



Australian Government

Civil Aviation Safety Authority

I, SHANE PATRICK CARMODY, Director of Aviation Safety, on behalf of CASA make this instrument under regulation 5 of the *Civil Aviation Regulations 1988* and regulations 11.160, 11.205 and 200.002 of the *Civil Aviation Safety Regulations 1998*.

[Signed S. Carmody]

Shane Carmody
Director of Aviation Safety

11 October 2017

Civil Aviation Order 95.10 Instrument (Repeal and Remake) 2017

1A Name

This instrument is the *Civil Aviation Order 95.10 Instrument (Repeal and Remake) 2017*.

1B Duration

This instrument:

- (a) commences on the day after registration; and
- (b) is repealed at the end of 30 September 2020.

1C Repeal

The *Civil Aviation Order 95.10 Instrument 2017* is repealed.

1 Application

This Order applies to a low-momentum ultralight aeroplane in relation to which the following requirements are satisfied:

- (a) the aeroplane is registered with the RAA or, if the aeroplane is a weight-shift controlled aeroplane, with the HGFA;
- (b) the aeroplane is a single-place aeroplane that has a take-off weight of not more than:
 - (i) if it is equipped to land on water — 335 kilograms; or
 - (ii) if it is equipped with a recovery parachute system — 320 kilograms; or
 - (iii) if it is equipped to land on water and has a parachute recovery system — not more than 355 kilograms; or
 - (iv) in any other case — 300 kilograms;
- (c) if the aeroplane first became registered with the RAA or the HGFA on, or after, 1 March 1990:
 - (i) the aeroplane was privately built; and
 - (ii) the aeroplane has a wing loading not greater than 30 kilograms per square metre at maximum all-up weight; and

- (iii) if the aeroplane is owned by a person who is not the builder or 1 of the builders — a certificate is in force that has been issued by the RAA or the HGFA which certifies that the aeroplane meets the requirements set out in the RAA Technical Manual or the HGFA Operations Manual, as the case may be.

2 Definitions

2.1 In this Order:

aerial application operation has the same meaning as in regulation 137.010 of CASR.

approved kit means a kit for the assembly of an aeroplane, being a kit:

- (a) that was manufactured by the holder of a certificate of approval in relation to the manufacture of kits of that kind; or
- (b) that was manufactured in accordance with an approval given by CASA; or
- (c) if the kit was exported to Australia — in relation to which there has been issued, by the appropriate authority of the country from which the kit was exported, a certificate that is acceptable to CASA and that relates to the airworthiness of the aeroplane that can be assembled from the kit; or
- (d) in relation to which the RAA or the HGFA has issued a certificate stating that the kit meets the standards set out in the RAA Technical Manual or the HGFA Operations Manual, as the case may be.

closely-settled area, in relation to an aeroplane, means an area in which, because of:

- (a) man-made obstructions such as buildings and vehicles; and
- (b) the characteristics of the aeroplane;

the aeroplane could not be landed without endangering the safety of persons unconnected with the aircraft or damaging property in the area.

ELT means emergency locator transmitter.

HGFA means the Hang Gliding Federation of Australia Inc.

HGFA Operations Manual means the *HGFA Operations Manual* as it exists from time to time.

immediate family, in relation to a person, means the person's spouse, parents and children (if any).

Order means Civil Aviation Order.

person does not include a body corporate.

pilot certificate means a pilot certificate issued by the RAA or the HGFA in accordance with the RAA Operations Manual or the HGFA Operations Manual, as the case may be.

public road means a street, road, lane, thoroughfare or place open to, or used by, the public for passage of vehicles.

RAA means Recreational Aviation Australia Incorporated.

RAA Operations Manual means the *RAAus Operations Manual* as it exists from time to time.

