

## Replacement Explanatory Statement

### Civil Aviation Regulations 1988

### Civil Aviation Safety Regulations 1998

### Civil Aviation Order 95.55 (Exemption from provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2021

#### Purpose

The purpose of *Civil Aviation Order 95.55 (Exemption from provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2021* (the **instrument**) is to reissue *Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2018* (the **2018 instrument**) when it expires at the end of 31 January 2021.

The instrument reissues the 2018 instrument in substantially the same form, with the only changes being minor drafting improvements and updating or deletion of outdated or obsolete provisions.

#### Legislation

Subsection 20AB (1) of the *Civil Aviation Act 1988* (the **Act**) provides that a person must not perform any duty that is essential to the operation of an Australian aircraft during flight time unless the person is authorised to do so under a civil aviation authorisation or is authorised by or under the regulations to perform that duty without the civil aviation authorisation.

Section 98 of 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 the *Civil Aviation Safety Regulations 1998 (CASR)*.

Subparagraph 14 (1) (a) (ii) 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 legislative 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.

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) provides that, for

subsection 98 (5A) of the Act, the Civil Aviation Safety Authority (*CASA*) may grant an exemption from a provision of the regulations in relation to a matter mentioned in that subsection (namely matters affecting the safe navigation and operation, or the maintenance, of aircraft or the airworthiness of, or design standards for, aircraft). Subregulation 11.160 (2) of CASR provides that an exemption may be granted to a person or a class of persons.

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 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, 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.

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), CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245 (2) 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 ceases to be in force on the day specified in the direction. Under regulation 11.255, it is an offence of strict liability to contravene a direction under regulation 11.245.

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.

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.

## **Background**

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. 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 overseen by CASA. Recreational Aviation Australia Limited (*RAA*) is one of these approved organisations.

The instrument applies in relation to certain ultralight aeroplanes that are registered with RAA. These aeroplanes will eventually be a class of sport and recreational aviation aeroplanes under Part 103 of CASR (anticipated to commence on 2 December 2021), at which time the instrument will be repealed.

This instrument continues the regulatory exemptions applying under the 2018 instrument and the ultralight industry and operators should not experience any disruption to operations as a result of this instrument.

### **Overview of instrument**

The instrument provides for exemptions from certain provisions of CAR for persons who would otherwise have obligations under those regulations. The exemptions will enable those persons to operate ultralight aeroplanes subject to conditions set out in the instrument.

The instrument will operate in substantially the same way as the 2018 instrument. The only changes are minor or machinery changes.

### **Documents incorporated by reference**

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/Details/F2005B00951>.

In subparagraph 1.2 (b) of the instrument, an aeroplane to which the Order applies includes an aeroplane mentioned in paragraph 1.1 of Schedule 1 to the Civil Aviation Amendment Order (No. R94) 2004 (also known as section 101.55 of the Civil Aviation Orders), as in force on 31 May 2016 (the *repealed Order*). The repealed Order is a legislative instrument. Under subparagraph 14 (1) (a) (ii) of the LA, subparagraph 1.2 (b) of the instrument applies, adopts or incorporates the repealed Order, as in force at a particular time, namely 31 May 2016.

In subparagraph 1.2 (c) of the instrument, an aeroplane to which the Order applies includes an aeroplane mentioned in paragraph 1.2 of, and that meets the design standards in, Schedule 1 to the repealed Order.

Paragraph 7.3 of the instrument prevents a person operating a relevant aeroplane in Class A, C or D airspace, or an active restricted area, unless certain conditions are complied with, including:

- under subparagraph 7.3 (a) (i), a condition that the aeroplane is certificated to the design standards mentioned in Schedule 1 to the repealed Order; and

- under subparagraph 7.3 (b) (i), a condition that the aeroplane is fitted with an engine of a type including a type mentioned in paragraph 6.1 of Schedule 1 to the repealed Order.

The repealed Order is freely available, and accessible via the internet on the following webpage: <https://www.legislation.gov.au/Series/F2005B00953/Amendments>.

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>.

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/files/cao-9525-issue-1>.

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/>.

In paragraph 2.2 of the instrument, a class of airspace is defined by reference to the *Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument*, as in force from time to time. That 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. Airspace details from the Determination in force at any particular time are published by Airservices Australia in the Designated Airspace Handbook. The instrument is also freely available on the Federal Register of Legislation which is accessible via the internet. The current instrument is on the following webpage: <https://www.legislation.gov.au/Details/F2020L01392>.

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. It is not a legislative instrument. The current edition is October 2012. The publication is freely available on the CASA website which is accessible via the internet on the following webpage: <https://www.casa.gov.au/rules-and-regulations/current-rules/civil-aviation-advisory-publications>.

### **Content of instrument**

Subsection 1A provides that the name of the instrument is the *Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2021*.

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 2021 and is repealed on the earlier of:

- the day of commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*; or
- the end of 31 January 2024.

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 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 are granted by CASA under the instrument and sets out which provisions of CAR are the **exempted provisions**. The exemptions are subject to the conditions stated in subsections 4, 6 and 7 of the instrument.

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. 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. Paragraph 6.2 directs 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 continues the transitional provisions from the 2018 instrument that were included to ensure references to RAA included references to that body when known by a previous name.

Subsection 11 includes provisions dealing with transitional issues arising from the transition from the 2018 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.

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

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. The instrument is a remake of the 2018 instrument with only minor or machinery changes. RAA has been advised by CASA that the instrument is being remade in this way. 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).

### **Sector risk, economic and cost impact**

Subsection 9A (3) of the Act states that subject to regarding the safety of air navigation as the most important consideration, in developing and promulgating aviation safety standards under paragraph 9 (1) (c) of the Act, CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the

production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

This instrument makes minor or machinery changes to an existing instrument and there will be no change to the economic or cost impact on individuals, businesses or the community.

### **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 2021 and is repealed on the earlier of:

- the day of commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*; or
- the end of 31 January 2024.

## 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 provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2021**

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 *Civil Aviation Order 95.55 (Exemption from provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2021* (the **instrument**) is to reissue *Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2018* (the **2018 instrument**) when it expires at the end of 31 January 2021.

The instrument provides a scheme of exemptions, subject to conditions, that facilitates the safe operation of ultralight aircraft administered by Recreational Aviation Australia Limited.

The instrument reissues the 2018 instrument in substantially the same form, with the only changes being minor drafting improvements and updating or deletion of outdated or obsolete provisions.

#### **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**