

Replacement Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX163/21 — The Corryong Hang Gliding Cup Instrument 2021

Purpose

The purpose of *CASA EX163/21 — The Corryong Hang Gliding Cup Instrument 2021* (the *instrument*) is to enable participants in the Corryong Hang Gliding Cup 2022 (the *event*) to fly a hang glider in the vicinity of Corryong aerodrome, Victoria, without complying with regulatory requirements relating to the carriage of an aircraft very high frequency (*VHF*) radio.

The instrument also allows the holder of a radio operator endorsement issued by Sports Aviation Federation of Australia Limited (*SAFA*) to transmit on a radio frequency while operating a ground communications station for the event.

The instrument contains conditions and directions imposed by the Civil Aviation Safety Authority (*CASA*) in the interest of the safety of air navigation.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (*CASR*) and the *Civil Aviation Regulations 1988* (*CAR*).

Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue instruments in relation to the following:

- (a) matters affecting the safe navigation and operation, or the maintenance, of aircraft;
- (b) the airworthiness of, or design standards for, aircraft.

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), 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.

Under subregulation 11.205 (1) of CASR, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, failure to comply with a condition of an exemption is a strict liability offence.

Under regulation 11.225 of CASR, an exemption must be published on the internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Under subregulation 11.245 (1) of CASR, CASA may issue directions about, among other things, any matter affecting the safe navigation and operation of aircraft. Under subregulation 11.245 (2), CASA may only issue a direction if the direction is for the purpose of CASA's functions and not inconsistent with the Act, and if CASA is satisfied that the direction is necessary in the interests of the safety of air navigation. Under regulation 11.250 of CASR, a direction ceases to be in force on the day specified in the direction or, if no day is

specified, 1 year after the day it commences. Under regulation 11.255 of CASR, it is an offence for a person to contravene a direction that is applicable to the person.

Under regulation 91.400 of CASR, the pilot in command of an aircraft operating in the vicinity of a registered aerodrome (among other locations), that is not carrying an operative radio, commits an offence unless subregulation 91.400 (3) or (4) is satisfied. Neither subregulation is considered to be satisfied in this case.

Under regulation 91.625 of CASR, if a person is transmitting on a radio frequency used by Air Traffic Services for communications at a registered aerodrome (among other locations) and the person is not authorised to do so under Part 61, 64 or 65 of CASR, or by a Part 103 Approved Self-Administering Aviation Organisation (*ASAO*) in the case of a Part 103 aircraft, that person commits an offence.

Under regulation 91.630 of CASR, the pilot in command of an aircraft commits an offence if the aircraft is fitted with or carries a radio and the pilot in command does not make a broadcast or report relating to the flight that is prescribed by the Part 91 MOS for paragraph 91.630 (1) (a) of CASR.

Under regulation 91.635, the pilot in command of an aircraft commits an offence if the aircraft is flown in controlled airspace and the pilot in command does not continuously monitor the primary communications medium used by air traffic control in that airspace.

Under regulation 91.640 of CASR, the pilot in command of an aircraft commits an offence if the aircraft is outside controlled airspace and is not fitted with or carries a radio that the pilot is eligible or authorised to use, under Part 61 or 64 of CASR, or by a Part 103 ASAO in the case of a Part 103 aircraft, and radio transmissions are not continuously monitored in accordance with paragraph 91.640 (1) (d).

Under subsection 14 (1) of the *Legislation Act 2003* (the *LA*), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14 (2) of the *LA*, unless the contrary intention appears, the 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. However, subsection 98 (5D) 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.

Background

It is intended to hold the event at Corryong aerodrome, Victoria. Corryong is a non-controlled aerodrome that is a registered aerodrome.

SAFA, which has responsibility for the administration of the event, has for previous events, requested an exemption so that participants in the event are not required to carry a serviceable

aircraft VHF radio when operating in the vicinity of Corryong aerodrome and in Class E airspace. Hang gliders generally do not operate in airspace in which such radios are required. The event represents an exception to this circumstance. Hang gliders are more commonly flown with ultra-high frequency (*UHF*) radio equipment.

Similar instruments were issued by CASA for previous competitions for the Hang Gliding Cup at Corryong (for example, instrument number CASA EX01/21).

Because the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021* that came into force on 2 December 2021 repealed provisions of CAR that were referred to in those instruments, and the *Civil Aviation Safety Amendment (Part 91) Amendment Regulations 2018* that came into force on the same day inserted a new Part 91 into CASR, the instrument provides exemptions from the Part 91 provisions referred to previously in this statement under the heading **Legislation**.

An exemption has been granted against regulation 91.625 of CASR to an individual who holds a radio operator endorsement issued by SAFA to enable him to operate a ground communications station established in accordance with clause 1 of Schedule 1 of the instrument.

Requirements relating to broadcasts are set out in the instrument and follow requirements in previous instruments issued for the same purpose. The conditions to which the exemptions are subject and procedures to be followed in the event remain substantially unaltered.

Instrument

Section 1 of the instrument sets out the name of the instrument.

Section 2 of the instrument specifies the period during which the instrument is in operation. It commences on 8 January 2022 and is repealed at the end of 16 April 2022. Although the event period concludes on 15 January 2022 and most of the provisions of the instrument, by their terms, cease to apply at the end of the event period, the instrument is not repealed until later to ensure the enforceability of the 3-month recordkeeping requirement in paragraph 6 (b) of Schedule 1 of the instrument.

Section 3 of the instrument contains definitions of terms used in the instrument.

Section 4 of the instrument is a direction under regulation 11.245 of CASR that directs SAFA to comply with the requirements mentioned in Schedule 1 of the instrument. These directions require SAFA to ensure that a danger area is active for the event on each day it occurs and that an effective ground communications station is established and maintained. That station will be responsible for monitoring VHF frequencies and providing information on air traffic in the area to the pilots of aircraft, whether participating in the event or not.

Subsection 5 (1) of the instrument provides an exemption for the pilot in command of a hang glider, while participating in the event during the event period, to fly the hang glider in the vicinity of Corryong aerodrome or in Class E or Class G airspace, without complying with the provisions of CASR to which the subsection refers.

Subsection 5 (2) of the instrument makes the exemption in subsection 5 (1) subject to the conditions in Schedule 2 of the instrument.

Subsection 5 (3) states that the exemption provided by subsection 5 (1) applies whether or not the hang glider is equipped with a VHF radiocommunication system.

Section 6 grants an exemption to the named radio operator to allow him to operate a ground communications station for the event. The exemption is against regulation 91.625 of CASR. The operator has to hold a SAFA radio operator endorsement for the exemption to apply.

Schedule 1 — Requirements for direction

Schedule 1 of the instrument contains requirements that SAFA must follow, with the aim of ensuring that there is a satisfactory support system to mitigate the safety risks associated with the operation of hang gliders without a serviceable VHF radio during the event.

The directions in clause 1 of Schedule 1 apply for each day of the event. They require SAFA to ensure that a danger area is active in the airspace where the event is conducted on that day.

SAFA must also ensure that a ground communications station is established and maintained that covers the area within 15 nautical miles of the hang gliders participating in the event. If one or more of those hang gliders is in the vicinity of Corryong aerodrome and in Class E airspace, the ground communications station must also cover the area in the vicinity of that aerodrome.

The communications station or stations must advise other aircraft of the event activities and location of the hang gliders at intervals of no more than 20 minutes. SAFA is responsible for ensuring that the Competition Director or other competent person maintains a listening watch on appropriate VHF frequencies and operates appropriate UHF frequencies to provide weather, traffic, and other pertinent information to event participants. The ground communications station must be active on the relevant frequencies.

Clause 2 of Schedule 1 contains further requirements for the ground communications station mentioned in clause 1. It must be supported by available back-up radios and batteries. The communications station must be active on several relevant frequencies commencing 30 minutes before event flights begin on each day of the event and continuing for the duration of event flights.

Clause 3 of Schedule 1 provides that a hand-held VHF radio without an external antenna is not an effective ground communications station.

Clause 4 of Schedule 1 requires SAFA to ensure that, at least 5 days before the commencement of the event period, specified information is provided to CASA by the Competition Director about event operations, which CASA will incorporate into a Notice to Airmen (**NOTAM**) to be published by Airservices Australia.

Clause 5 of Schedule 1 requires SAFA to ensure that, before hang glider flights on a day, a briefing is provided to event participants that addresses at least the following:

- (a) confirmation of communications station set-up and applicable frequencies in use;
- (b) review and explanation of the applicable NOTAM and danger area for that day;
- (c) review and explanation of event area limits and the requirement to operate only within the limits;

- (d) review and explanation of the conditions under which the exemption in the instrument that apply to the participants have been issued;
- (e) review and explanation of any airspace in which other aircraft may be operating;
- (f) review and explanation of the air traffic and activities which may occur at any aerodrome in the vicinity of which the event participants may fly;
- (g) any other matters that SAFA considers appropriate to promote the safety of the event.

Clause 6 of Schedule 1 requires SAFA to ensure that the name of each event participant attending the daily briefing is recorded, and that the record is retained for a period of 3 months.

Clause 7 of Schedule 1 requires SAFA to ensure that event participants are provided with a diagram of air traffic routes in the area where the event is conducted.

Schedule 2 — Conditions on exemption

Schedule 2 of the instrument contains conditions on the exemption in subsection 5 (1) of the instrument that pilots in command of hang gliders participating in the event must comply with. They include a requirement, in clause 1, for the hang glider to be equipped with a serviceable UHF radio.

