

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — power-assisted glider at the Australian International Air Show, Avalon

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 paragraph 155 (1) (a) of the *Civil Aviation Regulations 1988* (**CAR 1988**), a pilot in command must not fly an aircraft in acrobatic flight at night.

Subregulation 195 (1) of CAR 1988 requires that the pilot in command and the operator of an aircraft must comply with the rules requiring lights to be displayed in relation to the aircraft at night and in conditions of poor visibility. Subregulation 196 (3) provides that unless the Civil Aviation Safety Authority (**CASA**) otherwise directs, an aeroplane in flight or operating on the manoeuvring area of a land aerodrome shall display, in addition to navigation lights, an anti-collision light consisting of a flashing red light.

Subregulation 207 (2) of CAR 1988 provides that an Australian aircraft shall not be used in any class of operation unless it is fitted with such instruments and is fitted with or carries such equipment, including emergency equipment, as CASA approves or directs. Subregulation 5 (1) of CAR 1988 provides that whenever CASA is empowered by CAR 1988 to give directions or approvals, it may do so in Civil Aviation Orders (the **CAOs**). Paragraph 3 of Appendix V to Civil Aviation Order (**CAO**) 20.18 requires that aircraft must have 2 landing lights, except when engaged in private and aerial work operations and charter operations not carrying passengers for hire and reward, when it must have 1 landing light.

The Australian International Air Show 2013 (the **Air Show**) is scheduled to be held at Avalon, Victoria, from 21 February 2013 to 3 March 2013 inclusive. The organiser, Aviation Development Australia Limited, has proposed a display program that includes a night acrobatic performance by a pilot from the United States of America using a power-assisted glider. The pilot has participated in overseas air shows on several occasions and holds qualifications issued by the Federal Aviation Administration of the United States of America. However, his display and the aircraft that he uses require exemptions from certain requirements of CAR 1988 for the purposes of the Air Show. The aircraft to be used is not fitted with landing lights. Also, during the display, it will not display its navigation and anti-collision lights.

Exemption

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations, including CAR 1988, or a provision of the CAOs, 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 11.205 (1) of CASR 1998, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.225 of CASR 1998, 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.

Having considered the safety implications of the request for the exemptions in the context of the controlled environment of the Air Show, CASA agreed to grant the exemptions from the requirements of various provisions of CAR 1988.

The exemption in subsection 3.1 of the instrument applies for the duration of the instrument and is based on CAO 95.4 which allows gliders, powered sailplanes and power-assisted sailplanes to operate subject to exemptions from provisions of CAR 1988 that are considered inapplicable to such aircraft. The exemption requires compliance with CAO 95.4, apart from some of the CAO 95.4 conditions that are not applicable to the circumstances of the Air Show.

The exemption in subsection 3.2 of the instrument exempts the pilot in command and the operator of the aircraft from provisions of CAR 1988 relating to acrobatic flight at night, and the carriage and display of certain lighting. It only applies to the night display that is part of the official program approved by the organisers of the Air Show.

Legislative Instruments Act

Under regulation 5A of CAR 1988, if CASA has issued a CAO, and CASA later issues an exemption that in any way affects the operation of the CAO, the later document is declared 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 instrument affects the operation of CAO 20.18 which requires aeroplanes to have a landing light fitted if it is operated under the Instrument Flight Rules. It is, therefore, a legislative instrument for the purposes of section 5 of the LIA. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of that Act.

Consultation

The exemptions have been requested by the organiser of the Air Show and the operator of the aircraft. Further consultation under section 17 of the LIA has not been undertaken in this case. The instrument contains exemptions requested for a specific activity during a specified period. Similar instruments have been issued for operations of this nature at air shows.

Compatibility with human rights and freedoms

A statement of compatibility with human rights is at Attachment 1.

Commencement and making

The instrument commences on 21 February 2013 and stops having effect at the end of 5 March 2013.

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR 1998.

[Instrument number CASA EX16/13]

Statement of Compatibility with Human Rights

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

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This 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 allows the operation of a power-assisted glider aircraft during the Australian International Air Show 2013 (the *Air Show*) at Avalon, Victoria between 21 February 2013 and 5 March 2013 without compliance with the usual standards. The exemptions are subject to conditions imposed by CASA in the interest of safety of air navigation.

The primary purpose of the legislative instrument is to allow a specified experienced pilot to attend and perform a night aerobatic display at the Air Show.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority