

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX56/24 — Canungra Spandicup Paragliding Instrument 2024

Purpose

The purpose of *CASA EX56/24 — Canungra Spandicup Paragliding Instrument 2024* (the *instrument*) is to enable participants in that paragliding competition (the *event*) to fly a paraglider at a particular location and height without complying with particular regulatory requirements relating to the carriage and use of an aircraft very high frequency (*VHF*) radio.

The regulatory requirements mentioned in the preceding paragraph are located in:

- (a) regulations 91.630 and 91.640 of the *Civil Aviation Safety Regulations 1998 (CASR)*; and
- (b) the following provisions of *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021 (CAO 95.8)*:
 - (i) to the extent that the subparagraph may require the carriage or use of a VHF radiocommunication system — subparagraph 10.3(a);
 - (ii) subparagraph 10.4(b).

The instrument is necessary because paragliders are not typically equipped with VHF radio equipment. However, during the event paragliders will be flown in the vicinity of Canungra and above 5 000 feet above mean sea level (*AMSL*), which requires the carriage and use of VHF radio equipment.

The instrument also enables 2 holders of a radio operator endorsement issued by Sports Aviation Federation of Australia Limited (*SAFA*) to each:

- (a) transmit on a radio frequency while operating a ground communications station for the event; and
- (b) maintain a listening watch on appropriate VHF frequencies whenever flights are taking place for the purpose of 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 in relation to the safety of air navigation. Relevantly, the Governor-General has made CASR.

CASR — Exemptions (Subpart 11.F)

Each provision mentioned in this section is a provision of CASR.

Subpart 11.F 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, CASA may grant an exemption from a provision of the regulations or a Civil Aviation Order (*CAO*), 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 11.160(3), an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.170(3), in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety.

Under subregulation 11.205(1), CASA may impose on an exemption under Subpart 11.F any condition necessary in the interests of the safety of air navigation. Under regulation 11.210, failure to comply with a condition of an exemption is a strict liability offence.

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

CASR — Directions (Subpart 11.G)

Each provision mentioned in this section is a provision of CASR.

Subpart 11.G 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 a direction only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, only if the direction is not inconsistent with the Act, and only for the purposes of CASA's functions.

Under paragraph 11.250(a), a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255, it is a strict liability offence for a person to contravene a direction that is applicable to the person.

Parts 91 and 103 of CASR, and the Part 91 MOS

Unless otherwise stated, each provision mentioned in this section is a provision of CASR.

Regulation 91.360 sets out the meaning of *in the vicinity of a non-controlled aerodrome*.

Subregulation 91.360(1) provides that an aircraft is *in the vicinity of a non-controlled aerodrome* if it is:

- (a) in uncontrolled airspace; and
- (b) within 10 nautical miles of the aerodrome; and
- (c) at height above the aerodrome that could result in conflict with operations at the aerodrome.

Under regulation 91.625, a person commits a strict liability offence if:

- (a) the person transmits on a radio frequency published in the Aeronautical Information Publication (*AIP*) or a Notice to Airmen (*NOTAM*) that is:
 - (i) used by Air Traffic Services; or

- (ii) used for communications at a certified aerodrome (among other kinds of aerodrome); and
- (b) the person is not authorised or qualified to do so, relevantly:
 - (i) for an Australian aircraft (other than a Part 103 aircraft) — under Part 61, 64 or 65; or
 - (ii) for a Part 103 aircraft — by a Part 103 approved self-administering aviation organisation (*ASAO*).

Under subregulation 103.005(4), an aircraft is a **Part 103 aircraft** if the aircraft is:

- (a) not registered; and
- (b) is any of several kinds of aircraft listed in paragraph 103.005(4)(b) including, relevantly in subparagraph (b)(iv) — a paraglider.

Under regulation 91.630, the pilot in command of an aircraft for a flight commits a strict liability offence if:

- (a) the aircraft is fitted with or carries a radio; and
- (b) during the flight, the pilot in command does not make a broadcast or a report relating to the flight that is prescribed by the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020 (Part 91 MOS)* for paragraph 91.630(1)(b).

