

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — flight in class D airspace within 16 kilometres of an aerodrome

Subsection 98 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that the Governor-General may make regulations for the purposes of the Act and in the interests of the safety of air navigation.

Paragraph 7.6 of Civil Aviation Order 95.8 provides that an aircraft to which this Order applies may be flown in Class C or Class D airspace if the pilot holds a valid pilot licence (not being a student pilot licence), issued under Part 5 of CAR 1988, that allows the holder to fly in that airspace and has satisfactorily completed a flight review in accordance with regulation 5.81, 5.108 or 5.169 of CAR 1988. This provision was inserted into the Civil Aviation Order in March 2011.

The Tasmanian hang gliding and paragliding Associations (the Association) who are members of the Gliding Federation of Australia (HGFA) have been operating hang gliders and paragliders at a site on Single Hill in Hobart. With the coming into effect of this new provision the members of the Association cannot legally continue to operate if an exemption is not granted. The Association has applied for an exemption.

Exemptions

Under subregulation 11.160 (1) of CASR 1998, CASA may grant an exemption from compliance with a provision of CASR 1998. AA has applied for an exemption. In deciding whether to grant an exemption, CASA must regard as paramount the preservation of an acceptable level of safety.

CASA has agreed to grant the exemption and impose conditions. 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, it is an offence to fail 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), an exemption ceases on the day specified within it (but no longer than 3 years after its commencement), or if no day is specified, 3 years after commencement.

Legislative Instruments Act

For subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from compliance with a provision of the regulations or Civil Aviation Orders. 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. The instrument applies to a class of persons and is therefore legislative. As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instruments Act 2003* (*LIA*).

Human Rights Compatibility

This Legislative Instrument does not engage any of the applicable rights or freedoms. It is compatible with human rights as it does not raise any human rights issues.

Consultation

CASA consulted the HGFA and the Association. The instrument commences on the day after it is registered and stops having effect at the end of February 2015.

The exemption has been made by the Direction of Aviation Safety CASA in accordance with subsection 73 (2) of the Act.

[Instrument number CASA EX 38/12]