

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

CASA EX124/21 — The Canungra Cup and Canungra Classic Instrument 2021

Purpose

The purpose of *CASA EX124/21 — The Canungra Cup and Canungra Classic Instrument 2021* (the **instrument**) is to provide pilots in command of paragliders who are participating in the Canungra Cup 2021 paragliding competition and pilots in command of hang gliders who are participating in the Canungra Classic 2021 hang gliding competition with an exemption from particular licencing and radiocommunications qualification requirements in *Civil Aviation Order 95.8 Instrument 2011 (CAO 95.8)* that are normally required for flying in Class C airspace, where the events will take place.

The instrument also provides permissions, under subregulation 174A (3) of the *Civil Aviation Regulations 1988 (CAR)*, for the pilots in command of a paraglider or hang glider that is not equipped with a VHF radiocommunication system to fly in the relevant event.

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 each event.

The instrument imposes conditions on the exemptions and permissions that ensure, among other matters, that each pilot possesses the qualifications necessary to participate in the relevant event, and that their gliders are equipped with a UHF radio system. Directions are imposed on SAFA in the interest of the safety of air navigation in relation to the running of the events, including the maintenance of a ground communications station active on relevant UHF and certain VHF frequencies.

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.

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 the *Civil Aviation Safety Regulation 1998 (CASR)* provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of CASR, CAR 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) 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.

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.

Part 61 of CASR prescribes the licensing scheme for pilots and flight engineers of registered aircraft. Part 64 of CASR prescribes the requirements that a person must satisfy if they intend to transmit on a radio frequency of a kind used for the purpose of ensuring the safety of air navigation, but do not hold a flight crew licence.

CAO 95.8 applies to framed hang gliders, powered hang gliders, paragliders and powered paragliders that are used in private operations for recreational purposes, or for flying training for the issue of a pilot certificate under Part 95 of the CAOs.

Paragraph 3.1 of CAO 95.8 exempts persons associated with the flying of these aircraft from compliance with Part 61 of CASR and certain various airworthiness, maintenance and operational requirements that are prescribed in CAR. Under paragraph 3.2 of CAO 95.8, the exemptions provided by paragraph 3.1 are subject to a range of conditions further prescribed in subsections 6 and 7 of that CAO.

Regulation 200.001 of CASR additionally provides that a hang glider that is used solely in private operations and for recreational purposes, or for flying training for the issue of a pilot certificate, is exempt from CASR (other than excluded provisions) if the conditions in CAO 95.8 are complied with.

Paragraph 4.1 of CAO 95.8 provides that a person is authorised to perform a duty essential to the operation of these aircraft without holding a flight crew licence if they comply with the conditions set out in subsections 6 and 7.

Subparagraph 7.1 (i) of CAO 95.8 provides that, subject to paragraph 8.5, an aircraft to which the CAO applies must not be flown except in specified airspace and in specified conditions. The aircraft may be flown in Class C or Class D airspace to which sub-subparagraph 7.1 (i) (iii) does not refer if in accordance with paragraph 7.6.

Subparagraph 7.3 (a) of CAO 95.8 provides that a person must not use any radiotelephone equipment fitted on an aircraft for transmission on very high frequency (*VHF*) frequencies only unless the person holds a valid certificate issued by the Hang Gliding Federation of Australia (*HGFA*) that relates to the operation of radiotelephone equipment. (HGFA was the previous name of SAFA.)

Subparagraph 7.3 (b) of CAO 95.8 provides that a person must not use any radiotelephone equipment fitted to an aircraft for all transmissions unless the person is authorised to transmit using an aeronautical radio under Part 61 or Part 64 of CASR.

Subparagraph 7.6 (a) of CAO 95.8 provides that an aircraft to which the CAO applies may be flown in Class C or Class D airspace if the pilot holds a pilot licence issued under Part 61 of CASR with an aeroplane category rating that allows the pilot to fly in that airspace. Subparagraph 7.6 (b) further prescribes that the pilot must have a valid flight review for the class rating in accordance with Part 61 of CASR.

Under subregulation 83 (1) of CAR, a person commits an offence if the person transmits on a radio frequency of a kind used for the purpose of ensuring the safety of air navigation and the person is not qualified to transmit on the radio frequency. Subregulation 83 (2) defines when a person is qualified to transmit on a radio frequency of that kind.

For aircraft operated under the Visual Flight Rules, regulation 174A of CAR empowers CASA to issue instructions specifying the carriage or installation of (among other things) radiocommunication systems. Instrument DASR 2/1994 instructs that aircraft engaged in specified operations must have a VHF radiocommunication system installed.

Subregulation 174A (3) empowers CASA to grant a permission for an aircraft to be flown if it does not meet the equipment requirements of regulation 174A, subject to any conditions specified in the permission. It is an offence for the pilot in command of an aircraft to fly in contravention of a condition of a permission.

