit an RAAus pilot to commence their first relevant private hire flight of the approved flight training school unless the approved flight training school's CFI has recorded specified information in the RAAus pilot's logbook.

Under the condition in subsection 18 (2), an approved flight training school must ensure that the CFI of the school includes the authorisation mentioned in paragraph 18 (1) (a) for each relevant private hire flight conducted by a particular RAAus pilot (other than the first relevant private hire flight mentioned in subsection 18 (1)).

Part 5 — Condition and directions – reporting, record retention and audit – approved flight training schools

Section 19 of the instrument imposes a condition on an approved flight training school that reports an accident or incident under the *Transport Safety Investigation Act 2003* or the *Transport Safety Investigation Regulations 2003* in relation to a relevant private hire flight or a relevant solo training flight. That condition requires an approved flight training school to, as soon as practicable after reporting the accident or incident, provide a copy of the report to CASA.

Subsection 20 (1) of the instrument provides that the directions in subsections 20 (2), (3) and (4) are made for regulation 11.245 of CASR.

The directions in subsections 20 (2), (3) and (4) of the instrument are issued to an approved flight training school in relation to record retention and CASA's access to records made for the purposes of the instrument. Those directions are required to ensure that, in the interests of aviation safety, CASA can adequately monitor each approved flight training school's compliance with the instrument.

Subsection 20 (5) provides that the directions in subsections 20 (2), (3) and (4) cease to be in force at the end of:

- (a) 31 July 2027; or
- (b) the date of any earlier repeal under subparagraph 2 (b) (i) of the instrument.

Incorporation by reference

The instrument incorporates by reference requirements of the Part 61 MOS, as in force from time to time. The Part 61 MOS is a disallowable legislative instrument that prescribes requirements for Part 61 of CASR relating to pilot licensing. The Part 61 MOS is freely available on the Federal Register of Legislation (the **FRL**).

The instrument also incorporates by reference provisions of:

- (a) CAO 95.55, as in force from time to time; and
- (b) any instrument that remakes CAO 95.55, as the remade instrument is in force from time to time.

CAO 95.55 is a disallowable legislative instrument and is freely available on the FRL.

The instrument also incorporates by reference matter in *CASA OAR 020/19 — Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument 2019* (the **Determination**), as in force from time to time. The Determination prescribes volumes of classes of airspace and is a legislative instrument made under section 5 of the *Airspace Regulations 2007*. Under paragraph (a) of item 3 of the table in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the Determination (being a determination made under regulation 5 of the *Airspace Regulations 2007*) is not a disallowable legislative instrument and is, therefore, not subject to paragraph 14 (1) (a) of the LA. However, in accordance with subsection 95 (5D) of the Act, the Determination (and any subsequent determination made under regulation 5 of the *Airspace Regulations 2007*) may be applied, adopted or incorporated, as in force from time to time (even if the subsequent

determination does not exist when this instrument is made). The Determination is freely available on the FRL, as would be any subsequent determination made under regulation 5 of the *Airspace Regulations 2007*.

The instrument also incorporates by reference matters in *CASA EX65/18 — Private Pilot Licence Medical Certification (Basic Class 2 Medical Certificate) Exemption 2018*.

CASA EX65/18 is a disallowable legislative instrument and is freely available on the FRL.

The instrument also incorporates by reference matters in the *Recreational Aviation Australia Operations Manual*, issue 7.1, dated August 2016 (the **RAAus Operations Manual**). At the time of making this instrument, the RAAus Operations Manual is freely available at <https://www.raa.asn.au/storage/5-om-71-august-2016-single-pages.pdf>.

The instrument also incorporates by reference matters in the Austroads publication titled *Assessing Fitness to Drive for commercial and private vehicle drivers*, 5th edition, 2016 (as amended up to August 2017). At the time of making this instrument, that publication is freely available by searching for the publication title on the Austroads Publications page, located at <https://austroads.com.au/publications>.

Repeal of existing instruments

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument repeals instruments CASA EX30/17, CASA EX55/18 and CASA EX98/18. Those instruments would be no longer required with the making of this instrument and the approval of the related flight training schools under section 5 of this instrument. The related instruments of approval are expressed to commence immediately after this instrument is made.

Legislation Act 2003

Paragraph 10 (1) (d) of the of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument repeals instruments CASA EX30/17, CASA EX55/18 and CASA EX98/18, that were registered as legislative instruments. This instrument is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

The instrument would substantively affect the business of approved flight training schools. CASA consulted several flight training schools who would be approved in accordance with section 5 of the instrument on an advanced draft of the instrument and those flight training schools expressed satisfaction with its expression. The instrument also affects the management of Class D airspace by Airservices Australia (**AA**). Although CASA has not provided AA with a consultation draft of the instrument, as part of the application process the flight training schools that applied to CASA for the exemption consulted AA air traffic control tower unit supervisors on the proposal. The AA air traffic control tower unit supervisors expressed support for the flight training schools to operate in Class D airspace at aerodromes where the flight training schools carry out flight training. In those circumstances, CASA is satisfied that, for section 17 of the LA, no further consultation is appropriate or reasonably practicable for this instrument.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (**RIS**) is not required in this case, as the exemptions and the directions in the instrument are covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions and directions (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 is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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 the day after registration on the FRL and is repealed at the earlier of:

- (a) the end of the period of 5 years following the repeal of CAO 95.55; and
- (b) the end of 31 July 2027.

Statement of Compatibility with Human Rights

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

CASA EX86/19 — Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) 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

This legislative instrument permits specified kinds of pilots to fly certain ultralight aircraft under the control of a flight training school approved by CASA (an ***approved flight training school***) in Class D airspace at the controlled aerodrome where the approved flight training school carries out flight training without meeting certain licensing and competency requirements under Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)*. However, the removal of the need to meet those licensing and competency requirements is offset by the following:

- (a) conditions imposed in the interests of aviation safety;
- (b) the issue of directions about matters affecting the safe navigation and operation of aircraft.

Class D airspace is controlled airspace that is also used by passenger transport aircraft. The flights are limited to pilots operating aircraft under the control of, or with the authorisation of, an approved flight training school.

Human rights implications

This legislative instrument engages with the right to privacy in Article 17 of the International Covenant on Civil and Political Rights. It engages with that right to privacy by including conditions and directions about record keeping of, and access to, documents that contain personal information about the pilots who wish to operate the ultralight aircraft in Class D airspace at the aerodromes where approved flight training schools carry out flight training. The documents include aviation-related licences that indicate that pilots hold certain competencies, and medical certificates that state that pilots meet certain medical standards.

The record keeping and access requirements are necessary for CASA to perform its safety regulatory functions in relation to the risk mitigators that are put in place to enable the pilots to fly in the Class D airspace. Further, those requirements are not more onerous than those that apply to pilots who hold licences under Part 61 of CASR.

The instrument is consistent with the protection of personal information by the *Privacy Act 1988*, including the Australian Privacy Principles in Schedule 1 to that Act.

The engagement with the right to privacy promotes the general welfare of Australian society by ensuring that pilots operating in controlled airspace are competent to do so. The

record keeping and access requirements are reasonable and proportionate to the risks associated with the exemptions, conditions and directions in the instrument.

Conclusion

This legislative instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Civil Aviation Safety Authority