

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX08/25 — Radio Requirements (Approved Hang Gliding and Paragliding Events) Exemption 2025

##### Purpose

The purpose of *CASA EX08/25 — Radio Requirements (Approved Hang Gliding and Paragliding Events) Exemption 2025* (the **instrument**) is to enable participants in approved hang gliding and paragliding events to fly a hang glider or paraglider (**relevant aircraft**) in an approved area without complying with regulatory requirements relating to the carriage of an aircraft very high frequency (**VHF**) radio.

The instrument contains conditions 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 in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (**CASR**).

##### CASR — Exemptions and directions (Subparts 11.F and 11.G)

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 or the Civil Aviation Orders (**CAOs**). Within Division 11.F.1, subregulation 11.160(1) provides that, for subsection 98(5A) of the Act, CASA may, by instrument, grant an exemption from compliance with a provision of the regulations or of a CAO in relation to a matter mentioned in that subsection.

Under subregulation 11.160(2), CASA may grant an exemption 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), CASA may grant an exemption 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, with a maximum penalty of 50 penalty units.

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.

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, only if the direction is not inconsistent with the Act, and only for the purposes of CASA's functions.

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

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

Under regulation 91.400, the pilot in command of an aircraft for a flight commits a strict liability offence if:

- (a) the aircraft is operating on the manoeuvring area of, or in the vicinity of, a certified, military or prescribed aerodrome; and
- (b) the aerodrome is a non-controlled aerodrome; and
- (c) the aircraft is not carrying an operative radio, unless either subregulation 91.400(3) or (4) is satisfied. Subregulation 91.400(3) relates to flight in company with another aircraft that is carrying an operative radio. Subregulation 91.400(4) relates to a flight to take the radio to a place where it can be repaired.

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 or Notices to Airmen (*NOTAMS*) that is:
  - (i) used by Air Traffic Services; or
  - (ii) used for communications at a certified, military or prescribed aerodrome; or
  - (iii) used in aeronautical emergencies; or
  - (iv) of a kind prescribed by the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020 (Part 91 MOS)* for subparagraph 91.625(1)(a)(iv); 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), a hang glider or paraglider that is not registered is a **Part 103 aircraft**.

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 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 relevant aircraft from compliance with regulation 91.630.

Under regulation 91.635, the pilot in command of an aircraft for a flight commits a strict liability offence if:

- (a) during the flight, the aircraft is flown in controlled airspace; and
- (b) the pilot in command does not continuously monitor the primary communications medium used by air traffic control while flying in that airspace.

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.

#### Civil Aviation Order 95.8 (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, hang gliders and paragliders that are employed in private operations because of the combined effect of:

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

Under subparagraph 10.3(a), a relevant aircraft must not be flown at a height of 5 000 feet above mean sea level 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.

#### **Background**

Sports Aviation Federation of Australia Limited (*SAFA*) organises several hang gliding and paragliding events throughout the year. Hang gliders and paragliders typically are not equipped with VHF radio equipment. They generally do not operate in airspace in which such radios are required. Some events organised by SAFA represents an exception to this circumstance. Hang gliders and paragliders are more commonly flown with ultra high frequency (*UHF*) radio equipment.

In recent years, SAFA has applied for exemptions for participants in such events so that they can pilot relevant aircraft without complying with requirements to carry and use VHF radio

equipment. CASA has made legislative instruments for particular events, for example *CASA EX45/23 — The Corryong Inter-Club Fly-in Instrument 2023*, *CASA EX18/24 — The Paragliding State of Origin Instrument 2024* and *CASA EX56/24 — Canungra Spandicup Paragliding Instrument 2024*.

SAFA has applied to CASA for exemption instruments in relation to further events to be conducted in February and March 2025, and is expected to apply for more similar instruments in coming years.

CASA, on its own initiative, has decided to grant an exemption to participants in events that it subsequently approves, subject to appropriate conditions. Details relevant to each event will be specified in a separate instrument issued by CASA that approves that event.

### **Overview of instrument**

The instrument is intended to enable participants in the events approved by CASA to fly a hang glider or paraglider in an approved area without complying with regulatory requirements relating to the carriage of an aircraft VHF radio.

Before issuing an approval for an event, CASA will assess SAFA's application for the instrument including, but not limited to, a risk assessment provided by SAFA. Based on that assessment, CASA will issue the approval if it is satisfied that there are no adverse safety implications in relation to granting the approval.

### **Documents incorporated by reference**

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.

The condition in subsection 6(4) incorporates by reference the content of the SAFA ASAO exposition, as existing at the time the instrument commences, in relation to the way a pilot in command is required to operate.

The SAFA ASAO exposition comprises the set of documents set out in the following table. While the SAFA ASAO exposition will be available to SAFA members in the members only area of the SAFA website, it will not be freely available on the internet.

However, CASA can, upon request, provide a copy of the SAFA ASAO exposition free of charge.

<b>Item</b>	<b>Document</b>
2	<i>The Sports Aviation Federation of Australia Limited (SAFA) Abbreviations, Acronyms and Definitions Manual</i>
2	<i>The Sports Aviation Federation of Australia Limited (SAFA) Audit &amp; Surveillance Manual</i>
3	<i>The Sports Aviation Federation of Australia Limited (SAFA) Authorisations Manual</i>
4	<i>The Sports Aviation Federation of Australia Limited (SAFA) Enforcement and Disciplinary Procedures Manual</i>
5	<i>The Sports Aviation Federation of Australia Limited (SAFA) Management of Change Manual</i>
6	<i>The Sports Aviation Federation of Australia Limited (SAFA) Operations Manual</i>
7	<i>The Sports Aviation Federation of Australia Limited (SAFA) Organisation &amp; Personnel Manual</i>
8	<i>The Sports Aviation Federation of Australia Limited (SAFA) Principal Exposition Document</i>
9	<i>The Sports Aviation Federation of Australia Limited (SAFA) Qualifications Manual</i>
10	<i>The Sports Aviation Federation of Australia Limited Registrations, Records &amp; Retention Manual</i>
11	<i>The Sports Aviation Federation of Australia Limited (SAFA) Safety Management System Manual</i>
12	<i>The Sports Aviation Federation of Australia Limited (SAFA) Technical Manual Maintenance &amp; Standards</i>
13	<i>The Sports Aviation Federation of Australia Limited (SAFA) Towing Procedures Manual &amp; Training Syllabus</i>
14	<i>The Sports Aviation Federation of Australia Limited (SAFA) Training Manual</i>

Various provisions of the instrument incorporate matters in an event approval granted by CASA under subsection 4(2) of the instrument. Those matters are incorporated in this instrument as the event approval exists from time to time. CASA will publish event approvals on its website.

### ***Content of instrument***

Section 1 names the instrument.

Section 2 sets out the duration of the instrument.

Section 3 contains definitions of expressions appearing in the instrument. The terms ***event area***, ***event period***, ***relevant qualification*** and ***specified aerodrome*** are defined by reference to an event approval, to be granted by CASA under section 4 for an event.

Section 4 of the instrument provides for CASA, upon application by SAFA, to make an instrument approving a hang gliding or paragliding event as an approved event to which the exemptions in this instrument will apply. In accordance with subsection 9A(1) of the Act, in

deciding whether to grant an approval, CASA will regard the safety of air navigation as the most important consideration.

In deciding whether to approve an event, subsection 4(3) requires CASA to consider whether SAFA has adequate personnel and procedures to ensure that pilots in command of relevant aircraft will comply with the conditions in section 6.

Subsection 4(4) requires that the event approval specify details of the area in which, and the period during which, the approved event is to be held. It also requires the event approval to specify the minimum qualification that a pilot must have to participate in the event.

Subsection 4(5) allows for the instrument containing the approval of an event to specify an aerodrome. This affects the application (if any) of the exemption in paragraph 5(1)(a) of the instrument.

Subsection 4(6) allows for the instrument containing the approval of an event to include directions to SAFA relating to the conduct of the event. These directions are referenced in the conditions in section 6 of the instrument. For previous similar events, CASA has issued directions containing requirements that SAFA must comply with. Those requirements are intended to ensure that SAFA establishes a satisfactory support system to mitigate the safety risks associated with the operation of relevant aircraft without a serviceable VHF radio during an event.

Within CASA, the delegation of the power to grant an approval is limited to senior officers of CASA whose area of responsibility includes granting such approvals. In accordance with regulation 201.004 of CASR, a decision by CASA to refuse to approve an event under section 4 is subject to merits review by the Administrative Review Tribunal.

Subsection 5(1) of the instrument exempts a pilot in command of a relevant aircraft, who is participating in an approved event during the event period, from compliance with regulations 91.630 and 91.640 of CASR, subparagraph 10.4(b) of CAO 95.8 and subparagraph 10.3(a) of CAO 95.8 (to the extent that it may require the carriage and use of a VHF radiocommunication system).

It also exempts the pilot from compliance with 91.400 of CASR in relation to operation of the relevant aircraft in the vicinity of an aerodrome that is specified in the instrument approving the event. If the event area specified in that instrument includes Class E airspace (which is controlled airspace), the pilot is also exempt from compliance with regulation 91.635 of CASR.

Subsection 5(2) provides that the exemption in subsection 5(1) is subject to complying with the conditions mentioned in section 6.

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

Section 6 of the instrument contains conditions on the exemption in subsection 5(1) of the instrument that pilots in command of relevant aircraft participating in an approved event must comply with.

Subsection 6(1) requires the relevant aircraft to be equipped with a serviceable UHF radiocommunication system.

Subsection 6(2) requires that, if the UHF radio becomes unserviceable, the pilot in command must cease the flight as soon as safely practicable.

Subsection 6(3) provides that pilots in command may conduct a flight to which the exemption applies only if satisfied that:

- (a) a ground communications station will be established and maintained, in accordance with CASA's directions to SAFA, and is operating satisfactorily; and
- (b) a NOTAM has been published with information to aircraft operating in the event area about event operations; and
- (c) any danger area required by CASA's directions to SAFA is active.

Subsection 6(4) requires pilots in command to attend a daily briefing conducted or arranged by SAFA and, under paragraph (b), to operate in accordance with the SAFA ASAO exposition as it exists at the time this instrument commences. Among other things, the SAFA Operations Manual contains rules for the operation of relevant aircraft. Under paragraph 6(4)(c), pilots in command must hold a relevant qualification, defined in section 3 of the instrument.

Subsection 6(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 to reach the satisfaction mentioned in subsection 6(3).

Subsections 6(6) and (7) require that a pilot in command may conduct a flight to which the exemption applies only within the event area, which will be specified in the event approval, and within the active danger area (if any) for the event.

### ***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. 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 from compliance with particular provisions of CASR and 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.

### **Sunsetting**

As the instrument relates to aviation safety and is made under CASR, the sunseting 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 31 October 2027, which will occur before the sunseting 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 sunseting does not affect parliamentary oversight of this instrument.

### **Consultation**

SAFA has applied for instruments, which would operate in a similar way to instruments issued in relation to other hang gliding and paragliding events held in previous years.

CASA has consulted with SAFA in relation to the making of this instrument, including by giving a draft instrument to SAFA for comment.

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 is not expected to have any significant 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 regional communities in which events will be held because it will lead participants in, and spectators of, the events to visit those communities.

### **Office of Impact Analysis (OIA)**

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

### **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 at the time it is registered on the Federal Register of Legislation and is repealed at the end of 31 October 2027.

## Statement of Compatibility with Human Rights

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

### CASA EX08/25 — Radio Requirements (Approved Hang Gliding and Paragliding Events) Exemption 2025

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 legislative instrument enables participants in approved hang gliding and paragliding events to fly a hang glider or paraglider in an approved area without complying with regulatory requirements relating to the carriage of an aircraft very high frequency (VHF) radio.

Those regulatory requirements are:

- (a) regulations 91.630 and 91.640 of the *Civil Aviation Safety Regulations 1998 (CASR)*; and
- (b) subparagraph 10.3(a), to the extent that it may require the carriage and use of a VHF radiocommunication system, and subparagraph 10.4(b) of *Civil Aviation Order 95.8*; and
- (c) if applicable, regulations 91.400 and 91.635 of CASR.

The instrument provides for the Civil Aviation Safety Authority (CASA), upon application by the Sports Aviation Federation of Australia Limited (SAFA), to make an instrument approving a hang gliding or paragliding event as an approved event to which the exemptions will apply, and to specify the location and dates of the event, and the minimum qualifications for participants in the event.

The exemptions in the instrument are issued subject to conditions. The conditions are imposed by CASA in the interest of the safety of air navigation.

#### Human rights implications

The exemptions in the instrument are beneficial in purpose and content, and do 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 as it does not raise any human rights issues.

**Civil Aviation Safety Authority**