

## Explanatory Statement

### Civil Aviation Act 1988

### Civil Aviation Order 95.10 Instrument 2011

#### 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.

Under subregulation 308 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may exempt aircraft, or persons in, on, or otherwise associated with the operation of the aircraft, from compliance with specified provisions of CAR 1988.

The *Civil Aviation Order 95.10 Instrument 2011* was made to replace the previous Civil Aviation Order 95.10. It contains a new Civil Aviation Order 95.10 (the **new Order**).

The new Order applies to low-momentum ultralight aeroplanes. The previous Order referred to privately built single-place 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 the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) for which a Notice of Proposed Rule Making (**NPRM**) has been circulated. The NPRM received a mainly favourable response. The main purpose of the new Order is to allow the early introduction of the new class.

Low-momentum ultralight aeroplanes, as described in the new Order, have characteristics that closely resemble those of the privately built single-place ultralights referred to in the previous Order. The scope of the Order has been widened by the new criteria.

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. There is a new paragraph 2.3 that allows CASA to determine that an aircraft can be operated in accordance with the new Order if it substantially meets the criteria for the determination. Paragraph 2.3 is on the lines of paragraph 2.3 of the previous Order which allowed CASA to determine that an aircraft was privately built even if it was not. However, there are more guidelines for the exercise of the discretion.

The new Order now 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.

Another change from the previous Order is that the HGFA will now be able to register low-momentum ultralight aeroplanes, but only if they are weight-shift controlled aeroplanes.

The Order has also been changed to allow persons flying aircraft, of the types to which the new Order refers, to expand their operations. An aircraft, to which the new Order applies, is now 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 conditions relating to flights over water have been altered. The Order states that flights must be conducted within gliding distance from a suitable landing area, unless each occupant wears a life jacket and the aircraft is equipped with the prescribed safety equipment. If those requirements are met, flights may be conducted up to 25 nautical miles horizontal distance from a safe landing area. As well, aircraft may exceed the limit of 25 nautical miles, if flying between Tasmania and mainland Australia, in order to take advantage of safer weather conditions.

The new Order permits aircraft, to which the new 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.

Other changes have been made in the new Order to simplify the provisions, which in the previous Order had been amended piece-meal over the years. The new Order has also been prepared to make it as uniform as possible with other Orders relating to flights in similar light aircraft.

### **Legislative Instruments Act**

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. Under subsection 95 (5) of the Act, Civil Aviation Orders are declared to be disallowable instruments. The new Order 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**

The changes are consistent with the NPRM for the draft Part 103 of CASR 1998 as mentioned above. The sport and recreational aviation aircraft industry and users of those aircraft were made aware of the changes included in the new Order and have, through the various associations that regulate those aircraft, prepared for their introduction. None of the changes should adversely affect aviation safety.

### **Office of Best Practice Regulation (OBPR)**

The OBPR does not require a Regulation Impact Statement as the amendments are minor and of a machinery nature.

The instrument commences on the day after it is registered.

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

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