RAA Technical Manual means the *RAAus Technical Manual* as it exists from time to time.

recognised standard part means a part specified in the list of standard parts for aeroplanes to which this Order applies that is included in the RAA Technical Manual or the HGFA Operations Manual.

suitable landing area means an area in which an aeroplane, to which this Order applies, can be landed without endangering the safety, or damaging the property, of persons unconnected with the aeroplane.

take-off weight, in relation to an aeroplane to which this Order applies, means the total weight of the aeroplane when it begins to taxi before taking off, including the weight of the pilot and of fuel, oil, recovery and personnel parachutes, flotation equipment, items of optional equipment, tools and baggage.

- 2.1A In this Order, a reference to a Class of airspace means the volumes of airspace of that Class, as determined by CASA in the *Determination of airspace and controlled aerodromes etc* instrument, as in force from time to time.

Note The Determination of airspace and controlled aerodromes etc is a legislative instrument that is revised and reissued by CASA approximately every 6 months. Airspace details from the Determination in force at any particular time are also published by Airservices Australia in the Designated Airspace Handbook.

- 2.2 Subject to paragraph 2.3, for this Order an aeroplane is privately built only if:
- (a) the aeroplane was built by a person, or was jointly built by not more than 4 persons, with a view to the aeroplane being owned by the person, or by 1 or more of the persons, who built it; and
 - (b) the person, or each of the persons, who built the aeroplane was, at the time of completion of the aeroplane, an eligible private builder; and
 - (c) the aeroplane:
 - (i) was designed by its builder, or by 1 or more of its builders; or
 - (ii) was built in accordance with a set of drawings or a data package, or a set of drawings and a data package, approved, in writing, by the RAA or the HGFA; or
 - (iii) was built from a kit approved by the RAA or the HGFA; and
 - (d) except in a case to which sub-subparagraph (c) (iii) applies — the parts from which the aeroplane was built (other than any recognised standard parts) were made by, or at the direction of, the person, or 1 or more of the persons, who built the aeroplane.
- 2.3 CASA may determine, in writing, that an aeroplane to which this Order would not otherwise apply:
- (a) substantially complies with specifications set out in this Order; and
 - (b) may safely be operated in accordance with its conditions.
- 2.4 The operator of an aeroplane, the subject of a determination under paragraph 2.3, may operate the aeroplane in accordance with this Order, subject to compliance with any additional condition that CASA mentions in that determination.
- 2.5 The RAA may exercise a power under this Order only in relation to an aeroplane that it is entitled to register.
- 2.5A The HGFA may exercise a power under this Order only in relation to a weight-shift controlled aeroplane that it is entitled to register.
- 2.6 For this Order, a person is, at the time the building of an aeroplane is completed, an eligible private builder only if the person has not, within the preceding 12 months, whether alone or jointly with another person or other persons,

completed building another low-momentum ultralight aeroplane that satisfies the requirements of subparagraph 3 (c).

3 Exemptions

If the conditions set out in this Order are complied with in relation to an aeroplane to which this Order applies, the aeroplane is exempt from compliance with Part 61 of CASR and the following provisions of CAR:

- (a) Parts 4, 4A, 4B, 4C and 4D;
- (b) subregulation 83 (1) in respect of VHF equipment;
- (c) regulations 133, 139, 155 and 157;
- (d) paragraph 166A (2) (f) in respect of powered parachutes;
- (e) Division 4 of Part 13;
- (f) regulations 207, 208 and 230;
- (g) subregulations 232 (2) and (5);
- (h) subregulation 242 (2);
- (i) regulations 252 and 258.

4 Licence not required

- 4.1 For section 20AB of the Act, a person is authorised to perform a duty essential to the operation of an aeroplane to which this Order applies without holding a flight crew licence if he or she complies with the conditions set out in subsections 5 and 6.
- 4.2 In spite of paragraph 4.1, a person who makes an airborne radio transmission on an aeronautical HF frequency must be authorised to transmit using an aeronautical radio under Part 61 or Part 64 of CASR.

