

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX08/24 — The Bright Open Instrument 2024

##### Purpose

The purpose of *CASA EX08/24 — The Bright Open Instrument 2024* (the *instrument*) is to enable participants in that paragliding competition (the *event*) to fly a paraglider at a particular location and height without complying with particular regulatory requirements relating to the carriage and use of an aircraft very high frequency (*VHF*) radio.

The regulatory requirements mentioned in the preceding paragraph are located in:

- (a) regulations 91.400, 91.630 and 91.640 of the *Civil Aviation Safety Regulations 1998* (*CASR*); and
- (b) the following provisions of *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021 (CAO 95.8)*:
  - (i) to the extent that the subparagraph may require the carriage or use of a VHF radiocommunication system — subparagraph 10.3(a);
  - (ii) subparagraph 10.4(b).

The instrument is necessary because paragliders are not typically equipped with VHF radio equipment. However, during the event paragliders will be flown in the vicinity of Wangaratta aerodrome and above 5 000 feet above mean sea level (*AMSL*), which requires the carriage and use of VHF radio equipment.

The instrument also enables 4 holders of a radio operator endorsement issued by Sports Aviation Federation of Australia Limited (*SAFA*) to each transmit on a radio frequency while operating a ground communication station for the event.

The instrument also requires SAFA to ensure that one of the holders of such an endorsement maintains a listening watch on appropriate VHF frequencies whenever flights are taking place for the purpose of the event.

The instrument contains conditions and directions imposed by the Civil Aviation Safety Authority (*CASA*) in the interest of the safety of air navigation.

##### 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 the *Civil Aviation Regulations 1988* (*CAR*).

##### CASR — Exemptions (Subpart 11.F)

Each provision mentioned in this section is a provision of *CASR*.

Subpart 11.F provides for the granting of exemptions from particular provisions of the regulations or the Civil Aviation Orders (*CAOs*). Within Division 11.F.1, subregulation 11.160(1) provides that, for subsection 98(5A) of the Act, *CASA* may, by

instrument, grant an exemption from compliance with a provision of the regulations or of a CAO in relation to a matter mentioned in that subsection.

Under subregulation 11.160(2), CASA may grant an exemption 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 11.160(3), CASA may grant an exemption on application by a person or on CASA's own initiative.

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

Under subregulation 11.205(1), CASA may impose on an exemption under Subpart 11.F any condition necessary in the interests of the safety of air navigation. Under regulation 11.210, failure to comply with a condition of an exemption is a strict liability offence.

Under regulation 11.225, an exemption must be published on the internet. Under subregulation 11.230(1), the maximum duration of an exemption is 3 years.

#### CASR — Directions (Subpart 11.G)

Each provision mentioned in this section is a provision of CASR.

Subpart 11.G provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245(1)(a), CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft.

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

Under regulation 11.250, a direction under regulation 11.245 ceases to be in force on the day specified in the direction or, if no day is specified, 1 year after the day it commences. Under regulation 11.255, it is a strict liability offence for a person to contravene a direction under regulation 11.245 that is applicable to the person.

#### Parts 91 and 103 of CASR, along with the Part 91 MOS

Unless otherwise stated, each provision mentioned in this section is a provision of CASR.

Under regulation 91.400, the pilot in command of an aircraft for a flight commits a strict liability offence if:

- (a) the aircraft is operating on the manoeuvring area of, or in the vicinity of, a certified aerodrome (among other kinds of aerodrome); and
- (b) the aerodrome is a non-controlled aerodrome; and
- (c) if the aircraft is not carrying an operative radio — unless either subregulation 91.400(3) or (4) is satisfied.

Under regulation 91.625, a person commits a strict liability offence if:

- (a) the person transmits on a radio frequency published in the Aeronautical Information Publication or Notices to Airmen (*NOTAMS*) that is:
  - (i) used by Air Traffic Services; or
  - (ii) used for communications at a certified aerodrome (among other kinds of aerodromes); and
- (b) the person is not authorised or qualified to do so, relevantly:
  - (i) for an Australian aircraft (other than a Part 103 aircraft) — under Part 61, 64 or 65; or
  - (ii) for a Part 103 aircraft — by a Part 103 Approved Self-Administering Aviation Organisation (*ASAO*).

Under subregulation 103.005(4), an aircraft is a *Part 103 aircraft* if the aircraft is:

- (a) not registered; and
- (b) any of several kinds of aircraft listed in paragraph 103.005(4)(b) including, relevantly in subparagraph (b)(iv), a paraglider.

Under regulation 91.630, the pilot in command of an aircraft for a flight commits a strict liability offence if:

- (a) the aircraft is fitted with, or carries, a radio; and
- (b) during the flight, the pilot in command does not make a broadcast or a report relating to the flight that is prescribed by the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020 (Part 91 MOS)* for paragraph 91.630(1)(b).

Section 21.02 of the Part 91 MOS sets out the purpose of Division 21.2 of the Part 91 MOS. Specifically, section 21.02 provides that, for paragraph 91.630(1)(b), Division 21.2 of the Part 91 MOS prescribes broadcasts and reports relating to a flight that the pilot in command of an aircraft fitted with or carrying a radio must ensure are made during the flight.

Sections 21.03 to 21.09 of the Part 91 MOS prescribe broadcasts and reports of various kinds for paragraph 91.630(1)(b). However, it is not necessary to describe the effect of those sections of the Part 91 MOS in this Explanatory Statement because the instrument exempts the pilot in command of a paraglider from compliance with regulation 91.630 as a whole.

Under regulation 91.640, the pilot in command of an aircraft for a flight commits a strict liability offence if:

- (a) the aircraft is fitted with, or carries, a radio; and
- (b) the aircraft is flown by a pilot who is qualified, eligible or authorised to use the radio, relevantly:
  - (i) for an Australian aircraft (other than a Part 103 aircraft) — under Part 61 or 64; or
  - (ii) for a Part 103 aircraft — by a Part 103 ASAO; and
- (c) the aircraft is outside controlled airspace; and
- (d) radio transmissions are not continuously monitored by, relevantly in subparagraph 91.640(d)(i), the pilot in command of the aircraft for the flight.

#### Part 149 of CASR and related definitions

Unless otherwise stated, each provision mentioned in this section is a provision of CASR.

Part 1 of the CASR Dictionary includes the following definitions:

- **ASAO** (short for approved self-administering aviation organisation) means a person who holds an ASAO certificate that is in force;
- **ASAO certificate** means a certificate issued by CASA under regulation 149.075;
- **exposition**, relevantly at paragraph (b) for an ASAO, means:
  - (i) the set of documents approved by CASA under regulation 149.080 in relation to the ASAO; or
  - (ii) if the set of documents is changed under regulation 149.115 or 149.120, or in accordance with the process mentioned in paragraph 149.340(i) — the set of documents as changed.

Under regulation 149.080, if CASA issues an ASAO certificate to the applicant, CASA is taken to have also approved the applicant’s proposed exposition.

Regulation 149.115 relates to applying to CASA for approval of an exposition, and the related decision-making process.

Under subregulation 149.120(1), if CASA is satisfied that it is necessary in the interests of aviation safety, CASA may, by written notice given to an ASAO, direct the ASAO to change the ASAO’s exposition in the ways described in paragraphs (1)(a), (b) or (c).

Under subregulation 149.120(2), CASA may, by written notice given to an ASAO, direct the ASAO to remove any of the key personnel of the ASAO from the person’s position if CASA is satisfied that the person is not meeting a requirement mentioned in paragraph (2)(a) or (b).

Under regulation 149.340, an exposition for an ASAO must include, relevantly in paragraph (i), the ASAO’s process for managing changes to the ASAO’s exposition that do not require approval by CASA, including:

- (i) procedures for notifying the ASAO’s personnel and CASA of such changes; and
- (ii) the period within which such changes are to be so notified.

### CAO 95.8

Unless otherwise stated, each provision mentioned in this section is a provision of CAO 95.8.

CAO 95.8 applies to, relevantly, paragliders that are employed in private operations because of the combined effect of:

- (a) subparagraph (c) of the application provision in subsection 4; and
- (b) the definition of **relevant aircraft** in paragraph 5.1.

Paragraph 8.1 provides that a “person who would, but for this subsection, have an obligation under the **exempted provisions** in relation to a relevant aircraft is exempt from complying with the obligation if the person complies with the conditions in this Order.”.

Paragraph 8.2 provides that, in paragraph 8.1, **exempted provisions** means a range of provisions listed in paragraphs (a) and (b). Those provisions include, relevantly in sub-subparagraph (b)(i), regulation 91.625 of CASR.

Paragraph 10.1 sets out flight conditions that apply in relation to a relevant aircraft. Under subparagraph 10.1(k), a relevant aircraft may only be flown in:

- (i) Class E or G airspace; or
- (ii) Class C or D airspace that is below 300 feet above ground level and not within 10 nautical miles of a controlled aerodrome; or
- (iii) Class C or D airspace to which sub-subparagraph (ii) does not refer, or a restricted area — if in accordance with paragraph 10.2.

Under subparagraph 10.3(a), a relevant aircraft must not be flown at a height of 5 000 feet AMSL or higher unless it is equipped with, or carries, serviceable radiocommunications equipment.

Under subparagraph 10.4(b), any radiocommunications equipment fitted to, or carried by, a relevant aircraft must not be used by a person unless, in any case other than the transmission in VHF frequency, the person is authorised or qualified to transmit in the relevant frequency in accordance with regulation 91.625 of CASR.

The *Legislation Act 2003* (the *LA*) and the Act

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 – pilots in command of paragliders participating in the Bright Open 2024 during the event period – from compliance with particular provisions of CASR and CAO 95.8. 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.

Under subsection 14(1) of 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. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the LA, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, 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.

As the instrument relates to aviation safety and is made under CASR, the sunset provisions in Part 4 of Chapter 3 of the LA do not apply to the instrument — see 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 16 May 2024, which will occur before the sunset 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 sunseting does not affect parliamentary oversight of this instrument.

### **Background**

The event is scheduled to be held at Bright, Victoria from 10 to 16 February 2024. The event is organised by SAFA members and has been endorsed by SAFA.

Event flights are planned to take place within Class G airspace, originating from one of 3 designated launch sites (each defined in the instrument). Participants are expected to reach altitudes above 5 000 feet AMSL during the event, up to a maximum of 8 500 feet AMSL (within Class G airspace). Paragliders will be operating in the vicinity of Wangaratta aerodrome, which is a certified, non-controlled aerodrome.

Since 2018, CASA has made similar instruments for the event – most recently *CASA EX11/23 – The Bright Open Instrument 2023 (CASA EX11/23)*.

Registration for the event is open to up to 100 paraglider SAFA Pilot Certificate holders from PG4 level and above. Paragliders are not typically equipped with VHF radio apparatus and generally do not operate in airspace or in areas where such radios are required. The event represents an exception to that circumstance. Paragliders are more commonly flown with ultra-high frequency (*UHF*) radio equipment.

CASA EX11/23 required particular actions to be carried out in accordance with the *SAFA Operations Manual* or the *SAFA Qualifications and Training Manual*. From 2 December 2023, after CASA EX11/23 was made, SAFA began operating under an ASAO certificate. Consequently, during the event period the *SAFA ASAO exposition* will apply instead of those manuals in relation to:

- (a) the issue by SAFA of a radio operator endorsement; and
- (b) the requirements in accordance with which a pilot in command must operate.

To ensure the safety of the participants, CASA's Office of Airspace Regulation has declared the event area to be a Temporary Danger Area during the event period.

### **Overview of instrument**

The instrument is intended to enable:

- (a) participants in the event to fly a paraglider in the vicinity of Wangaratta aerodrome, Victoria, and at or above a height of 5 000 feet AMSL, without complying with regulatory requirements relating to the carriage of an aircraft VHF radio; and
- (b) 4 holders of a radio operator endorsement issued by SAFA to each transmit on a radio frequency while operating a ground communications station for the event.

The instrument also requires SAFA to ensure that one of the holders of such an endorsement maintain a listening watch on appropriate VHF frequencies whenever flights are taking place for the purpose of the event.

This is because the instrument includes a direction to SAFA to comply with the requirements mentioned in Schedule 1 to the instrument. Those requirements relate to the running of the event and include the requirements that SAFA must ensure that:

- (a) a danger area is active for the event that covers the event operations on that day;
- (b) during the event an effective ground communications station is maintained that is active on relevant UHF and certain VHF frequencies.

The instrument also imposes conditions on the exemption granted to pilots in command. These conditions, that are set out in Schedule 2 to the instrument, include the requirements that:

- (a) each pilot in command holds the qualifications necessary to participate in the event; and
- (b) their paragliders are equipped with a serviceable UHF radiocommunication system.

The requirements of the direction, and the conditions imposed on the exemption, are described in more detail below.

CASA has assessed SAFA's application for the instrument including, but not limited to, a risk assessment provided by SAFA. Based on that assessment, CASA is satisfied that there are no adverse safety implications in relation to issuing the direction or granting the exemptions.

#### **Documents incorporated by reference**

Subsection 6(1) of the instrument incorporates by reference the content of the SAFA ASAO exposition, as existing at the time this instrument commences, in relation to issuing a radio operator endorsement.

The condition in paragraph 4(b) of Schedule 2, incorporates by reference the content of the SAFA ASAO exposition, as existing at the time this instrument commences, in relation to the way a pilot in command is required to operate.

The SAFA ASAO exposition is composed of the set of documents set out in the following table. While the SAFA ASAO exposition will be available to SAFA members in the members only area of the SAFA website, it will not be freely available on the internet.

However, CASA can, upon request, provide a copy of the SAFA ASAO exposition free of charge.

<b>Item</b>	<b>Document</b>
1	<i>The Sports Aviation Federation of Australia Limited (SAFA) Abbreviations, Acronyms and Definitions Manual</i>
2	<i>The Sports Aviation Federation of Australia Limited (SAFA) Audit &amp; Surveillance Manual</i>
3	<i>The Sports Aviation Federation of Australia Limited (SAFA) Authorisations Manual</i>
4	<i>The Sports Aviation Federation of Australia Limited (SAFA) Enforcement and Disciplinary Procedures Manual</i>
5	<i>The Sports Aviation Federation of Australia Limited (SAFA) Management of Change Manual</i>
6	<i>The Sports Aviation Federation of Australia Limited (SAFA) Operations Manual</i>

<b>Item</b>	<b>Document</b>
7	<i>The Sports Aviation Federation of Australia Limited (SAFA) Organisation &amp; Personnel Manual</i>
8	<i>The Sports Aviation Federation of Australia Limited (SAFA) Principal Exposition Document</i>
9	<i>The Sports Aviation Federation of Australia Limited (SAFA) Qualifications Manual</i>
10	<i>The Sports Aviation Federation of Australia Limited Registrations, Records &amp; Retention Manual</i>
11	<i>The Sports Aviation Federation of Australia Limited (SAFA) Safety Management System Manual</i>
12	<i>The Sports Aviation Federation of Australia Limited (SAFA) Technical Manual Maintenance &amp; Standards</i>
13	<i>The Sports Aviation Federation of Australia Limited (SAFA) Towing Procedures Manual &amp; Training Syllabus</i>
14	<i>The Sports Aviation Federation of Australia Limited (SAFA) Training Manual</i>

### ***Content of instrument***

Section 1 names the instrument.

Section 2 sets out the duration of the instrument.

The note located immediately below section 2 sets out when the provisions of the instrument apply and cease to be in force. In particular, the note confirms that, and explains why, the direction in section 4 of the instrument continues to be in force until the instrument is repealed.

Section 3 contains definitions.

The note located immediately below the heading of section 3 is a signpost note, intended to assist users of the instrument to identify particular defined terms located in the Act or the regulations.

The note located immediately below the definition of ***Wangaratta aerodrome*** is intended to clarify that, although that definition mentions a CASA registration number, Wangaratta aerodrome is, in accordance with the provisions mentioned in the note, taken to be a certified aerodrome at the time the instrument is made.

Section 4 directs SAFA, under regulation 11.245 of CASR, to comply with the requirements mentioned in Schedule 1 to the instrument.

Subsection 5(1) provides an exemption for the pilot in command of a paraglider, when participating in the event during the event period, from compliance with:

- (a) regulations 91.400, 91.630 and 91.640 of CASR; and
- (b) the following provisions of CAO 95.8:
  - (i) to the extent that the subparagraph may require the carriage or use of a VHF radiocommunication system — subparagraph 10.3(a);
  - (ii) subparagraph 10.4(b).



The note located immediately below subsection 5(1) is a signpost note, intended to assist users of the instrument to identify a provision in CAO 95.8 that exempts persons from obligations under other provisions of CAR and CASR – including regulation 91.625 of CASR – in relation to, relevantly, paragliders employed in private operations.

Subsection 5(2) provides that the exemption in subsection 5(1) is subject to complying with the conditions mentioned in Schedule 2.

Subsection 5(3) provides that subsection 5(1) applies to the pilot in command of a paraglider whether or not the paraglider is equipped with a VHF radiocommunication system.

Under subsection 6(1), the exemption in subsection 6(2) applies if the 4 individuals named in that subsection is each the holder of a radio operator endorsement issued by SAFA in accordance with the *SAFA ASAO exposition*, as it exists at the time the instrument commences.

Subsection 6(2) exempts each of those 4 named individuals from compliance with regulation 91.625 of CASR when transmitting on a radio frequency while operating a ground communications station in accordance with clause 1 of Schedule 1.

#### *Schedule 1 — Requirements for direction*

Schedule 1 to the instrument sets out, for the direction in section 4, requirements that SAFA must comply with. Those requirements are intended to ensure that SAFA establishes a satisfactory support system to mitigate the safety risks associated with the operation of paragliders without a serviceable VHF radio during the event.

The requirements in clause 1 of Schedule 1 apply for each day of the event. They require SAFA to ensure the following, mentioned in paragraphs 1(a) to (h):

- (a) that a danger area is active in the airspace where the event is conducted on that day;
- (b) if flight from one or more of 3 launch sites (each defined in the instrument) is required on the day — that the Competition Director gives the air traffic control tower at Albury aerodrome sufficient notice about each launch site that will be used for the event on that day;
- (c) that an effective ground communications station is established and maintained that covers:
  - (i) the area within 15 nautical miles of the paragliders participating in the event; and
  - (ii) if a paraglider participating in the event is in the vicinity of Wangaratta aerodrome — the area in the vicinity of Wangaratta aerodrome;
- (d) that one of 4 named individuals maintains a listening watch on appropriate VHF frequencies whenever flights are taking place for the purpose of the event;
- (e) that the Competition Director, or another competent person, operates the appropriate UHF frequencies whenever flights are taking place for the purpose of providing traffic, weather and other relevant information to event participants;
- (f) that a ground communications station advises aircraft not participating in the event, at intervals of no more than 30 minutes, of the particular information about the event listed in subparagraphs (h)(i) to (iv).

The note located immediately below clause 1 of Schedule 1 is composed of information provided to CASA by the event organiser. The note is intended to clarify that, although it is possible that more than one launch site will be used during an event day, two or more launch sites will not be used at the same time. The reasons that a launch site may change during an event day include, but may not be limited to, a change in wind direction.

Clause 2 of Schedule 1 contains further requirements for the ground communications station mentioned in clause 1. It must be supported by available back-up radios and batteries. The communications station must be active on several relevant frequencies commencing 30 minutes before event flights begin on each day of the event and continuing for the duration of event flights.

Clause 3 of Schedule 1 provides that a hand-held VHF radio without an external antenna is not an effective ground communications station.

Clause 4 of Schedule 1 requires SAFA to ensure that, at least 5 days before the commencement of the event period, the Competition Director gives CASA specified information about event operations, which CASA will incorporate into a NOTAM to be published by Airservices Australia.

Clause 5 of Schedule 1 requires SAFA to ensure that, before the first paraglider flight on each day of the event, a briefing is provided to event participants that addresses the matters mentioned in paragraphs 5(a) to (f) and, under paragraph 5(g), any other matters that SAFA considers appropriate to promote the safety of the event.

Clause 6 of Schedule 1 requires SAFA to ensure that, for each day of the event, the Competition Director records the name of each event participant attending the daily briefing, and that SAFA retains the record for a period of 3 months from the end of the event period.

Clause 7 of Schedule 1 requires SAFA to ensure that each event participant is, before first operating a paraglider during the event period for the purpose of an event, provided with a diagram of air traffic routes in the area where the event is conducted.

#### *Schedule 2 — Conditions on exemption*

Schedule 2 to the instrument contains conditions on the exemption in subsection 5(1) of the instrument that pilots in command of paragliders participating in the event must comply with.

Clause 1 of Schedule 2 requires the paraglider to be equipped with a serviceable UHF radiocommunication system.

Clause 2 of Schedule 2 requires that, if the UHF radio becomes unserviceable, the pilot in command must cease the flight as soon as safely practicable.

Clause 3 of Schedule 2 provides that pilots in command may conduct a flight to which the exemption applies only if satisfied that:

- (a) the ground communications station has been established and is operating satisfactorily; and
- (b) the NOTAM has been published; and

- (c) the danger area mentioned in paragraph 1(a) of Schedule 1 is active; and
- (d) for a flight from any of the 3 launch sites defined in the instrument — the Competition Director has notified the air traffic control tower at Albury aerodrome in accordance with paragraph 1(b), (c) and (d) of Schedule 1.

Clause 4 of Schedule 2 requires pilots in command to attend the daily briefing mentioned in the directions to SAFA and, under paragraph (b), to operate in accordance with the *SAFA ASAO exposition* as it exists from time to time. Among other things, the *SAFA ASAO exposition* contains rules for the operation of paragliders. Under paragraph 4(c), pilots in command must hold a relevant qualification, defined in section 3 of the instrument.

Clause 5 of Schedule 2, in relation to those matters which are not a pilot in command's direct responsibility, allows the pilot in command to rely on the daily briefing to reach the satisfaction mentioned in clause 3.

Clause 6 of Schedule 2 requires that a pilot in command may conduct a flight to which the exemption applies only within the active danger area for each day of the event.

### **Consultation**

SAFA has applied for the instrument, which operates in a similar way to instruments issued in relation to the same event held in previous years.

CASA has consulted with SAFA and the organiser of the event. The organiser contacted local aerodrome operators and local aviation operators about the event and consulted with airspace users through the Aviation State Engagement Forum.

CASA has also consulted with Airservices Australia in accordance with Airspace Change Process requirements for the establishment of a temporary danger area.

In those circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for the 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.

All competitors and event staff who hold membership with SAFA are covered by \$20,000,000 public liability insurance. Any foreign participating pilots are to provide proof of private medical insurance before competition commencement. All SAFA members carry ambulance cover as a minimum.

The instrument makes no changes to:

- (a) existing arrangements under which pilots in command have voluntarily participated in other paragliding events that have previously taken place in the vicinity of Wangaratta aerodrome; or
- (b) SAFA's obligations in relation to the event when compared to its obligations in relation to previous similar events.

Therefore, there will be no change to the economic or cost impact on individuals, businesses or the community, except the influx of visitors may be of economic benefit.

### **Impact on categories of operations**

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

Alpine Shire Council has informed CASA that the event brings approximately \$302,400 into the local economy per year and that the event has been run for more than 20 years. Approximately 100 pilots and their family and friends attend the event. Alpine Shire Council provides sponsorship for the event, encouraging local community members to attend, and be involved in, the event.

