

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX91/22 — The Go For Goal Instrument 2022

##### Purpose

The purpose of *CASA EX91/22 — The Go For Goal Instrument 2022* (the *instrument*) is to enable paragliders to be flown in the Go For Goal 2022 paragliding event (the *event*) without the pilots in command having to comply with certain licencing and radiocommunication regulatory requirements that apply in relation to aircraft to which *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021 (CAO 95.8)* applies.

The event is to be held near Corryong, Victoria. The exemption is necessary because paragliders are not typically equipped with VHF radio equipment but during the event paragliders will be flown in the vicinity of Corryong aerodrome, and above 5 000 feet above mean sea level (*AMSL*) which requires the carriage and use of VHF radio equipment.

The instrument also provides an exemption for a named individual who holds a radio operator endorsement issued by Sports Aviation Federation of Australia Limited (*SAFA*) to allow the individual to transmit on a radio frequency while operating a ground communications station for 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 the *Civil Aviation Safety Regulations 1998 (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, 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 conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, it is a strict liability offence not to comply with a condition of an exemption.

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

Under paragraph 11.250 (a), a direction 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.

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 aerodrome (among other kinds of aerodrome); and
- (b) the aerodrome is a non-controlled aerodrome; and
- (c) if the aircraft is not carrying an operative radio — unless either subregulation 91.400 (3) or (4) is satisfied.

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 or Notices to Airmen 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 91.635, 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.

### 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 meaning an aircraft to which this Order applies under subsection 4.

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

Paragraph 10.1 sets out flight conditions that apply in relation to a relevant aircraft. Under subparagraph 10.1 (k), a relevant aircraft may only be flown in:

- (i) Class E or G airspace; or
- (ii) Class C or D airspace that is below 300 feet above ground level and not within 10 nautical miles of a controlled aerodrome; or
- (iii) Class C or D airspace to which sub-subparagraph (ii) does not refer, or a restricted area — if in accordance with paragraph 10.2.

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 Go For Goal 2022 during the event period, from compliance with specified provisions of CASR, and of specified provisions of 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 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 4 March 2023, 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.

### **Background**

The event is to be held from 24 November to 4 December 2022. The event is organised by Sydney Paragliding Pty Ltd and Sydney Paragliding and Hang-Gliding Club Inc (the *organisers*) with the assistance of SAFA.

Event flights are planned to take place within Class G and E airspace, originating from a designated launch point on Mount Elliot, located 4 nautical miles east of Corryong Aerodrome (YCRG) in Victoria. Participants are expected to reach altitudes above 5 000 feet AMSL during the event, up to a maximum of 12 500 feet AMSL (within Class E airspace). Paragliders will be operating in the vicinity of Corryong aerodrome, which is a certified, non-controlled aerodrome.

The event is the first “Go For Goal” event to be held by the organisers at this location. Registration for the event is open to 60 paraglider SAFA Pilot Certificate holders from PG2 level and above. Under SAFA’s current certificate structure and rules, Pilot Certificate holders below the level of PG4 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 this 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 and Class E airspace (up to 12 500 feet AMSL) without individual carriage of VHF radios, and within the vicinity of a certified aerodrome.

To ensure the safety of the participants, CASA’s Office of Airspace Regulation has declared the event area to be a Temporary Danger Area for the period of the event.

### Overview of instrument

The instrument provides exemptions from specified CASR and CAO 95.8 provisions, and from specified 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 and up to 12 500 feet AMSL in Class E airspace, without complying with the applicable regulatory requirements relating to the carriage and use of an aircraft VHF radio, including licencing and qualification requirements; and
- (b) a named holder of a radio operator endorsement issued by SAFA to transmit on a radio frequency while operating a ground communications station for the event.

The instrument includes a direction to SAFA to comply with the requirements set out in Schedule 1 to the instrument. These requirements relate to the running of the event and include the requirement that SAFA must ensure that a danger area is active for the event that covers the event operations on that day, and that SAFA maintain during the event an effective ground communications station that is active on relevant UHF and certain VHF frequencies.

The instrument also imposes conditions on the exemption provided 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.