Section 21.02 of the Part 91 MOS sets out the purpose of Division 21.2 of the Part 91 MOS. Specifically, section 21.02 provides that, for paragraph 91.630(1)(b), Division 21.2 of the Part 91 MOS prescribes broadcasts and reports relating to a flight that the pilot in command of an aircraft fitted with or carrying a radio must ensure are made during the flight. Sections 21.03 to 21.09 of the Part 91 MOS prescribe broadcasts and reports of various kinds for paragraph 91.630(1)(b). However, it is not necessary to describe the effect of those sections of the Part 91 MOS in this Explanatory Statement because the instrument exempts the pilot in command of a paraglider from compliance with regulation 91.630 as a whole.

Under regulation 91.640, the pilot in command of an aircraft for a flight commits a strict liability offence if:

- (a) the aircraft is fitted with, or carries, a radio; and
- (b) the aircraft is flown by a pilot who is qualified, eligible or authorised to use the radio, relevantly:
 - (i) for an Australian aircraft (other than a Part 103 aircraft) — under Part 61 or 64; or
 - (ii) for a Part 103 aircraft — by a Part 103 ASAO; and
- (c) the aircraft is outside controlled airspace; and
- (d) radio transmissions are not continuously monitored by, relevantly in subparagraph 91.640(d)(i), the pilot in command of the aircraft for the flight.

CAO 95.8

Unless otherwise stated, each provision mentioned in this section is a provision of CAO 95.8.

CAO 95.8 applies to, relevantly, paragliders that are employed in private operations because of the combined effect of:

- (a) subparagraph (c) of the application provision in subsection 4; and
- (b) the definition of **relevant aircraft** in paragraph 5.1.

Paragraph 5.1 defines *relevant aircraft* as an aircraft to which this Order applies under subsection 4.

Under subsection 8, a person who would, but for that subsection, have an obligation under, relevantly, regulation 91.625 of CASR in relation to a relevant aircraft is exempt from complying with the obligation if the person complies with the conditions in the Order.

Subsection 10 sets out flight conditions that apply in relation to a relevant aircraft.

Under subparagraph 10.3(a), a relevant aircraft must not be flown at a height of 5 000 feet AMSL or higher unless it is equipped with, or carries, serviceable radiocommunications equipment.

Under subparagraph 10.4(b), any radiocommunications equipment fitted to, or carried by, a relevant aircraft must not be used by a person unless, in any case other than the transmission in VHF frequency, the person is authorised or qualified to transmit in the relevant frequency in accordance with regulation 91.625 of CASR.

The *Legislation Act 2003* (the *LA*) and the Act

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. Additionally, 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, being pilots in command of paragliders participating in the Canungra Spandicup 2024 during the event period, from compliance with specified provisions of CASR and CAO 95.8, to the extent mentioned in the instrument.

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.

Under subsection 14(1) of 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.

As the instrument relates to aviation safety and is made under CASR, the sunset provisions in Part 4 of Chapter 3 of the LA do not apply to the instrument — see 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 6 January 2025, which will occur

before the sunset 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 sunset does not affect parliamentary oversight of this instrument.

Background

The event is to be held from 29 September to 6 October 2024. The event is being organised by the Canungra Hang Gliding Club, in conjunction with SAFA. The event is being organised by SAFA members and has been endorsed by SAFA.

Event flights are planned to take place within Class G airspace, originating from one of four designated launch points, at Mount Tamborine, Beechmont, Hinchcliff and Flying Fox. Participants are expected to reach altitudes above 5 000 feet AMSL during the event.

The event is the most recent event to be held by the organisers at this location. In 2022, CASA made instrument *CASA EX85/22 — The Canungra Cup Instrument 2022*, in relation to an earlier event.

Registration for the event is open to up to 80 paraglider SAFA Pilot Certificate holders from PG3 level and above. Under SAFA's current certificate structure and rules, Pilot Certificate holders below the level of PG3 are not required to hold a VHF radio endorsement. This is because paragliders are not typically equipped with VHF radio apparatus and generally do not operate in airspace or in areas where such radios are required. The event represents an exception to that circumstance.

