**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**Exemption — take-offs from Lady Elliott Island aerodrome**

**Legislation**

Section 98 of the *Civil Aviation Act 1988* (the ***Act***) provides that the Governor-General may make regulations for the Act and in relation to the safety of air navigation.

Subsection 33 (3) of the *Acts Interpretation Act 1901,* that confers the power to make, grant or issue any instrument of a legislative character, shall be construed as including a power to repeal, rescind and revoke any such instrument.

Under regulation 11.160 of the *Civil Aviation Safety Regulations 1998* (***CASR 1998***), CASA may grant an exemption from compliance with a provision of CASR 1998 or the *Civil Aviation Regulations 1988* (***CAR 1988***). 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, 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.

Under paragraph 166A (2) (f) of CAR 1988, the pilot in command of an aircraft in the vicinity of an uncontrolled aerodrome must maintain the same track from take-off until the aircraft is 500 feet above the terrain (unless required to change to avoid terrain).

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**Instrument**

In a take-off from the Lady Elliot Island aerodrome, if the pilot has to maintain the same track until the aircraft is 500 feet above the terrain, the likelihood of a return to the aerodrome or the shallow waters of the reef, in case of an engine failure, is greatly reduced.

The instrument, exempts the pilot in command of an aircraft that is taking off from paragraph 166A (2) (f) of CAR 1988 to allow a pilot to undertake a turn after passing a minimum of 300 feet above the terrain, which enhances safety in the event of engine failure where the aircraft is required to undertake an emergency landing on the runway.

The exemption is subject to the following conditions: the pilot must maintain the same track from take-off until the aircraft is 300 feet above the terrain; he or she must broadcast his or her intention to turn at less than 500 feet; he or she may take off under the exemption only if he or she considers that it is safe to do so; he or she must comply with the established procedures for operations at the aerodrome as established by Istlecote Pty Ltd which manages the aerodrome and operates the majority of flights.

The instrument repeals and replaces an earlier exemption (CASA EX95/11) which expires at the end of July 2014.

**Legislative Instruments Act**

Exemptions issued under regulation 11.160 of CASR 1998 are issued undersubsection 98 (5A) of the Act. Subsection 98 (5A), in paragraph (a), states that the regulations may empower CASA to issue an instrument relating to the safe navigation and operation, or the maintenance, of aircraft. Subsection (5AA) states that an instrument issued under paragraph (5A) (a) is a legislative instrument if it applies to a class of persons. This exemption is accordingly a legislative instrument.

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* (the ***LIA***).

**Consultation**

Consultation under section 17 of the LIA has not been undertaken in this case. The instrument is of a minor or machinery nature and has been issued at the request of a company which both operates the aerodrome and conducts flights to and from it.

**Statement of Compatibility with Human Rights**

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

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

A Regulation Impact Statement (***RIS***) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required (OBPR id: 14507).

**Making and commencement**

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

The exemption commences on 1 August 2014 and expires at the end of July 2017.

[Instrument number CASA EX77/14

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Exemption — take-offs from Lady Elliott Island aerodrome**

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**

This legislative instrument exempts pilots (being members or guest members) of Newcastle Paragliding Club (the ***Club***), who are also members of Hang Gliding Federation of Australia, from the requirements of paragraph 7.6 of Civil Aviation Order 95.8 when operating a hang-glider or paraglider within military restricted airspace at Williamtown, New South Wales.

The purpose of this legislative instrument is to exempt those pilots from requirements to hold a valid pilot licence issued under Part 5 of the *Civil Aviation Regulations 1988* and complete a flight review before being able to fly in that airspace.

The Club has received in-principle approval from Williamtown Defence authority to operate along the north-western boundary of the restricted airspace. The instrument specifies a range of conditions, including that the Club must sign a letter of agreement with Williamtown Defence authority requiring compliance with the instrument in addition to any other requirements specified by Williamtown Defence authority.

**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**