

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2015

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and 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.

Under regulation 5 of the *Civil Aviation Regulations 1988*, if CASA is empowered or required under the Regulations to give a permission, approval or authority, CASA may, unless the contrary intention appears in the regulation conferring the power or function or imposing the obligation or duty, issue the direction, instruction or notification or give the permission, approval or authority in CAOs or otherwise in writing.

Details of the instrument

This instrument repeals and replaces Civil Aviation Order 95.55 (*CAO 95.55*).

Background

Civil Aviation Order 95.55 was made on 6 December 2011 as the *Civil Aviation Amendment Order 95.55 Instrument 2011*, referred to below as the **2011 Instrument**. It was registered with the Federal Register of Legislative Instruments as F2011L00617. Schedule 1 of the 2011 Instrument contained the entire section 95.55 of the CAOs (also referred to as CAO 95.55). Subsequent amendments to the 2011 Instrument, up to and including the *Civil Aviation Order (Flight Crew Licensing) Repeal and Amendment Instrument 2014 (No. 1)* and the *Civil Aviation Order 95.55 Amendment Instrument 2014 (No. 1)*, which came into effect on 1 September 2014 and 16 September 2014 respectively, were made under the abovementioned provisions of the Act and CAR 1988.

Recent discussions with the Office of Parliamentary Counsel (*OPC*) identified that the existence of CAO 95.55 in a schedule to the 2011 Instrument could create legislative ambiguity and was not best practice drafting methodology. To rectify this issue, CASA has decided to repeal the 2011 Instrument and remake CAO 95.55 in its entirety by issuing this instrument. As required by OPC, this is being done as soon as practicable.

The remaking will include in the 2015 Instrument some amendments of the CAO 95.55 provisions. These amendments will allow Recreational Aviation Australia Incorporated (**RAA**) to authorise and permit modifications to RAA registered aircraft. These amendments are in the form of 2 new subparagraphs (1.2 (d) (iv) and 6.1 (f) (iv)).

Apart from this, there are no changes to the existing contents of CAO 95.55 except for updating certain provisions, including the exempting provisions mentioned in section 3. The changes only involve removing outdated references that are no longer in force and replacing them as necessary.

Consultation

CASA decided to remake CAO 95.55 as the 2015 Instrument in accordance with the request by OPC. As mentioned, the 2015 Instrument does not alter the content of CAO 95.55 in any way, apart from the amendments referred to above.

In relation to the amendments of CAO 95.55 that permit RAA to approve modifications to RAA registered aircraft, these have been agreed to after CASA was satisfied with the relevant procedures set out in the RAA Technical Manual. No additional consultation was undertaken as the amendments only affect the RAA and RAA-registered aircraft. If these amendments were not made, the situation would continue where the RAA would not be able to supervise the modification of aircraft which it has registered and supervises.

It is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the *Legislative Instruments Act 2003* in relation to the 2015 Instrument.

Statement of Compatibility with Human Rights

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

Regulation Impact Statement

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 2015 Instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The 2015 Instrument commences on the day after registration and expires at the end of January 2018, as if it had been repealed by another instrument.

[Civil Aviation Order 95.55 Instrument 2015]

Statement of Compatibility with Human Rights

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

Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes) Instrument 2015

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 repeals and replaces the *Civil Aviation Order 95.55 Instrument 2011* which contained Civil Aviation Order 95.55 (Exemption from the provisions of the Civil Aviation Regulations 1988 — certain ultralight aeroplanes).

The primary purpose of making the legislative instrument is to remove problems identified by the Office of Parliamentary Counsel with the existence of Civil Aviation Order 95.55 in a schedule to another instrument. As a result, CASA decided to repeal the 2011 Instrument and remake CAO 95.55 in its entirety.

The remaking will include in the 2015 Instrument some amendments of the CAO 95.55 provisions. These amendments are required as a consequence of approving Recreational Aircraft Australia Incorporated to approve modifications to aircraft that it has registered. There are no changes to the existing contents of CAO 95.55 apart from those consequential amendments and changes of a drafting nature required to replace outdated provisions.

The 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*. The instrument does not engage any of the applicable rights or freedoms and is compatible with human rights.

Conclusion

This legislative instrument does not raise any human rights issues.

Civil Aviation Safety Authority