

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX60/22 — Hang Gliding and Paragliding Operations Within Active Restricted Airspace (Hooley Dooley) Exemption 2022

Purpose

The purpose of *CASA EX60/22 — Hang Gliding and Paragliding Operations Within Active Restricted Airspace (Hooley Dooley) Exemption 2022* (the **instrument**) is to allow pilots who are members of both the Newcastle Paragliding Club Incorporated (the **Club**) and the Sports Aviation Federation of Australia Limited (**SAFA**) to operate a hang glider or paraglider within military restricted airspace at Williamtown, New South Wales, in accordance with an agreement with the controlling authority for the restricted airspace, the Williamtown Defence authority.

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 the *Civil Aviation Safety Regulations 1998* (**CASR**).

Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021 (**CAO 95.8**) applies to hang gliders and paragliders where these aircraft are used in private operations (**relevant aircraft**). CAO 95.8 exempts pilots of relevant aircraft from various requirements, prescribed in CAR and CASR, for licensing, airworthiness, maintenance and operations.

The exemptions provided by CAO 95.8 are subject to a range of conditions further prescribed in CAO 95.8. In particular, sub-subparagraph 10.1 (k) (iii) of CAO 95.8 provides that a relevant aircraft may only be flown in Class C or D airspace that is not below 300 feet above ground level and within 10 nautical miles of a controlled aerodrome if in accordance with paragraph 10.2. Subparagraph 10.2 (a) of CAO 95.8 states that a person must not operate a relevant aircraft in Class C or D airspace or a restricted area unless the person: holds a pilot licence with an aircraft category rating, the valid privileges of which include operating in controlled airspace and at a controlled aerodrome; and has a valid flight review for the aircraft class rating in accordance with Part 61 of 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, the Civil Aviation Safety Authority (**CASA**) may grant an exemption from compliance with 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, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.175 (4) of CASR, in deciding whether to reissue 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.

Under subsection 14 (1) of the *Legislation Act 2003* (the **LA**), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time.

Background

CASA originally issued an exemption from equivalent provisions of *Civil Aviation Order 95.8 Instrument 2011* under instrument CASA EX43/14. This exemption was renewed under instrument CASA EX161/16, which was repealed at the end of 31 October 2019. After that time, there was also a change of ownership of the land where the Hooley Dooley launch site is located, and the Club had to renegotiate with the new owners for permission to use the site. CAO 95.8 replaced *Civil Aviation Order 95.8 Instrument 2011* on 2 December 2021. The Club has now applied for an equivalent exemption, with substantially similar conditions, to instrument CASA EX161/16, so that its members may resume operation of relevant aircraft within restricted military airspace in Williamstown. The Club has negotiated a Letter of Agreement with the Williamstown Defence authority regarding the operation of relevant aircraft within the restricted airspace.

Pilots who are members of the Club previously operated from Hooley Dooley launch site within the boundary of Williamstown military restricted airspace on weekends, when control of that airspace was deactivated. The airspace is now active restricted airspace on weekends, and the Club seeks the exemption so that its pilots may operate on each day of the week.

Currently, Club pilots are not authorised to operate in the airspace without complying with the pilot licensing requirements prescribed under subparagraph 10.2 (a) of CAO 95.8 and Part 61 of CASR, which are requirements not ordinarily applied to hang glider and paraglider pilots.

Overview of instrument

The instrument applies to pilots who are members or guest members of the Club and who are also members of SAFA, where the pilot is operating a hang glider or paraglider within active military restricted airspace at Williamstown, New South Wales.

This instrument exempts these pilots from the Part 61 requirements mentioned in subparagraph 10.2 (a) of CAO 95.8 when operating within the boundary of the military restricted airspace at Williamstown.

For the exemption to apply, the Club must have also signed an agreement with the Williamstown Defence authority governing the conduct of the operations within the active military restricted airspace. In addition, the exemption will only apply if the Williamstown Defence authority and Williamstown air traffic control have approved the operation.

The exemption is stated to be subject to conditions, set out in the instrument. CASA is satisfied that an acceptable level of aviation safety is preserved through the conditions and the requirement for the Club to have signed an agreement with the Williamstown Defence authority governing the conduct of the operations within the active military restricted airspace.

Documents incorporated by reference

This instrument incorporates CAO 95.8, (see definitions of **CAO 95.8** and **relevant aircraft** and section 6 of the instrument where the exemption is expressed as being from compliance with sub-subparagraph 10.1 (k) (iii) of CAO 95.8).

The instrument also incorporates the instrument made by CASA for regulation 6 of the *Airspace Regulations 2007* (see definitions of **active restricted area** and **Williamstown Defence authority**).

Both of these instruments are legislative instruments. A reference to each is, by virtue of section 10 of the *Acts Interpretation Act 1901* and section 13 of the LA, a reference to the instrument as originally made and as amended from time to time. Their incorporation in the instrument is authorised by paragraph 14 (1) (a) of the LA. As legislative instruments, both of these documents are freely available at the Federal Register of Legislation website.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument, which commences on the day after it is registered and is repealed at the end of 31 July 2025.

Section 3 sets out definitions used in the instrument. **Hooley Dooley launch site** is defined by reference to a series of coordinates located in the State of New South Wales.

Section 4 sets out the application of the instrument. Paragraph (a) provides that the instrument applies to a pilot if a written agreement exists between the Club and the Williamstown Defence authority for the conduct of the operation of a relevant aircraft from the Hooley Dooley launch site within the active restricted area. Paragraph (b) provides that the instrument applies if the pilot:

- (i) is a member or guest member of the Newcastle Paragliding Club Incorporated; and
- (ii) is a financial member of SAFA; and
- (iii) holds the following qualifications issued by SAFA:
 - (A) a valid pilot certificate, not being a student pilot certificate;
 - (B) a valid Flight Radio Operator's Licence or a valid Radio Operator's Endorsement.

Section 5 sets out the exemption. It provides that the pilot is, when conducting an operation in a relevant aircraft from the Hooley Dooley launch site, exempt from complying with sub-subparagraph 10.1 (k) (iii) of CAO 95.8, to the extent that the pilot is required to hold the qualifications in subparagraph 10.2 (a) of CAO 95.8.

Section 6 provides that the exemption is subject to the conditions in Schedule 1.

Schedule 1 sets out the conditions on the exemption. Among other matters, before commencing operations, the pilot must register with a Club official and be briefed on the conditions of the instrument by the Club's Duty Pilot. There are altitude and geographical limits on the operations within the military restricted airspace and an altitude limit within 5 nautical miles of the airspace boundary. The altitude limit within 5 nautical miles of the airspace boundary does not displace the requirement when operating within restricted airspace to remain within 2 nautical miles of the launch site. There are also conditions related to the carriage and use of a VHF radio, and a procedure in the event of radio failure.

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 applies to a class of persons engaged in hang gliding and paragliding 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.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, this instrument will be repealed at the end of 31 July 2025, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

The instrument is similar in effect to instrument CASA EX161/16, which was repealed at the end of 31 October 2019. The Club applied to CASA for a new instrument after consulting with the Williamstown Defence authority and SAFA. The Williamstown Defence authority has drafted a new Letter of Agreement to approve the Club to operate along the north-western boundary of the restricted airspace, and SAFA has confirmed its continuing support for the exemption.

Members of the Club have previously operated from Hooley Dooley launch site without incident, and continue to engage with the Williamstown Defence authority in planning their operations. Having regard to these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and

(b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

As the instrument replaces an expired instrument with the same (or largely the same) provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The instrument is likely to have a beneficial effect on hang gliding and paragliding operations and related businesses by promoting those operations and encouraging the use of equipment offered for sale or hire by those businesses.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on the regional community around Williamtown in which the operations will be held because it will lead participants in, and spectators of, the events to visit that community.

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*.

Making and commencement

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

The instrument commences on the day after it is registered and is repealed at the end of 31 July 2025.

Statement of Compatibility with Human Rights

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

CASA EX60/22 — Hang Gliding and Paragliding Operations Within Active Restricted Airspace (Hooley Dooley) Exemption 2022

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 instrument applies to pilots who are members or guest members of the Newcastle Paragliding Club Incorporated (the **Club**) and who are also members of the Sports Aviation Federation of Australia Limited (**SAFA**), where the pilot, having launched a glider or paraglider from a launch site known as “Hooley Dooley”, is operating a hang glider or paraglider within active military restricted airspace at Williamtown, New South Wales.

This instrument exempts these pilots from the Part 61 requirements mentioned in sub-subparagraph 10.1 (k) (iii) of CAO 95.8 when operating within the boundary of the military restricted airspace at Williamtown.

For the exemption to apply, the Club must have also signed an agreement with the Williamtown Defence authority governing the conduct of the operations within the active military restricted airspace. In addition, the exemption will only apply if the Williamtown Defence authority and Williamtown air traffic control have approved the operation.

The exemption is stated to be subject to conditions, set out in the instrument. Among other matters, the pilot must have a pilot certificate and radio operator qualifications that have been issued by SAFA. Before commencing operations, the pilot must register with a Club official and be briefed on the conditions of the instrument by the Club’s Duty Pilot. There are altitude and geographical limits on the operations within the military restricted airspace and an altitude limit within 5 nautical miles of the airspace boundary. The altitude limit within 5 nautical miles of the airspace boundary does not displace the requirement when operating within restricted airspace to remain within 2 nautical miles of the launch site. There are also conditions related to the carriage and use of a VHF radio, and a procedure in the event of radio failure.

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