5 General conditions

Subject to paragraph 8.5, the exemptions given by subsection 3, in relation to an aeroplane, are subject to the following general conditions:

- (a) there must be clearly displayed in the aeroplane, in a position visible to the pilot when occupying the control seat, a sign stating that:
 - (i) CASA does not guarantee the airworthiness of the aeroplane; and
 - (ii) whichever body registered the aeroplane, being the RAA or HGFA, does not guarantee the airworthiness of the aeroplane; and
 - (iii) the pilot operates the aeroplane at the pilot's own risk;
- (b) the aeroplane must not be used in aerial application operations;
- (c) the aeroplane must not be used for any purpose other than:
 - (i) the personal carriage of the pilot; or
 - (ii) the aerial inspection, conducted as a private operation, of stock, fencing or farm or pastoral equipment that is located on land owned by, or under the control of, the pilot or a member or members of the pilot's immediate family;

Note **Conduct as a private operation** means that no remuneration must be received by the pilot of the aircraft or the owner (subregulation 2 (7) of CAR).

- (d) the aeroplane must not be operated by a person as pilot in command unless the person:
 - (i) holds a valid pilot certificate; and

- (ii) subject to the other conditions set out in this Order, operates the aeroplane in accordance with the privileges and limitations of that certificate;
- (e) subject to the other conditions set out in this Order, the aeroplane must be operated in accordance with the requirements of the RAA Operations Manual or the HGFA Operations Manual, as the case may be;
- (f) the aeroplane must be maintained in accordance with the maintenance standards set out in the RAA Technical Manual or the HGFA Operations Manual, as the case may be.

6 Flight conditions

- 6.1 an aeroplane to which this Order applies may only be flown subject to the following conditions:
- (a) the aeroplane must not be flown at a height of less than 500 feet above ground level unless 1 of the conditions set out in paragraph 7.1 is complied with;
 - (b) subject to paragraph 7.3, the aeroplane must not be operated above a body of water at a horizontal distance from a suitable landing area of more than:
 - (i) the distance that the aeroplane can glide in the case of engine failure; or
 - (ii) if in accordance with paragraph 6.2 — 25 nautical miles;
 - (c) the aeroplane must only be flown in:
 - (i) Class G airspace; or
 - (ii) Class E airspace in V.M.C.; or
 - (iii) in accordance with paragraph 6.4 — Class A, B, C or D airspace;
 - (d) the aeroplane must not be flown inside an area designated as an area where the operation of low-momentum ultralight aeroplanes would constitute a hazard to other aircraft;
 - (e) the aeroplane must only be flown in V.M.C.;
 - (f) the aeroplane must only be flown during daylight hours;
 - (g) the aeroplane must not be flown over any closely-settled area;
 - (h) the aeroplane must not be flown in acrobatic flight;
 - (i) if the aeroplane is fitted with radiotelephone equipment, the radiotelephone equipment must not be used by a person unless the person:
 - (i) for a transmission mentioned in paragraph 4.2 — is authorised to transmit using an aeronautical radio under Part 61 or Part 64 of CASR; or
 - (ii) for a transmission using aeronautical VHF frequencies — holds a valid certificate issued by the RAA or the HGFA in accordance with the RAA Operations Manual or the HGFA Operations Manual, as the case may be, relating to the operation of radiotelephone equipment.
- 6.2 Subject to paragraph 6.3, an aeroplane to which this Order applies may be flown over a body of water up to a horizontal distance from a suitable landing area of not more than 25 nautical miles if:
- (a) the pilot is wearing a life jacket; and