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

The Canungra Hang Gliding Club Inc. holds 2 internationally significant gliding competitions annually: the Canungra Cup (paragliding) and the Canungra Classic (hang gliding). Each event attracts approximately 85 pilots and is to be held this year on the following dates:

- Canungra Cup — 9 to 16 October 2021
- Canungra Classic — 23 to 30 October 2021.

The events take place in Class C airspace over the town of Canungra, Queensland, and may include flights within declared areas. To ensure the safety of the competitors, CASA's Office of Airspace Regulation declares the airspace in which the competitions take place to be a restricted area or danger area (the **declared areas**) while the competitions are held.

Because the flights are in Class C airspace, the competitors would normally require licences that are not usually required for sport aviation activities and would normally also be required to carry and use an aeronautical VHF radio. Hang gliders and paragliders typically are equipped with UHF, not VHF, radio equipment, and generally do not operate in airspace in which VHF radio equipment is required. The event represents an exception to this circumstance.

The Canungra Hang Gliding Club Inc., which organises the events has, therefore, requested that pilots flying in the events be exempted from the licencing requirement in paragraph 7.6 of CAO 95.8 for flying in Class C airspace, and permission for the pilots that do not carry a VHF radio in Class C airspace, as required by regulation 174A of CAR. SAFA supported this application.

The instrument replaces instrument CASA EX142/17 that repealed at the end of 30 September 2020.

Document incorporated by reference

In accordance with subsection 98 (5D) of the Act, the *Sports Aviation Federation of Australia Operations Manual*, version 20211006, as existing from time to time, (the **SAFA Operations Manual**) is incorporated in this instrument.

The *SAFA Operations Manual* is freely available from SAFA via SAFA's website at the following address: <http://www.safa.asn.au/>. As at commencement of this instrument, the following link provided direct access to the SAFA Operations Manual: [SAFA Operations Manual](#). Also, on request, CASA can provide a copy of the document free of charge.

Instrument

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

Section 2 sets out the duration of the instrument. The instrument commences on 9 October 2021 and is repealed at the end of 31 January 2022. A note is included under section 2 explaining the application of provisions in the instrument.

Section 3 contains definitions of terms used in the instrument, including of *hang gliding event* and *paragliding event, declared area* and *Competition Director*. The Competition Director is the person appointed by SAFA to manage the event.

Section 4 is a direction under regulation 11.245 of CASR requiring SAFA to comply with the requirements mentioned in Schedule 2 of the instrument.

Subsection 5 (1) provides an exemption for the pilot in command of a paraglider, when participating in the paragliding event during the event period, from compliance with subparagraph 7.3 (b) and paragraph 7.6 of CAO 95.8.

Subsection 5 (2) provides a similar exemption for the pilot in command of a hang glider when participating in the hang gliding event.

Subsection 5 (3) provides that the exemptions in subsections 5 (1) and (2) are subject to the conditions in Schedule 3.

Subsections 5 (4) and (5) provide an exemption for the operator of a ground communications station that SAFA is required by the instrument to establish and maintain. If the operator holds a radio operator endorsement issued by SAFA, then the operator is exempt from complying with regulation 83 of CAR.

Subsection 6 (1) provides a permission, for subregulation 174A (3) of CAR, for the pilot in command of a paraglider that is not equipped with a VHF radiocommunication system to fly the paraglider in the paragliding event. Subsection 6 (2) provides a similar permission for the pilot in command of a hang glider in relation to the hang gliding event.

Subsection 6 (3) makes the permissions in subsections 6 (1) and (2) subject to the conditions in Schedule 3 of the instrument.

Schedule 1 — Declared areas

Schedule 1 sets out the declared areas for the definition of *declared area* in section 3.

Schedule 2 — Requirements for direction

Schedule 2 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 gliders without a serviceable VHF radio during the hang gliding and paragliding events.

The directions in clause 1 of Schedule 2 apply for each day of each event period. They require SAFA to ensure that a declared area is active in the airspace where the event is conducted on that day if flight is higher than 6 500 feet above mean sea level.

SAFA must also ensure that an effective ground communications station is established and maintained that covers the event vicinity, and, if flight higher than 6 500 feet above

mean sea level is possible during the event operations on the day, an effective communications station is established and maintained within 15 nautical miles of the gliders participating in an event, including any glider in Class C airspace. This would enable, for example, an airborne communications station accompanying the gliders to be utilised.

The communications station or stations must advise other aircraft of the event activities and location of the gliders at intervals of no more than 30 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 2 contains further requirements for the ground communications station mentioned in clause 1. It provides that a hand-held VHF radio without an external antenna is not an effective ground communications station. 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 2 requires SAFA to ensure that, at least 3 days before the commencement of the event period, specified information is provided to CASA about event operations, which CASA will incorporate into a Notice to Airmen (*NOTAM*) to be published by Airservices Australia.