Clause 2 requires that, if the UHF radio becomes unserviceable, the pilot in command must cease the flight as soon as safely practicable.

Clause 3 requires pilots in command of hang gliders covered by the exemption to be satisfied that the ground communications station has been established and is operating satisfactorily, that the NOTAM has been published, and that the danger area is active.

Clause 4 requires pilots in command to attend the daily briefing mentioned in the directions to SAFA and, under paragraph (b), to operate in accordance with the SAFA Operations Manual as it exists from time to time. Among other things, the SAFA Operations Manual contains rules for the operation of hang gliders. The SAFA Operations Manual is freely available on the internet and can be accessed at: <https://members.safa.asn.au/isonic-download.php?docid=0X0X1X1X47R2hYQ2t5YU9HL0xLL1RBbjlrM1VEdz09>.

Subsection 98 (5D) of the Act enables the incorporation by reference of the SAFA Operations Manual as it exists from time to time. This provision is discussed above under the heading **Legislation**).

Under paragraph (c) of clause 4, pilots in command must hold a relevant qualification as defined in section 3 of the instrument.

Clause 5, in relation to those matters which are not a pilot in command's direct responsibility, allows the pilot in command to rely on the daily briefing.

Clause 6 requires that flights must only be carried out within the active danger area for each day of the event.

Legislation Act 2003

Subsection 98 (5AA) of the Act states that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if it applies to a class of persons or a class of aircraft. Most of the exemptions in the instrument apply to a class of persons (hang glider pilots). Therefore, the instrument is a legislative instrument. As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, this instrument will be repealed at the end of 16 April 2022, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

SAFA has requested the instrument. CASA has consulted with SAFA and the organisers of the event. The organisers also consulted with the local aerodrome operators and local aviation operators.

CASA also consulted with local aerodrome and airspace users through the regional airspace and procedures advisory committee forum.

The terms of the exemptions and permission are similar to the terms of instruments issued in relation to the same event held in previous years.

In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for the instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), 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.

The instrument makes no changes to existing arrangements under which the event has been taking place and there will be no change to the economic or cost impact on individuals, businesses or the community, except that the influx of visitors may be of economic benefit.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is 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

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

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on 8 January 2022 and is repealed at the end of 16 April 2022.

Statement of Compatibility with Human Rights

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

CASA EX163/21 — The Corryong Hang Gliding Cup Instrument 2021

The 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 legislative instrument enables participants in the Corryong Hang Gliding Cup 2022 (the *event*) to fly a hang glider in the vicinity of Corryong aerodrome, Victoria, without complying with the requirements of regulations 91.400, 91.630, 91.635 and 91.640 of the *Civil Aviation Safety Regulations 1998 (CASR)*. These regulations contain requirements relating to the carriage and use of an aircraft very high frequency (*VHF*) radio when operating in the vicinity of certified, military, registered or designated aerodromes. Corryong aerodrome is a registered aerodrome.

The instrument permits participants in the event to fly a hang glider without complying with those requirements, subject to compliance with the procedures and conditions of the exemption.

The exemptions are issued subject to conditions.

The instrument also issues directions to Sports Aviation Federation of Australia Limited (*SAFA*).

The conditions and directions are imposed by the Civil Aviation Safety Authority in the interest of the safety of air navigation.

Human rights implications

The legislative instrument engages the right to protection against arbitrary and unlawful interferences with privacy (Article 17 of the International Covenant on Civil and Political Rights (the *ICCPR*)).

The right to protection against arbitrary and unlawful interference with privacy, contained in Article 17 of the ICCPR, provides that no-one shall be subjected to arbitrary or unlawful interference with their privacy.

The right to privacy is engaged by clause 6 of Schedule 1 of the instrument, which requires SAFA to record the name of each participant that attends the daily briefing for the event.

An individual is also named in section 6 of the instrument but that is to enable them to exercise functions under the exemption from regulation 91.625 of CASR, although not

holding a prescribed qualification, because they are considered competent for that purpose. This is the same as occurs with any other exemption issued to an individual under regulation 11.160 of CASR.

The protections provided by the *Privacy Act 1988* continue to apply to personal information collected.

The requirements of the instrument are necessary in order to ensure proper administration and enforcement of Australia's aviation safety system. It is necessary for SAFA to receive this information to ensure that only properly-briefed pilots participate in the event. Participating pilots must be aware of how the event will be conducted each day and must attend each briefing. Any potential limitation on the right to privacy is necessary, reasonable and proportionate in promoting the objective of improving aviation safety.

The named individual is granted an exemption that is subject to them holding the required qualification. CASA must be able to ensure that they hold that qualification.

Apart from the impact on the right to privacy, the exemption in the instrument is beneficial in purpose and content, and does not adversely affect the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The legislative instrument is compatible with human rights. To the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate in order to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

Civil Aviation Safety Authority