- (b) the aeroplane is equipped with a serviceable radiocommunication system and:
 - (i) an approved ELT, or approved portable ELT, within the meaning of regulation 252A of CAR; or
 - (ii) a personal locator beacon that has been approved by CASA for use in that aeroplane on such flights.
- 6.3 In spite of the limit of 25 nautical miles mentioned in paragraph 6.2, an aeroplane to which that limit would otherwise apply may be flown between Tasmania and mainland Australia, in either direction by a longer route, if taking advantage of safer weather conditions.
- 6.4 An aeroplane to which this Order applies may be flown inside Class A, B, C or D airspace (the ***controlled airspace***) only if all of the following conditions are complied with:
 - (a) the aeroplane is approved under regulation 262AP of CAR in regard to flights over closely-settled areas;
 - (b) the aeroplane is fitted with an engine of a kind to which paragraph 6.1 of *Civil Aviation Amendment Order No. R94 2004* as in force from time to time applies, or that CASA has approved as being suitable for use in an aircraft to which this section applies, and is not subject to any conditions that would prevent the flight;
 - (c) the aeroplane is fitted with a radio capable of two-way communication with air traffic control;
 - (d) the aeroplane is flown by the holder of a pilot licence with an aeroplane category rating:
 - (i) issued under Part 61 of CASR; and
 - (ii) that allows the holder to fly inside the controlled airspace;
 - (e) the pilot has a valid flight review for the rating covering the class of the aeroplane in accordance with Part 61 of CASR;
 - (f) if the controlled airspace in which the aeroplane is operating requires a transponder to be fitted — the aeroplane is fitted with a transponder suitable for use in the airspace.

Note Operations in Class A airspace in V.F.R. are only possible in accordance with an approval issued by CASA under regulation 99AA of CAR.

7 Provisions relating to flight height limitations

- 7.1 For subparagraph 6.1 (a), an aeroplane to which this Order applies may be flown at less than 500 feet above ground level over land owned by a person (including the Crown) if:
 - (a) the aeroplane is flying in the course of actually taking off or landing;
 - (b) the aeroplane is flying over land that is owned by, or under the control of, the pilot; or
 - (c) the owner or occupier (including the Crown) of the land, or an agent or employee of the owner or occupier, has given permission for the flight to take place at such a height.
- 7.2 Except when taking off or landing, an aeroplane to which this Order applies that is flown at a height lower than 500 feet above ground level must be at a distance of at least 100 metres horizontally from:
 - (a) a public road; or

- (b) a person, other than a person associated with the operation of the aeroplane; or
 - (c) a dwelling, except with the permission of the occupier.
- 7.3 When taking off or landing an aeroplane to which this Order applies that is flown at a height of less than 500 feet above ground level the pilot must, during the take-off or landing, maintain a horizontal distance from a person or place referred to in subparagraph 7.2 (a), (b) or (c) that may be less than 100 metres but is:
 - (a) enough to avoid endangering any person or causing damage to any property; and
 - (b) as far as possible from such a person or place, having regard to carrying out a safe take-off or landing.
- 7.4 An aeroplane to which this Order applies may only be flown at a height of 5 000 feet above mean sea level or higher if it is equipped with serviceable radiotelephone equipment and the pilot is qualified to use it in accordance with subparagraph 6.1 (i).
- 7.5 An aeroplane to which this Order applies may only be flown at a height of more than 10 000 feet above mean sea level in accordance with an approval given by CASA under paragraph 8.3.

8 Approval of flights not complying with flight conditions

- 8.1 A person who wants to fly an aeroplane to which this Order applies, otherwise than in accordance with the flight conditions set out in subsections 5 and 6, may apply to CASA for approval of the flight.
- 8.2 The application must:
 - (a) be in writing; and
 - (b) include details of the proposed flight; and
 - (c) be made at least 28 days before the proposed flight.
- 8.3 CASA may, in writing, approve the application.
- 8.4 The approval:
 - (a) must specify which of the flight conditions set out in subsections 5 and 6 do not apply to the use, by the applicant, of the aeroplane in the proposed flight; and
 - (b) may specify conditions to be complied with in relation to the proposed flight.
- 8.5 If the proposed flight takes place in accordance with the approval (including any conditions specified in the approval in accordance with subparagraph 8.4 (b)), the use by the applicant of the aeroplane in the flight is not subject to the flight conditions specified in the approval in accordance with subparagraph 8.4 (a).

Note Definitions of some expressions used in this Order can be found in regulation 2 of CAR (subregulation 5 (2) of CAR provides for this). Expressions defined in regulation 2 include (for example) *acrobatic flight*, *agricultural operations* and *certificate of approval*.