

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX04/22 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Sports Aviators) Instrument 2022

Purpose

The purpose of instrument *CASA EX04/22 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Sports Aviators) Instrument 2022* (the **instrument**) is to permit members of Sunshine Coast Sports Aviators Inc. (the **Association**), an association incorporated in Queensland, to operate hang gliders and paragliders from a site near Point Cartwright, Maroochydore. The site is within 10 nautical miles of the controlled aerodrome at Sunshine Coast, which means that the operations may otherwise be prohibited under subparagraph 10.1 (k) of *Civil Aviation Order 95.8 (CAO 95.8)*.

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)*.

Exemptions

Subpart 11.F of CASR provides for the granting of exemptions from particular legislative provisions. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, the Civil Aviation Safety Authority (**CASA**) may grant an exemption from a provision of CASR or a Civil Aviation Order.

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 11.160 (3) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.175 (4) of CASR, in deciding whether to reissue an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to renew an exemption on its own initiative.

Regulation 11.205 of CASR provides that CASA may impose conditions on an exemption if they are 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.

Directions

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 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.

Civil Aviation Order 95.8

CAO 95.8 applies to hang glider and paraglider aircraft. It contains exemptions from specified provisions of CASR subject to conditions, such as the pilot being issued a certificate by a relevant sport aviation body (which in this case is Sports Aviation Federation of Australia Limited (**SAFA**)) or being supervised by an instructor approved by SAFA (paragraph 9.1 of CAO 95.8). Another of the conditions imposed, by subparagraph 10.1 (k) of CAO 95.8, limits the airspace in which an aircraft may be flown. Relevantly, subparagraph 10.1 (k) (iii) and paragraph 10.2 provide that a person must not fly a relevant aircraft in Class C or D airspace that is above 300 feet, or within 10 nautical miles of a controlled aerodrome, unless the person meets specified pilot licence and flight review requirements and the aircraft is carrying specified radiocommunication equipment.

Legislation Act 2003

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

Members of the Association operate hang gliders and paragliders from the hang-gliding site at Point Cartwright near Maroochydore, Queensland. The site consists of an area defined by the lengths of coastline and points 100 metres from that coastline.

The site is within 10 nautical miles of Sunshine Coast aerodrome, which is a controlled aerodrome. The Association's members have been able to use the site because their operations have, for many years, been exempted from compliance with relevant provisions of CAO 95.8 despite the proximity of the site to Sunshine Coast aerodrome.

The Association has requested the grant of a new exemption to replace the previous exemption, CASA EX99/19, that expired at the end of 20 May 2020.

Airservices Australia (*AA*), which is the air traffic service provider at Sunshine Coast aerodrome, supports the granting of the exemption on the basis that hang gliding and paragliding operations at Point Cartwright are done in accordance with a Letter of Agreement (*LoA*) between the Association and AA that was agreed on 30 November 2021. However, if circumstances change, AA and the Association require the flexibility to agree on a new LoA after the instrument commences.

Overview of instrument

The instrument exempts the pilot in command of a hang glider or paraglider from compliance with paragraph 10 (1) (k) of CAO 95.8 when conducting an *exempt operation* (as defined in the instrument) in a defined area around Point Cartwright, Maroochydore, subject to the conditions and directions set out in the instrument and LoA. In effect, it will authorise hang gliding and paragliding operations in the defined area, which is within 10 nautical miles of the controlled aerodrome at Sunshine Coast.

Document incorporated by reference

In accordance with subsection 98 (5D) of the Act, the LoA is incorporated, as the LoA exists from time to time. The Association envisages that a new LoA may be agreed to after the instrument is made.

The Association will have a copy of each LoA and can provide it to pilots wishing to operate in reliance on the exemption in the legislative instrument. By prior arrangement with CASA, a copy of the LoA in effect can be made available for viewing free of charge at any office of CASA.

Content of instrument

Section 1 names the instrument.

Section 2 states the instrument commences on the day after it is registered and will be repealed at the end of 1 December 2024. A note explains that, for regulation 11.250 of CASR, the directions in sections 6 and 7 cease to be in force when the instrument is repealed.

Section 3 contains definitions for the instrument. An important definition is *exempt operation*, which is defined to be an operation: (a) conducted wholly within Class D airspace at the Point Cartwright site; and (b) covered by an LoA; and (c) the pilot in command for which is a member of the Association and a financial member of SAFA.