### **Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA id: 14507).

### **Statement of Compatibility with Human Rights**

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

### **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 10 February 2024 and is repealed at the end of 16 May 2024.

## Statement of Compatibility with Human Rights

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

### CASA EX08/24 — The Bright Open Instrument 2024

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 enables participants in the paragliding competition mentioned in its title (defined in the instrument as the *event*) to fly a paraglider in the following locations without complying with regulatory requirements relating to the carriage of an aircraft very high frequency (*VHF*) radio:

- (a) in the vicinity of Wangaratta aerodrome, Victoria; and
- (b) at or above a height of 5 000 feet above mean sea level.

The regulatory requirements mentioned in the preceding section are located in the following:

- (a) regulations 91.400, 91.630 and 91.640 of the *Civil Aviation Safety Regulations 1998 (CASR)*;
- (b) the following provisions of *Civil Aviation Order 95.8 (Exemptions from CAR and CASR — Hang Gliders and Paragliders) Instrument 2021*:
  - (i) to the extent that the subparagraph may require the carriage or use of a VHF radiocommunication system — subparagraph 10.3(a);
  - (ii) subparagraph 10.4(b).

The instrument also enables 4 holders of a radio operator endorsement issued by Sports Aviation Federation of Australia Limited (*SAFA*) to each:

- (a) transmit on a radio frequency while operating a ground communications station for the event; and
- (b) maintain a listening watch on appropriate VHF frequencies whenever flights are taking place for the purpose of the event.

The instrument contains conditions and directions imposed by the Civil Aviation Safety Authority (*CASA*) in the interest of the safety of air navigation.

The event is organised by SAFA members and has been endorsed by SAFA.

The instrument also issues directions to SAFA, including the maintenance of a ground communications station active on relevant UHF and certain VHF frequencies.

### **Human rights implications**

The legislative instrument engages the right to protection against arbitrary and unlawful interferences with privacy (Article 17 of the International Covenant on Civil and Political Rights (the *ICCPR*)).

The right to protection against arbitrary and unlawful interference with privacy, contained in Article 17 of the ICCPR, provides that no-one shall be subjected to arbitrary or unlawful interference with their privacy.

The right to privacy is engaged by clause 6 of Schedule 1 to the instrument, which requires SAFA to record the name of each participant that attends the daily briefing for the event.

The right to privacy is also engaged because 4 named individuals are mentioned in:

- (a) subsection 6(2) of the instrument; and
- (b) paragraph 1(f) of Schedule 1 to the instrument.

Each of those named individuals is granted an exemption that is subject to them holding the required qualification. CASA must be able to ensure that they hold that qualification.

Also, the named individuals are the only individuals authorised by SAFA to operate the VHF ground communications station. Therefore, the named individuals are mentioned in those provisions of the instrument to enable them to:

- (a) exercise functions under the exemption from compliance with regulation 91.625 of CASR; and
- (b) comply with a requirement under the direction in section 4 of the instrument.

Naming an individual in an instrument of exemption is not unique to this instrument — it occurs in any other instrument issued to an individual that grants an exemption under regulation 11.160 of CASR. Regulation 11.225 of CASR requires all such exemptions to be published on the internet.

The protections provided by the *Privacy Act 1988* continue to apply to personal information collected.

The personal information collection requirements mentioned in the instrument are necessary to ensure proper administration and enforcement of Australia's aviation safety system. It is necessary for SAFA to receive that personal information to ensure that only properly-briefed pilots participate in the event. Participating pilots must be aware of how an event will be conducted each day and must attend each briefing. Any potential limitation on the right to privacy is necessary, reasonable and proportionate in promoting the objective of improving aviation safety.

Apart from the impact on the right to privacy, the exemption in the instrument is beneficial in purpose and content, and does not adversely affect the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Conclusion**

The legislative instrument is compatible with human rights. To the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate in order to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

**Civil Aviation Safety Authority**