

## Explanatory Statement

### Civil Aviation Act 1988

### Civil Aviation Order 95.10 Instrument 2014

#### 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.

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations, including the *Civil Aviation Regulations 1988* (**CAR 1988**), 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. An instrument issued under paragraph 98 (5A) (a) of the Act is a legislative instrument if the instrument is expressed to apply to a class of persons or aircraft.

Subregulation 11.230 (1) of CASR 1998 operates so that an exemption issued under subregulation 11.160 (1) ceases at the end of the day no longer than 3 years after the day on which the exemption commences.

Regulation 5 of CAR 1988 allows CASA to issue a permission, approval or authority, if empowered or required under the regulations in Civil Aviation Orders. This includes issuing an exemption, being a permission to not comply with regulatory requirements.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Instrument

The *Civil Aviation Order 95.10 Instrument 2011* was made under regulation 308 of CAR 1988 on 6 April 2011 and commenced on 16 April 2011. It was inadvertently repealed on 19 March 2014 by the *Civil Aviation (Spent and Redundant Instruments) Repeal Regulation 2014*. Due to the repeal of *Civil Aviation Order 95.10 Instrument 2011*, it is unclear whether Civil Aviation Order 95.10 survives. Consequently, to place the issue beyond doubt, *Civil Aviation Order 95.10 Instrument 2014* (the **Order**) is made to completely replace *Civil Aviation Order 95.10 Instrument 2011* and contains the same substantive provisions with only minor alterations. A reference to regulation 322 of CAR 1988 has been removed as that regulation has been repealed. CASA's ability to approve a flight that does not comply with the flight conditions specified in the Order has been extended to include approvals in relation to flight height limitations. The Order is made under regulation 5 of CAR 1988 and regulation 11.160 of CASR 1998.

The Order applies to low-momentum ultralight aeroplanes. Low-momentum ultralight aeroplanes are a class of sport and recreational aviation aircraft that was created in

draft Part 103 (Sport and Recreational Aviation Operations), the new Part proposed for inclusion in CASR 1998 for which a Notice of Proposed Rule Making (*NPRM*) was circulated. The *NPRM* received a mainly favourable response. The main purpose of the Order is to allow the early introduction of the new class before the introduction of Part 103.

Low-momentum ultralight aeroplanes have low take-off weights and low maximum wing loadings. Privately-built aircraft need to have a certificate issued by Recreational Aviation Australia Incorporated (*RAA*) or the Hang Gliding Federation of Australia Inc (*HGFA*) if they are not owned by the original builder and were first registered on, or after, 1 March 1990. Paragraph 2.3 allows CASA to determine that an aircraft can be operated in accordance with the Order if it meets the criteria for the determination. The *HGFA* will be able to register low-momentum ultralight aeroplanes, but only if they are weight-shift controlled aeroplanes.

The Order allows an aircraft that is taking off or landing to be less than 100 metres from a public road, a person not associated with the operation of an aircraft or a dwelling. However, the aircraft must be distant enough to avoid endangering any person or causing damage to any property, and to be as far as possible from such a person or place, having regard to carrying out a safe take-off or landing.

The Order allows persons flying aircraft, of the types to which the Order refers, to expand their operations. An aircraft, to which the Order applies, is permitted to fly in Class A, B, C or D airspace, if the pilot holds a pilot licence, other than a student pilot licence, and satisfies aeroplane flight review requirements under CAR 1988. The Order states that aeroplanes must generally not be operated above a body of water at a horizontal distance from a suitable landing area of more than the distance that the aeroplane can glide in case of engine failure. However, flights may be conducted up to 25 nautical miles from a suitable landing area if the pilot is wearing a life jacket and the aeroplane has the specified appropriate radio and locator equipment. However, the aeroplane may exceed the limit of 25 nautical miles if flying between Tasmania and mainland Australia and taking advantage of safer weather conditions.

The Order permits aircraft, to which the Order applies, to be used for aerial inspections if conducted as a private operation over land belonging to the aircraft owner or his or her immediate family.

To avoid doubt, the instrument repeals all earlier instruments relating to Civil Aviation Order 95.10 appearing on the Federal Register of Legislative Instruments.

### **Legislative Instruments Act**

Under subsection 95 (5AAA) of the Act, Civil Aviation Orders are declared to be legislative instruments. The Order is, therefore, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instruments Act 2003*.

### **Consultation**

No consultations were necessary or appropriate since the sport and recreational aviation aircraft industry was previously consulted on *Civil Aviation Order 95.10 Instrument 2011* and the Order remakes the same substantive provisions of that instrument without significant alteration.

**Statement of Compatibility with Human Rights**

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

**Office of Best Practice Regulation**

A Regulation Impact Statement is not required since the Order remakes the provisions of *Civil Aviation Order 95.10 Instrument 2011* with the same substantive effect.

**Making and commencement**

The Order has been made by the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The Order commences on the day of registration and expires at the end of April 2017, as if it had been repealed by another instrument.

[Civil Aviation Order 95.10 Instrument 2014]

## Statement of Compatibility with Human Rights

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

### Civil Aviation Order 95.10 Instrument 2014

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 remakes the substantive content of *Civil Aviation Order 95.10 Instrument 2011* which was made under subregulation 308 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)* and was repealed by the *Civil Aviation (Spent and Redundant Instruments) Repeal Regulation 2014*.

*Civil Aviation Order 95.10 Instrument 2014* contains the same provisions and has the same substantive effect as *Civil Aviation Order 95.10 Instrument 2011*. However, it has been remade under regulation 11.160 of the *Civil Aviation Safety Regulations 1998* and regulation 5 of CAR 1988, since subregulation 308 (1) of CAR 1988 was repealed on 27 June 2011.

#### 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**