

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Permission, directions and exemptions — aerotowing operations (Gliding Federation of Australia)

Purpose

The instrument provides pilots endorsed by The Gliding Federation of Australia (the **GFA**) with permissions, directions and exemptions in respect of certain provisions of the *Civil Aviation Regulations 1988 (CAR)* and Civil Aviation Order 29.5 (**CAO 29.5**). The instrument enables these pilots to conduct aerotowing operations.

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 subsections 98 (5A) and (5AA) of the Act, the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft which, if applicable to a class of persons, would be legislative instruments. Subregulation 5 (1A) of CAR provides that if CASA is empowered or required under the regulations to issue any direction, instruction or notification, CASA may, unless the contrary intention appears, issue the direction, instruction or notification in a Civil Aviation Order.

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Under subregulation 149 (1) of CAR, a pilot in command of an aircraft commits an offence if he or she permits anything to be towed by the aircraft without the towing being further permitted by regulation 149 or authorised under Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Subregulation 149 (5) provides that it is a defence to a prosecution under subregulation 149 (1) if the pilot in command had the written permission of CASA for the towing, and the towing was undertaken in accordance with the directions (if any) specified in the permission.

Subregulation 150 (1) of CAR provides that, subject to the further provisions of regulation 150, it is an offence for a pilot in command of an aircraft in flight to permit anything to be dropped from the aircraft. However, subregulation 150 (2) states that regulation 150 does not prevent the dropping of packages or other articles or substances in the course of operations carried out in accordance with directions issued by CASA.

CASA has issued such directions under subregulation 150 (2) of CAR via CAO 29.5. CAO 29.5 applies to all Australian aircraft except those engaged in aerial application operations or flight training for aerial application operations. CAO 29.5 prescribes the requirements to be followed for the dropping of articles from aircraft in flight, including the operational requirements for the location of the dropping of the articles

and the carriage of the articles and persons during flights in which articles are to be dropped.

Subregulation 166A (2) of CAR prescribes a number of rules for operating aircraft on the manoeuvring area of, or in the vicinity of, a non-controlled aerodrome. Under subregulation 166A (1), a pilot commits an offence if he or she engages in conduct that contravenes a rule set out in subregulation 166A (2).

In particular, if a pilot joins the circuit pattern for the aerodrome for a landing at that aerodrome, the rule in paragraph 166A (2) (d) requires the pilot to make all turns in accordance with subregulation 166A (3).

Similarly, the rule in paragraph 166A (2) (e) provides that if the pilot takes off from the aerodrome, the pilot must (after taking off from the aerodrome) make all turns in accordance with subregulation 166A (3) while the aircraft is flying in the circuit pattern for the aerodrome.

For paragraphs 166A (2) (d) and (e), subregulation 166A (3) provides that the pilot's turns must be made in accordance with a direction issued by CASA under subregulation 92 (2) of CAR. If CASA has not issued such a direction, subregulation 166A (3) further provides that the pilot must make turns in accordance with visual signals displayed at the aerodrome that indicate a direction to make all turns or, in any other case, to make all turns to the pilot's left.

Paragraph 166A (2) (f) of CAR provides generally that a pilot must maintain the same track from take-off until the aircraft is 500 feet above the terrain. Subregulation 166A (4) further provides that the rule in paragraph 166A (2) (f) does not apply if a change to the track is necessary to avoid the terrain.

Exemptions, authorisations and directions issued under CASR

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations or a Civil Aviation Order.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic. Subregulation 11.170 (3) provides that in deciding whether to grant an exemption, CASA must regard as paramount the preservation of an acceptable level of aviation safety.

Regulation 11.205 provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition.

Regulation 11.225 of CASR requires an exemption to be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

The written permission of CASA for towing under paragraph 149 (5) (a) of CAR is an **authorisation** under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation. Regulation 11.055 sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation can be granted

subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability if the person breaches a condition of an authorisation.

Under paragraph 11.245 (1) (a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft.

Subregulation 11.245 (2) of CASR provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions.

Under paragraph 11.250 (a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Regulation 11.255 prescribes an offence for the contravention of a direction under regulation 11.245.

Instrument

The instrument applies to holders of Glider Towing Certificates issued by the GFA that are pilots in command of aircraft conducting aerotowing operations. The instrument provides these pilots with permissions and exemptions in respect of certain flight rules and operational requirements prescribed in CAR, enabling the aerotowing operations to take place.

Aerotowing operations are defined in section 2 of the instrument to mean the towing of a glider or gliders by a powered aircraft in accordance with the processes and procedures prescribed in the GFA Aerotowing Manual.