Because of the nature of the event flights to take place, SAFA has applied to CASA for an exemption from relevant CASR and CAO 95.8 requirements, so that, during the event, paragliding operations may be conducted above 5 000 feet AMSL, in Class G airspace, without individual carriage of VHF radios.

Overview of instrument

The instrument provides exemptions from specified CASR and CAO 95.8 provisions, to the extent stated, that are intended to enable:

- (a) event participants to fly a paraglider in the event area above 5 000 feet AMSL in Class G airspace, without complying with particular regulatory requirements relating to the carriage and use of an aircraft VHF radio, including licencing and qualification requirements; and
- (b) 2 specified holders of a radio operator endorsement issued by SAFA to each:
 - (i) transmit on a radio frequency while operating a ground communications station for the event; and
 - (ii) maintain a listening watch on appropriate VHF frequencies whenever flights are taking place for the purpose of the event.

The instrument includes a direction to SAFA to comply with the requirements mentioned in Schedule 1 to the instrument. Those requirements relate to the running of the event and include the requirements that SAFA must ensure that:

- (a) a danger area is active for the event that covers the event operations on that day; and

- (b) during the event an effective ground communications station is maintained that is active on relevant UHF and certain VHF frequencies.

The instrument also imposes conditions on the exemption granted to pilots in command. These conditions are set out in Schedule 2 to the instrument, and include the requirement that each pilot possess the qualifications necessary to participate in the event, and that their paragliders are equipped with a serviceable UHF radiocommunication system. The requirements of the direction, and the exemption conditions, are described further below.

CASA has assessed SAFA's application for the instrument including, but not limited to, a risk assessment provided by SAFA. Based on that assessment, CASA is satisfied that there are no adverse safety implications in relation to issuing the direction or granting the exemptions.

Documents incorporated by reference

Subsection 6(1) of the instrument incorporates by reference the content of the SAFA Qualifications Manual, as existing at 26 June 2024, in relation to issuing a radio operator endorsement.

The condition in paragraph 4(b) of Schedule 2, incorporates by reference the content of the SAFA Operations Manual, as existing at 29 May 2024.

CASA can, on request (and with the permission of SAFA), provide a copy of the SAFA Qualifications Manual and SAFA Operations Manual, free of charge.

Instrument

Section 1 names the instrument.

Section 2 sets out the duration of the instrument.

The note located immediately below section 2 sets out when the provisions of the instrument apply and cease to be in force. In particular, the note confirms that, and explains why, the direction in section 4 of the instrument continues to be in force until the instrument is repealed.

Section 3 contains definitions for the instrument.

The note located immediately below the heading of section 3 is a signpost note, intended to assist users of the instrument to identify particular defined terms located in the Act or the regulations.

Section 3 defines *event area* as the area in proximity of Canungra, Queensland, that is within specified lateral limits and vertical limits extending from ground level within the lateral limits to 8 500 feet AMSL, excluding any coincident portions of controlled airspace.

Section 4 of the instrument directs SAFA, under regulation 11.245 of CASR, to comply with the requirements mentioned in Schedule 1 to the instrument.

Subsection 5(1) provides an exemption for the pilot in command of a paraglider, when participating in the event, during the event period, from compliance with:

- (a) regulations 91.630 and 91.640 of CASR; and
- (b) the following provisions of CAO 95.8:
 - (i) to the extent that the subparagraph may require the carriage or use of a VHF radiocommunication system — subparagraph 10.3(a);
 - (ii) subparagraph 10.4(b).

The note below paragraph 5(1)(b) states that CAO 95.8 provides an exemption from regulation 91.625 of CASR for persons with obligations under that regulation in relation to aircraft to which CAO 95.8 applies, which includes paragliders employed in private operations.

Subsection 5(2) provides that the exemption in subsection 5(1) is subject to the conditions in Schedule 2.

Subsection 5(3) provides that subsection (1) applies to the pilot in command of a paraglider whether or not the paraglider is equipped with a VHF radiocommunication system.

Under subsection 6(1), the exemption in subsection 6(2) applies if the 2 individuals named in that subsection is each the holder of a radio operator endorsement issued by SAFA in accordance with the SAFA Qualifications Manual, as it exists at the time the instrument commences.

Subsection 6(2) exempts those 2 named individuals from compliance with regulation 91.625 of CASR when transmitting on a radio frequency while operating a ground communications station in accordance with clause 1 of Schedule 1.

Schedule 1 — Directions

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

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

SAFA must also ensure that an effective ground communications station is established and maintained that covers the event area and the area within 15 nautical miles of all paragliders participating in the event.

The communications station or stations must advise other aircraft of the event activities and location of the paragliders at intervals of no more than 20 minutes. SAFA is responsible for ensuring that:

- (a) one of 2 named individuals maintains a listening watch on appropriate VHF frequencies; and

- (b) that the Competition Director or other competent person operates appropriate UHF frequencies, to provide weather, traffic and other pertinent information to event participants.

Clause 2 of Schedule 1 contains further requirements for the ground communications station mentioned in clause 1. Back-up radios and batteries are required for the communications station. 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, the Competition Director gives CASA specified information about event operations, which CASA will incorporate into a NOTAM to be published by Airservices Australia.

Clause 5 of Schedule 1 requires SAFA to ensure that, before the first paraglider flight on each day of the event, a daily briefing is given to event participants that addresses the following:

- (a) confirmation of ground communications station set-up and the frequencies in use;
- (b) review and explanation of the daily NOTAM in relation to the event;
- (c) review and explanation of the event area limits and the requirement to operate within those limits;
- (d) review and explanation of the conditions under which the exemption in the instrument that apply to the participant have been issued;
- (e) review and explanation of any airspace in which other aircraft may be operating;
- (f) if event participants may fly in the vicinity of an aerodrome — review and explanation of the air traffic and activities that SAFA expects may occur at the aerodrome;
- (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 from the end of the event period.

Clause 7 of Schedule 1 requires SAFA to ensure that each event participant is, before first operating a paraglider during the event period for the purpose of the event, provided with a diagram of air traffic routes in the area where the event is conducted.

While the directions impose obligations on SAFA, it is expected that, in practice, SAFA will ask the Competition Director to fulfil the obligations on its behalf.

Schedule 2 — Conditions on exemption for pilots in command

Schedule 2 of the instrument contains conditions on the exemption in section 5 for the pilot in command of a paraglider participating in the event during the event period.

Clause 1 of Schedule 2 requires the pilot in command to ensure that the paraglider is equipped with a serviceable UHF radiocommunications system.

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

Clause 3 of Schedule 2 provides that the pilot in command may conduct a flight to which the exemption applies only if satisfied that:

- (a) the ground communications station has been established and is operating satisfactorily; and
- (b) the NOTAM has been published as required; and
- (c) the danger area mentioned in paragraph 1(a) of Schedule 1 is active.

Clause 4 requires pilots in command to attend the daily briefing mentioned in the directions to SAFA. In relation to these matters, which are not a pilot in command's direct responsibility, clause 5 allows the pilot in command to rely on the daily briefing.

Clause 4 also requires the pilot in command to operate in accordance with the SAFA Operations Manual and to hold a relevant qualification (as defined) that authorises participation in the event.

Under clause 5, the pilot in command may rely on the daily briefing to be satisfied of the matters mentioned in clause 3.

Under clause 6, the pilot in command may conduct a flight to which the exemption applies only within the active danger area.

Two elements of the legislative instrument engage the right to protection against arbitrary and unlawful interferences with privacy. Article 17 of the International Covenant on Civil and Political Rights 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.

The right to privacy is also engaged because 2 named individuals are mentioned in:

- (a) subsection 6(2) of the instrument; and
- (b) paragraph 1(c) of Schedule 1 to the instrument.

Each of those named individuals is granted an exemption that is subject to each of them holding the required qualification. CASA must be able to ensure that each of them holds that qualification.

Also, the named individuals are the only individuals authorised by SAFA to operate the VHF ground communications station. Therefore, the named individuals are mentioned in those provisions of the instrument to enable them to:

- (a) exercise functions under the exemption from compliance with regulation 91.625 of CASR; and
- (b) comply with a requirement under the direction in section 4 of the instrument.

Naming an individual in an instrument of exemption is not unique to this instrument — it occurs in any other instrument issued to an individual that grants an exemption under regulation 11.160 of CASR. Under regulation 11.225 of CASR, CASA must publish such exemptions on the internet.

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

The personal information collection requirements mentioned in the instrument are necessary to ensure proper administration and enforcement of Australia's aviation safety system. It is necessary for SAFA to receive that personal 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.

CASA has not prepared a privacy impact statement.

Consultation

SAFA has applied for the instrument, which operates in a similar way to instruments issued in relation to the same event held in previous years.

CASA has consulted with SAFA and the organisers of the event.

The Office of Airspace Regulation of CASA has also consulted with local aerodrome and airspace users in accordance with Airspace Change Process requirements for the establishment of a temporary danger area.

The organisers of the event contacted:

- Archerfield aerodrome management and air traffic control tower;
- Gold Coast, Boonah, Gatton and Kooralbyn aerodromes;
- local aviation operators;
- the Australian Defence Force representative at Amberley Aerodrome; and
- emergency services.

The organisers also consulted with airspace users, through the Aviation State Engagement Forum.

A draft of the instrument was provided to SAFA and the event organiser for comment. No changes were made to the instrument as a result of that consultation.

In those 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 pilots in command have voluntarily participated in other paragliding events that have previously taken place in the vicinity of Canungra, or to SAFA's obligations in relation to the event when compared to its obligations in relation to previous similar events. Therefore, there will be no change to the economic or cost impact on individuals, businesses or the community, except the influx of visitors may be of economic benefit.

Impact on categories of operations

The instrument is likely to have a beneficial effect on 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 event will be held because it will lead participants in, and spectators of, the event to visit that community.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA23-06252).

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 29 September 2024 and is repealed at the end of 6 January 2025.

Statement of Compatibility with Human Rights

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

CASA EX56/24 — Canungra Spandicup Paragliding Instrument 2024

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 paragliding competition mentioned in its title (defined in the instrument as the *event*) to fly a paraglider in the following locations without complying with regulatory requirements relating to the carriage of an aircraft very high frequency (*VHF*) radio:

- (a) in the vicinity of Canungra, Queensland;
- (b) at or above a height of 5 000 feet above mean sea level.

The regulatory requirements mentioned in the preceding paragraph are located in:

- (a) regulations 91.630 and 91.640 of the *Civil Aviation Safety Regulations 1998 (CASR)*; and
- (b) the following provisions of *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021*:
 - (i) to the extent that the subparagraph may require the carriage or use of a VHF radiocommunication system — subparagraph 10.3(a);
 - (ii) subparagraph 10.4(b).

The instrument also enables 2 holders of a radio operator endorsement issued by Sports Aviation Federation of Australia Limited (*SAFA*) to each:

- (a) transmit on a radio frequency while operating a ground communications station for the event; and
- (b) maintain a listening watch on appropriate VHF frequencies whenever flights are taking place for the purpose of 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.

The event is organised by SAFA members and has been endorsed by SAFA.

The instrument also issues directions to SAFA, including the maintenance of a ground communications station active on relevant UHF and certain VHF frequencies.

The conditions and directions are imposed by CASA 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.

The right to privacy is also engaged because 2 named individuals are mentioned in:

- (a) subsection 6(2) of the instrument; and
- (b) paragraph 1(c) of Schedule 1 to the instrument.

Each of those named individuals is granted an exemption that is subject to each of them holding the required qualification. CASA must be able to ensure that each of them holds that qualification.

Also, the named individuals are the only individuals authorised by SAFA to operate the VHF ground communications station. Therefore, the named individuals are mentioned in those provisions of the instrument to enable them to:

- (a) exercise functions under the exemption from compliance with regulation 91.625 of CASR; and
- (b) comply with a requirement under the direction in section 4 of the instrument.

Naming an individual in an instrument of exemption is not unique to this instrument — it occurs in any other instrument issued to an individual that grants an exemption under regulation 11.160 of CASR. Under regulation 11.225 of CASR, CASA must publish such exemptions on the internet.

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

The personal information collection requirements mentioned in the instrument are necessary to ensure proper administration and enforcement of Australia's aviation safety system. It is necessary for SAFA to receive that personal 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.

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