### 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 24 November 2022 and is repealed at the end of 4 March 2023.

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 of terms used in the instrument, including of *event*, *event area* and *Safety Director*. The Safety Director is the person appointed by SAFA to manage safety at the event.

The note located immediately below the definition of *Corryong aerodrome* is intended to clarify that, although that definition mentions a CASA registration number, Corryong aerodrome is, in accordance with the provisions mentioned in the note, taken to be a certified aerodrome at the time the instrument is made.

Section 4 is a direction under regulation 11.245 of CASR requiring SAFA to comply with the requirements mentioned in Schedule 1 of 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 91.400, 91.630, 91.635 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).

A note below paragraph (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 individual named in that subsection is the holder of a radio operator endorsement issued by SAFA in accordance with the SAFA Operations Manual, as it exists at the time the instrument commences.

Subsection 6 (2) exempts the named individual 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 — Requirements for direction*

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 area within 15 nautical miles of all paragliders participating in the event, and, if a pilot participating in the event is operating a paraglider in the vicinity of Corryong aerodrome, the area in the vicinity of the aerodrome.

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 the named individual maintains a listening watch on appropriate VHF frequencies and that the Safety 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, 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 5 of Schedule 1 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 danger area activated for that day, 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 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 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.

Clause 7 of Schedule 1 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 Safety Director to fulfil the obligations on its behalf.



### *Schedule 2 — Conditions on exemption for pilot 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.

The conditions include a requirement, in clause 1 of Schedule 2, for the pilots to ensure 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 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, and 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 pilots in command to operate in accordance with the SAFA Operations Manual during the event period, and hold a relevant qualification (as defined) that authorises participation in the event.

Clause 6 requires that pilots only conduct flights within the active danger area.

### **Consultation**

SAFA has applied for the instrument, which operates in a similar way to instruments issued in relation to other paragliding events conducted in the vicinity of Corryong aerodrome in previous years.

CASA provided a copy of a draft of the instrument to SAFA and the organisers on 18 November 2022 for response no later than 21 November 2022. SAFA and the organisers did not express any concerns with the instrument or provide any suggested changes.

The proposed Temporary Danger Area for the event was posted on the website of the Aviation State Engagement Forum for consultation with aviation stakeholders between 6 October 2022 and 3 November 2022.

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.

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 instrument makes no changes to existing arrangements under which pilots in command have previously voluntarily participated in other paragliding events that have previously taken place in the vicinity of Corryong aerodrome, 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 Best Practice Regulation (OBPR)**

A Regulation Impact Statement (*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 and directions (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 24 November 2022 and is repealed at the end of 4 March 2023.

## Statement of Compatibility with Human Rights

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

### CASA EX91/22 — The Go For Goal Instrument 2022

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 pilots in command of paragliders to participate in the Go For Goal 2022 paragliding event, that is to be held in the vicinity of Corryong, Victoria, and is organised by Sydney Paragliding Pty Ltd and Sydney Paragliding and Hang-Gliding Club Inc with the assistance of Sports Aviation Federation of Australia Limited (*SAFA*), to fly in Class G and Class E airspace (above 5 000 feet above mean sea level) without holding certain licences and radiocommunications requirements required for general sport aviation activities.

The instrument provides an exemption for pilots in command of paragliders participating in the event from the following regulatory requirements:

- (a) regulations 91.400, 91.630, 91.635 and 91.640 of the *Civil Aviation Safety Regulations 1998 (CASR)*;
- (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 exemption is issued subject to conditions.

The instrument also provides an exemption for a named individual, if holding a radio operator endorsement issued by SAFA, from regulation 91.625 of CASR when transmitting on a radio frequency while operating a ground communications station in accordance with specified requirements. This will enable the individual to transmit on a radio frequency while operating a ground communications station for the event.

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 the Civil Aviation Safety Authority (*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 an individual is named in section 6 of the instrument and granted an exemption subject to holding the required qualification. CASA must be able to ensure that the individual holds that qualification. Also, the named individual is the only individual authorised by SAFA to operate the VHF ground communications station for the event. Therefore, the individual is named 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, which CASA is required by regulation 11.225 of CASR to publish 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**