Among other matters, the Aerotowing Manual sets out the guidelines and rules for the towing of gliders, including take-off and glider towing techniques, and certain aircraft maintenance and inspection matters. The Aerotowing Manual also prescribes the required qualifications, eligibility and competency standards for the GFA's issuing of Glider Towing Certificates and the associated glider towing endorsements to pilots.

In accordance with subregulation 98 (5D) of the Act, the Aerotowing Manual is incorporated as approved by CASA from time to time. The Aerotowing Manual describes the procedures to be followed for glider towing operations conducted under the auspices of the GFA and is freely available within the GFA's Document and Form Library, which is accessible via the Internet on the following webpage:

www.glidingaustralia.org.

For paragraph 149 (5) (a) of CAR, section 4 of the instrument provides towing pilots with the written permission of CASA to tow a glider during these operations. For paragraph 149 (5) (b), subsection 4 (2) of the instrument further directs the towing pilot to conduct the glider towing operations in accordance with the Aerotowing Manual.

For paragraph 150 (2) (a) of CAR, section 5 of the instrument directs a towing pilot to drop the rope or fitting used for towing a glider during the operation in accordance with the procedures listed in the Aerotowing Manual. Paragraph 5 (1) (b) of the instrument confirms that the dropping of the rope or fitting must be undertaken so as to minimise hazard to persons, animals or property.

Additionally, subsection 5 (2) directs the GFA to only amend the Aerotowing Manual after obtaining CASA's prior written approval to do so.

As the procedures in the Aerotowing Manual are sufficient to govern the pilots' safe dropping of ropes and fittings from their aircraft, section 6 of the instrument provides these pilots with an exemption from compliance with CAO 29.5.

Section 6 of the instrument also provides towing pilots with exemptions from compliance with the rules in paragraphs 166A (2) (d), (e) and (f) of CAR, prescribed for subregulation 166A (1).

The exemptions from compliance with paragraphs 166A (2) (d) and (e) of CAR provide that the participating pilot is not obliged to make all turns in accordance with the requirements of subsection 166A (3) while the aircraft is flying in the circuit pattern for the aerodrome. These exemptions are subject to the requirement that the participating pilot maintains safe separation from other aircraft and persons on the ground, set out in the condition in subsection 7 (1).

Similarly, the exemption from compliance with paragraph 166A (2) (f) of CAR, therefore, provides that the towing pilot, after taking off from a non-controlled aerodrome, is not obliged to maintain the same track while the aircraft is less than 500 feet above the terrain. This exemption is subject to the condition in subsection 7 (2), that the towing pilot may only change the track of the tow aircraft while the aircraft is less than 500 feet above the terrain to the extent necessary to keep the tow aircraft and glider in tow within gliding distance of terrain that is suitable for landing.

Prior to the scheme in the instrument, similar permissions and directions were given for subregulations 149 (5) and 150 (2) of CAR by specified GFA members exercising power delegated by CASA. The existing delegation instrument will be repealed on 31 August 2017. Permissions and directions given pursuant to the delegated power will continue in force by operation of section 7 of the *Acts Interpretation Act 1901*.

Following a transitional period ending on 24 December 2017, section 8 of the instrument will cease permissions and directions given by the GFA members pursuant to delegated power.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft. Under subsection 98 (5AA), an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply to a class of persons or a class of aircraft.

The instrument applies to a class of persons engaged in aerotowing operations. The instrument is, therefore, a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

The instrument has been developed at the request of the GFA. CASA has consulted with the GFA executive management and an operations expert on the terms of the instrument, as well as with an industry participant. Given the beneficial nature of the

instrument and the GFA's request for it, CASA is satisfied that no further consultation is appropriate or reasonably practicable for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for permissions, directions and exemptions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 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, as it does not raise any human rights issues.

Making and commencement

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

The instrument commences on the day after registration and is repealed at the end of 31 May 2020.

[Instrument number CASA EX71/17]

Statement of Compatibility with Human Rights

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

Permission, direction and exemption — aerotowing operations (Gliding Federation of Australia)

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*.

Overview of the legislative instrument

The legislative instrument provides pilots who are holders of Glider Towing Certificates issued by The Gliding Federation of Australia (the **GFA**), with permissions, directions and exemptions under the *Civil Aviation Regulations 1988*.

The legislative instrument enables these pilots to fly aircraft in aerotowing operations that involve towing glider aircraft from take-off and through the air.

For the permissions and exemptions to apply, the pilots must carry out the aerotowing operations in accordance with the procedures in the GFA Aerotowing Manual and the further directions and conditions prescribed by CASA in the instrument.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority