Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — for round Australia flight by David Brian Jacka

**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.

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 the *Civil Aviation Regulations 1988* (***CAR 1988***), or a provision of the Civil Aviation Orders (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.

This exemption is required in order to allow David Brian Jacka, who is a member of Recreational Aviation Australia (the ***RAA***), to fly his ultralight Jabiru J230 aeroplane around Australia. Mr Jacka is a quadriplegic but holds a pilot certificate issued by the RAA. Mr Jacka’s aircraft is normally operated under Civil Aviation Order 95.55 (***CAO 95.55***). CAO 95.55 exempts the aircraft to which it applies (the ***exempted aircraft***) from compliance with certain regulations in CAR 1988, subject to compliance with the conditions set out in the Order.

For the proposed flight and training for the flight, Mr Jacka required an individual exemption, omitting conditions in CAO 95.55 that restricted his ability to fly in controlled airspace. One of those conditions, subparagraph 7.3 (d) requires that, for flights inside Class A, B, C or D airspace, the pilot must hold 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. Another condition, subparagraph 7.3 (e), requires the pilot, as the holder of a valid pilot licence, to have satisfactorily completed an aeroplane flight review in accordance with regulation 5.81, 5.108 or 5.169 of CAR 1988. The exemption allows Mr Jacka to undertake his flight without complying with those 2 conditions. All other conditions of CAO 95.55 apply.

In addition, the aeroplane must be fitted with a transponder and a radio capable of two-way communication with Air Traffic Control and Certified Air/Ground Radio Service where applicable. The aeroplane must be equipped with all the hand controls specific to the pilot’s quadriplegia, and approved by the aircraft manufacturer, that enable him to fly the aircraft independently in spite of his disability.

The pilot must have satisfactorily undergone training in relation to radio procedures, airspace procedures and navigation, as required for day V.F.R. operations in controlled airspace:

(a) with an instructor holding a current grade 1 flight instructor (aeroplane) rating and an RAA instructor rating; and

(b) in accordance with the CASA Day V.F.R. syllabus.

The pilot must have been found competent by the instructor to pilot an aircraft in each of the classes of airspace to which access is sought for the purposes of the flight.

The pilot must have provided CASA with a risk acceptance statement signed by him in relation to the activities carried out by him under this exemption.

The pilot must hold a valid RAA pilot certificate and a valid RAA radio operator’s certificate.

**Legislative Instruments Act 2003 (the *LIA*)**

Subregulation 5A (1) of CAR 1988 declares an instrument that affects the operation of a CAO to be a disallowable instrument. Under subparagraph 6 (d) (i) of 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**

Consultation on the proposed flight has taken place with David Jacka, RAA, Air Traffic Control and other persons ready to assist in the undertaking. It is considered, as a result, that the arrangements in place will allow Mr Jacka to satisfactorily undertake the flight.

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at Attachment 1.

**Making and commencement**

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

The instrument commences on the day of registration and stops having effect at the end of April 2014 as if it had been repealed by another instrument.

[Instrument number CASA EX48/13]

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Exemption under regulation 11.160 — for round Australia flight by David Jacka**

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 David Jacka to fly his ultralight aircraft around Australia. Mr Jacka is a quadriplegic.

**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**