**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**CASA EX55/18 — Flight in Certain Ultralight Aeroplanes in Rockhampton Class D Airspace (Peace Aviation) Exemption 2018**

**Purpose**

The purpose of this legislative instrument is to permit pilots to fly certain ultralight aircraft in class D airspace at Rockhampton aerodrome without meeting certain licensing and competency requirements under Part 61 of the *Civil Aviation Safety Regulations 1998* (***CASR***). The flights are limited to pilots operating aircraft under the control of Peace Aviation Pty Ltd (***Peace Aviation***).

**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. Relevantly, the Governor-General has made CASR and *Civil Aviation Regulations 1988* (***CAR***).

Civil Aviation Order 95.55 (***CAO 95.55***) provides exemptions that enable operation of certain ultralight aeroplanes under a less onerous regulatory scheme than that ordinarily applicable under CAR and CASR. Among other requirements, aeroplanes relying on the alternate scheme must be registered with Recreational Aviation Australia Limited (the ***RAAus***). The exemptions place a series of conditions on pilots who fly relevant aeroplanes in reliance on the exemptions. Notably for present purposes, subparagraphs 7.3 (d) and (e) of CAO 95.55 impose requirements for pilots to hold qualifications under Part 61 of CASR in order to fly the aeroplane in specified classes of airspace, including class D.

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 a Civil Aviation Order.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons.

Under subregulation 11.170 (3) of CASR, in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least 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.

Subsection 14 (1) of the *Legislation Act 2003* (the ***LA***) enables a legislative instrument to apply, adopt or incorporate any matter contained in another legislative instrument of a kind mentioned in subsection 14 (3), as the latter instrument is in force from time to time. Relevantly, the latter instrument must be a disallowable instrument.

Subsection 98 (5D) of the Act provides that, despite section 14 of the LA, 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.

**Background**

For an RAAus registered aeroplane to fly in Class A, C and D airspace, the pilot is required by subparagraphs 7.3 (d) and (e) of CAO 95.55 to meet specified requirements under Part 61 of CASR related to flight crew licensing. There are a limited range of circumstances in which CASA considers it appropriate to relax those Part 61 requirements in relation to the flight in controlled airspace of RAAus registered aeroplanes including, subject to conditions, flights in class D airspace at Rockhampton aerodrome.

**Instrument**

The instrument provides exemptions against the flight crew licensing requirements in subparagraphs 7.3 (d) and (e) in relation to the operation of certain aeroplanes under the control of Peace Aviation within class D airspace at Rockhampton aerodrome.

The exemptions will apply in relation to a “Peace Aviation aeroplane”, which is defined to be an aircraft of the kind mentioned in subsection 1 of CAO 95.55, that is available for use for flying training by Peace Aviation at Rockhampton aerodrome, and that is maintained by a person authorised by Peace Aviation. The intention of the definition is to limit the exemption to operations in aircraft that are under the control of Peace Aviation and to prevent, for example, the use of any aircraft that might be used from time to time by Peace Aviation for its flying training activities.

The exemptions cover Peace Aviation as the entity with control of the relevant aircraft as well as a “Peace Aviation pilot” and a “Peace Aviation restricted pilot”.

The term “Peace Aviation pilot” is defined for the instrument to be the holder of a “pilot certificate” issued by, or under the authority of RAAus. Such pilots are generally permitted to fly specified kinds of aeroplanes without supervision (but subject to the restrictions in CAO 95.55). However, the instrument will only permit such pilots to operate a Peace Aviation aeroplane in class D airspace at Rockhampton aerodrome, without complying with subparagraphs 7.3 (d) and (e) of CAO 95.55, in the circumstances permitted in the instrument, including in accordance with the conditions mentioned below.

In effect, the instrument permits flights in class D airspace by “Peace Aviation pilots” only if criteria specified in the instrument, which are intended to ensure that the flight can be conducted safely, have been met. This is the case even though these pilots are not supervised for the flight by Peace Aviation. The instrument will permit such pilots to hire and operate a Peace Aviation aeroplane for private use within class D airspace, subject to Peace Aviation checks and control.

The latter term, “Peace Aviation restricted pilot”, covers pilots who hold a “student pilot certificate” or another pilot qualification that is being converted to an RAAus issued pilot certificate after testing. Such pilots are only permitted to fly aeroplanes under supervision. In effect, the instrument permits flights by these pilots only under the supervision of Peace Aviation, and if criteria specified in the instrument, which are intended to ensure that the flight can be conducted safely, have been met.