Another important term is *LoA*, which is a Letter of Agreement between the Association and AA to describe the terms on which AA and the Association will cooperate to permit the conduct of exempt operations and to ensure that the operations do not conflict with aircraft operating at Sunshine Coast aerodrome. A note identifies that the current LoA was agreed to on 30 November 2021.

Section 3 also defines *Point Cartwright site* by reference to lines between prescribed coordinates of latitude and longitude along the coast and 100 metres from the coast (the *prescribed lines*), as well as lines that connect the corresponding endpoints of the prescribed lines. The effect of the definition is to create a roughly rectangular area that is the location of the Point Cartwright site.

Section 4 contains an exemption for the pilot in command of a hang glider or paraglider from compliance with subparagraph 10.1 (k) of CAO 95.8 when conducting an exempt operation.

Section 5 imposes conditions on the pilot in relation to the exemption. The pilot must confirm air traffic control clearance for the operations with the duty pilot. Consistent with the operational limitation in sub-subparagraph 10.1 (k) (ii) of CAO 95.8 for operations more than 10 nautical miles from a controlled aerodrome, the pilot must not conduct an exempt operation higher than 300 feet above mean sea level. The pilot must also comply with any conditions in the LoA.

Section 6 of the instrument contains 3 directions, under regulation 11.245 of CASR, that apply to the **duty pilot**, who is defined in section 3 as the member of the Association responsible for overseeing and facilitating hang gliding and paragliding operations at the Point Cartwright site. There are directions that require the duty pilot to obtain clearance from AA before a session of operations commences at the Point Cartwright site, and to notify AA when a session of operations is completed for a day, or a part of a day. These are necessary to ensure that AA's air traffic controllers are aware of when exempt operations are occurring. A third direction imposes reporting obligations in the event of an incident or accident involving an exempt operation.

Section 7 directs the Association to ensure that CASA has a copy of the LoA that is in effect in relation to an exempt operation.

Legislation Act 2003

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft.

Paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument exempts a class of persons from complying with the provisions in subparagraph 10.1 (k) of CAO 95.8.

The instrument is, therefore, a legislative instrument, and 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 1 December 2024, 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

This instrument is of substantially the same effect as previous instruments on this subject, including CASA EX122/18, and CASA EX99/19 which expired at the end of 20 May 2020.

The instrument is issued at the request of the Association with the support of SAFA Operations Manager. CASA has consulted AA's air traffic control centre for Sunshine Coast aerodrome and SAFA, both of which expressed support for a new instrument permitting the

exempt operations at Point Cartwright, on substantially the same terms as the previous instrument, subject to the terms of the LoA.

The Association, SAFA and AA were consulted on the terms of the instrument. The Association agreed to the terms and no objection to the instrument was received from SAFA or AA.

In these circumstances, CASA is satisfied that no further consultation on the instrument is necessary or appropriate 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.

As the instrument replaces an expiring instrument with the same (or largely the same) provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The instrument is likely to have a beneficial effect on hang gliding and paragliding operations and related businesses by promoting those operations and encouraging the use of equipment offered for sale or hire by those businesses.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on the regional community in which the operations will be held because it will allow members of the Association, many of whom live in the region, to participate in the operations. If other Association members come from elsewhere to participate, that would also provide a benefit to the regional community.

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

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*.

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 the day after it is registered and is repealed at the end of 1 December 2024.

Statement of Compatibility with Human Rights

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

CASA EX04/22 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Sports Aviators) Instrument 2022

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

Members of Sunshine Coast Sports Aviators Inc. (the *Association*), an association incorporated in Queensland, operate hang gliders and paragliders from a site at Point Cartwright near Maroochydore, Queensland (the *site*). The site is within 10 nautical miles of Sunshine Coast aerodrome, which is a controlled aerodrome.

Subparagraph 10.1 (k) of *Civil Aviation Order 95.8 (CAO 95.8)* prohibits aircraft, operating under the scheme in CAO 95.8, from flying within 10 nautical miles of a controlled aerodrome. Therefore, many hang glider and paraglider pilots require an exemption for operations at the site.

This instrument contains an exemption for the pilot in command of a hang glider or paraglider from compliance with subparagraph 10.1 (k) of CAO 95.8 when conducting operations within the site.

The exemption is subject to conditions on pilots who are operating at the site, and directions to the Association and the Association's duty pilot. The duty pilot is an Association member responsible for overseeing and facilitating a session of hang gliding and paragliding operations at the site.

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