Clause 4 of Schedule 2 sets out requirements that SAFA must ensure the Competition Director completes. These requirements relate to liaison with Airservices Australia regarding the declared areas.

Clause 5 of Schedule 2 requires SAFA to ensure that 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, and the airspace restrictions and boundaries of any declared area activated for that day, in relation to the event;
- (c) review and explanation of the event vicinity and the requirement to operate within the event vicinity;
- (d) review and explanation of the conditions under which the exemption and permission in the instrument that apply to the participant have been issued;
- (e) review and explanation of any airspace in which SAFA expects 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 which 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 2 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 2 requires SAFA to ensure that event participants are 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 3 — Conditions on exemptions and permissions

Schedule 3 of the instrument contains conditions on the exemption in section 5, and the permission in section 6, for the pilot in command of a paraglider participating in the paragliding event, and of a hang glider participating in the hang gliding event, during the event period.

The conditions include a requirement, in clauses 1 and 2 of Schedule 3, for the pilots to hold the relevant qualifications for the event in which they are participating. The qualifications are set out in the definitions of ***relevant qualifications for the hang gliding event*** and ***relevant qualifications for the paragliding event*** mentioned in section 3 of the instrument.

Clause 3 of Schedule 3 requires each glider to be equipped with a serviceable UHF radio. Clause 4 requires that, if the UHF radio becomes unserviceable, the pilot in command must cease the flight as soon as safely practicable.

Clause 5 requires pilots in command to be satisfied that the ground communications station has been established and is operating satisfactorily, that the NOTAM has been published as required. Paragraph 6 (a) 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 7 allows the pilot in command to rely on the daily briefing.

Clause 6 also requires pilots in command of gliders covered by an exemption and a permission to operate in accordance with the SAFA Operations Manual during the event period. Among other things, the SAFA Operations Manual contains rules for the operation of paragliders and hang gliders.

Clause 8 requires that flights may only be carried out within a declared area if the declared area is active.

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. The exemptions and permissions in the instrument apply to classes of persons. 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 and CAR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (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 January 2022, 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.

Consultation

CASA provided a copy of a draft of the instrument in September 2021 to the Canungra Hang Gliding Club Inc., the applicant for the instrument, and the Club's comments were taken into account when preparing the final draft.

CASA had consulted with local aerodrome and airspace users through the Regional Airspace and Procedures Advisory Committee (which has since transitioned to the Aviation State Engagement Forum) in relation to the previous instrument CASA EX142/17. The conditions on the exemptions and permissions in the instrument are similar to those of CASA EX142/17.

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.

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.

The economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument; and
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This

valuation is consistent with the principles of best practice regulation of the Australian Government; and

- (d) a valuation of the impact the different requirements 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; and
- (e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The requirements of the instrument apply to pilots in command of paragliders who voluntarily participate in the Canungra Cup and pilots in command of hang gliders who voluntarily participate in the Canungra Classic, and to SAFA, which is aware of its obligations under the instrument in relation to these events.

CASA has assessed that the economic and cost impact of the instrument is not significant. The Office of Best Practice Regulation (**OBPR**) has also made the assessment that the impact of the instrument is minor and that a Regulation Impact Statement (**RIS**) is not required. As there is no significant economic or cost impact on individuals or businesses, there will be no community impacts.

Office of Best Practice Regulation

A RIS is not required because the instrument 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 9 October 2021 and is repealed at the end of 31 January 2022.

Statement of Compatibility with Human Rights

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

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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 competitors in the “Canungra Cup” paragliding competition and the “Canungra Classic” hang gliding competition, competitions that are organised by the Canungra Hang Gliding Club Inc. with the assistance of Sports Aviation Federation of Australia Limited (*SAFA*), to fly in Class C controlled airspace, where the events will take place, without holding licences and radiocommunications qualifications required under *Civil Aviation Order 95.8 Instrument 2011 (CAO 95.8)*. Those licences and qualifications are not normally required for general sport aviation activities.

The instrument also provides a permission, under subregulation 174A (3) of the *Civil Aviation Regulations 1988 (CAR)*, for the pilot in command of a paraglider, and for the pilot in command of a hang glider, that is not equipped with a VHF radiocommunication system, to fly in the relevant event.

The instrument also allows the holder of a radio operator endorsement issued by SAFA to transmit on a radio frequency while operating a ground communications station for each event, despite regulation 83 of CAR.

The exemptions and permissions for the pilots in command of the paragliders and hang gliders being flown in the competitions are issued subject to conditions, including in relation to the qualifications they are to hold.

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

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 2 of the instrument, which requires SAFA to record the name of each participant that attends the daily briefing for the event. It is necessary for SAFA to receive this information to ensure that only properly-briefed pilots participate in the event.

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. 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 exemptions and permissions 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. 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