The instrument, therefore, applies if Peace Aviation operates a Peace Aviation aeroplane in class D airspace at Rockhampton aerodrome as part of a flying training activity being flown by a Peace Aviation restricted pilot, or if it authorises the use of such an aeroplane in an operation conducted by a Peace Aviation pilot in class D airspace.

The exemption is subject to the conditions mentioned in sections 6 to 9 of the instrument. Subsection 6 (1) imposes conditions on Peace Aviation to ensure that the relevant pilot meets specified competency requirements that ensure that the pilot can fly safely in class D airspace at Rockhampton. Flight training schools operating in controlled airspace are required to train student pilots to the competencies of Part 61 MOS, mentioned in the instrument, before they are sent solo for the first time. The Peace Aviation CFI will be required to make an assessment of the same competencies in relation to pilots that are not former student pilots of Peace Aviation, for example through ground briefings and dual training flights. It is the responsibility of Peace Aviation to ensure that the CFI appropriately assesses pilots, and notates the existence of the required competencies.

Subsection 6 (2) imposes conditions on the pilot not to fly in class D airspace unless the pilot meets specified medical certification and aeronautical radio licensing requirements.

Subsection 7 (1) of the instrument imposes a condition on Peace Aviation to ensure that its chief flying instructor (the ***CFI***) authorises pilots before they commence a flight in class D airspace at Rockhampton aerodrome. That authorisation must be in writing.

Subsection 7 (2) imposes a condition on Peace Aviation to ensure that, before any particular pilot first operates a Peace Aviation aircraft in class D airspace, its CFI provides training to the pilot on the local procedures at Rockhampton aerodrome for the use of class D airspace. The subsection also requires Peace Aviation to ensure that the CFI makes specified notations in the pilot’s logbook before the pilot’s first flight in the airspace, covering the training on local procedures, the CFI’s authorisation for the flight and the attainment of the particular competencies mentioned in paragraph 6 (1) (a).

Section 8 of the instrument imposes a condition on Peace Aviation in relation to the reporting of accidents and incidents under the *Transport Safety Investigation Act 2003*. Any such report must be copied to CASA.

Section 9 of the instrument imposes conditions on Peace Aviation in relation to record keeping and access to records related to the instrument. The condition is required to ensure that CASA can adequately monitor compliance with the instrument in the interests of safety.

The instrument incorporates by reference requirements of the *Part 61 Manual of Standards Instrument 2014* (***Part 61 MOS***), as in force from time to time. The Part 61 MOS is a disallowable instrument that prescribes requirements for Part 61 of CASR relating to pilot licensing. It is freely viewable on the Federal Register of Legislation (***FRL***).

The instrument also incorporates by reference provisions of CAO 95.55, as the CAO is in force from time to time, and also incorporates provisions of any instrument that remakes CAO 95.55, as the remade instrument is in force from time to time. CAO 95.55, described above, is a disallowable instrument that is freely viewable on the FRL.

The instrument also incorporates by reference matter in the *Determination of airspace and controlled aerodromes etc.* (the ***Determination***), as in force from time to time. The Determination prescribes volumes of classes of airspace and is a legislative instrument made under section 5 of the *Airspace Regulations 2007*. By operation of regulations made for the purpose of paragraph 44 (2) (b) of the LA, the Determination is not a disallowable instrument and is, therefore, not subject to the permission in section 14 of the LA mentioned above. However, the Determination may be applied, adopted or incorporated, as in force from time to time, in accordance with subsection 95 (5D) of the Act. The Determination is freely viewable on the FRL.

***Legislation Act 2003***

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. Additionally, paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument exempts a class of persons from complying with subparagraphs 7.3 (d) and (e) of CAO 95.55. 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 substantively affects the business of Peace Aviation. CASA consulted Peace Aviation on a draft of the instrument and Peace Aviation expressed satisfaction with its wording. The instrument also affects the management of class D airspace by Airservices Australia (***AA***). CASA consulted with AA on the proposal, which agreed to the instrument subject to pilots receiving training on airspace procedures in class D airspace at Rockhampton. CASA has drafted this requirement into the instrument. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument 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 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 Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after it is registered and is repealed at the end of 30 April 2021.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

***CASA EX55/18 — Flight in Certain Ultralight Aeroplanes in Rockhampton Class D Airspace (Peace Aviation) Exemption 2018***

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 permits pilots to fly certain ultralight aircraft in class D airspace at Rockhampton aerodrome without meeting certain competency requirements under Part 61 of the *Civil Aviation Safety Regulations 1998*. The flights are limited to pilots operating aircraft under the control of Peace Aviation Pty Ltd.

**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**