

EXPLANATORY STATEMENT
CIVIL AVIATION ACT 1988
CIVIL AVIATION REGULATIONS 1988
EXEMPTION UNDER REGULATION 308 RELATING TO USE OF A HANG
GLIDER AT THE AUSTRALIAN INTERNATIONAL AIR SHOW, AVALON,
VICTORIA

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the purposes of the Act and in the interests of the safety of air navigation.

Under subregulation 308 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may exempt persons from compliance with specified provisions of CAR 1988 in relation to a category of aircraft. Under subregulation 308 (3), an exemption is subject to the person complying with any conditions which CASA specifies to be necessary in the interests of safety.

Regulation 5 of CAR 1988 provides that where CASA is empowered to issue directions, it may issue those directions in Civil Aviation Orders.

Section 95.8 of the Civil Aviation Orders (**CAOs**) contains an exemption, made under subregulation 308 (1) of CAR 1988, from certain provisions of CAR 1988 otherwise applicable to pilots of hang gliders. The hang gliders are those whose pilot in command holds a pilot certificate issued by the Hang Gliding Federation of Australia (HGFA). The exemption is subject to a range of safety conditions.

For example, the pilot in command must not fly a hang glider at a height in excess of 300 feet without a prescribed altimeter (subparagraph 4.7 (b)), or in certain controlled airspace (subparagraph 4.7 (e)), or below 1 000 feet over a city, town or populous area (subparagraph 4.7 (h)), or at a public gathering (subparagraph 4.7 (k)) or at night (subparagraph 4.8 (a)). Further, the pilot must not engage in acrobatic flight over a city, town or populous area (paragraph 4.11), and he or she may fly only for recreational or training purposes (paragraph 4.13).

Section 29.4 of the CAOs provides that air displays must be approved by CASA and comply with various general and specific conditions in the interests of safety.

The Australian International Air Show (the *air show*) is scheduled to be held at Avalon, Victoria, from 11 March 2005 to 20 March 2005. The organiser, AirShows DownUnder, has proposed a display program that includes Dan Buchanan (the pilot) flying a powered hang glider including some night acrobatics. The proposed performances would contravene the requirements of the conditions mentioned above. The organiser has requested an exemption from those requirements on the basis that the pilot is experienced in such displays at air shows around the world and has conducted them previously at Avalon air shows.

Having considered the safety implications of the organiser's request in the context of the controlled environment of the air show that is provided by the operation of section 29.4 of the CAOs, CASA has made the instrument. It exempts the pilot and his hang

glider from compliance with certain provisions of CAR 1988, subject to conditions. The instrument exempts the pilot from the same provisions as he would be exempt from if he were a pilot in command holding a pilot certificate issued by HGFA. The exemption is subject to the condition that he must hold such a certificate and otherwise comply with the requirements of section 95.8 of the CAOs except those referred to above which would prevent the proposed display program involving him.

Subregulation 308 (4) of CAR 1988 declares an exemption to be a disallowable instrument. Under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the *LIA*), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. The exemption is, therefore, a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation under section 17 of the LIA has not been undertaken in this case. The instrument is a personal exemption requested for a specific activity during a specific period.

The instrument comes into effect at the start of the day after it is registered on the Federal Register of Legislative Instruments. However, it will only apply to the pilot's official performances as approved by the organisers for the air show. The instrument stops having effect at the end of 20 March 2005.

The exemption has been made by the Deputy Chief Executive and Chief Operating Officer, a delegate of CASA, in accordance with subregulation 7 (1) of CAR 1988.

[Exemption Number: CASA EX07/2005]