**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**CASA EX13/24 — Flight in Class D Airspace near Hobart Aerodrome Exemption 2024**

**Purpose**

The purpose of *CASA EX13/24 — Flight in Class D Airspace near Hobart Aerodrome Exemption 2024* (the ***instrument***) is to enable the pilots of hang gliders and paragliders to continue to carry out operations at a site near Hobart aerodrome without complying with a condition to which such operations would otherwise be subject under Civil Aviation Order 95.8 (***CAO 95.8***).

**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***).

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 11.160(3) of CASR, an exemption may be granted on application by a person or on CASA’s own initiative.

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.

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. 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. Under regulation 11.255, it is an offence of strict liability to contravene a direction under regulation 11.245.

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. 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.

CAO 95.8 applies to hang glider and paraglider aircraft employed in private operations and contains exemptions from Part 61 of CASR (relating to flight crew licensing) and the *Civil Aviation Regulations 1988*, subject to conditions. The conditions provide that an aircraft must not be flown except in specified classes of airspace and in limited circumstances. One of the conditions imposed, under sub-subparagraph 10.1 (k) (ii) of CAO 95.8, provides that the aircraft may only be flown in Class C or D airspace that is below 300 feet above ground level and not within 10 nautical miles of a controlled aerodrome.

**Background**

Members of the Tasmanian Hang Gliding and Paragliding Association (the ***THPA***) operate hang gliders and paragliders from the hang gliding site at Single Hill in Tasmania. The site consists of an area bounded by the line drawn north-south through the top of Single Hill, northwards to Seven Mile Beach Road and eastwards, following the coastline 100 metres offshore, to a point abeam of the northern end of Lauderdale township.

The site is within 10 nautical miles of Hobart aerodrome, which is a controlled aerodrome, and is in Class D airspace. The THPA’s members have been able to use the site because their operations have, for many years, been exempted from compliance with the requirement under CAO 95.8 not to operate in Class D airspace within proximity of Hobart aerodrome.

Flights have previously been carried out under other similar exemption instruments. The most recent instrument, *CASA EX36/21 — Flight in Class D Airspace near Hobart Aerodrome Exemption 2021* (***CASA EX36/21***), will be repealed at the end of 31 March 2024. The THPA has requested that the exemption be renewed. CASA anticipates that the exemption will no longer be required when a new Part 103 Manual of Standards commences, however, CASA is uncertain as to when a new Part 103 Manual of Standards will be made.

**Overview of instrument**

The instrument renews exemption CASA EX36/21. It will permit the pilot in command of a hang glider or paraglider to conduct an operation at the Single Hill site by exempting the pilot from compliance with sub-subparagraph 10.1 (k) (ii) of CAO 95.8.

CASA has assessed the safety impact of the proposed operations at the Single Hill site and is satisfied that they will not adversely affect the safety of operations at Hobart aerodrome.

**Document incorporated by reference**

In accordance with subsection 98(5D) of the Act, the instrument has the effect of applying, adopting or incorporating the written agreement between Airservices Australia in its capacity as the air traffic services provider at Hobart aerodrome (***AA***) and the THPA in relation to the operations at the site (the ***written agreement***) as in force from time to time. It does so by applying conditions in the written agreement that apply in relation to the conduct of an operation covered by the exemption (an ***exempt operation***).

The written agreement is intended to describe the terms on which AA and the THPA will cooperate to permit the conduct of the exempted operations and to ensure that the operations do not conflict with aircraft operating at Hobart aerodrome.

The THPA will have a copy of the written agreement and can provide it to pilots wishing to operate in reliance on the exemption in the legislative instrument. By prior arrangement with CASA, a copy of the written agreement in effect can be made available for viewing free of charge at any office of CASA.

***Content of instrument***

Section 1 of the instrument gives the name by which the instrument may be cited.

Section 2 of the instrument specifies the duration of the instrument. The instrument commences on 1 April 2024 and will be repealed at the end of 1 December 2024, as that is also the repeal date of CAO 95.8. A note is included under section 2 which states that, for regulation 11.250 of CASR, the directions in sections 7 and 8 cease to be in force at the end of 1 December 2024.

Section 3 defines expressions appearing in the instrument. It includes a definition of the boundaries of the ***Single Hill site***and ***exempt operation***.

The exemption only applies if each of the 3 circumstances specified in section 4 are met. Firstly, the instrument applies if there is a written agreement in effect. A note to section 4 identifies that the current written agreement is dated 10 August 2022.

Secondly, the instrument only applies if the pilot is either a member of the THPA or a guest of the THPA who is also a financial member of the Sports Aviation Federation of Australia Limited (***SAFA***) (formerly the Hang Gliding Federation of Australia Inc.).

Thirdly, the instrument only applies if the pilot of the hang glider or paraglider has confirmed with the THPA duty pilot that AA has given air traffic control clearance of the operation. The duty pilot is a THPA member responsible for overseeing and facilitating a session of hang gliding or paragliding operations at the Single Hill site.

Section 5 of the instrument grants an exemption from compliance with subparagraph 10.1 (k) (ii) of CAO 95.8 to the pilot of a hang glider or paraglider who is operating the hang glider or paraglider in Class D airspace and within 10 nautical miles of Hobart aerodrome.

The exemption in the instrument is subject to the conditions in section 6 of the instrument. Among these, the pilot must not conduct an exempt operation higher than 1 000 ft above mean sea level. Also, a pilot operating at the site is required to carry a serviceable UHF radio and to be informed of, and comply with, any conditions specified in the written agreement that relate to the conduct of an exempt operation.

Section 7 of the instrument contains 2 directions for the duty pilot. One direction requires the duty pilot to obtain clearance from the Hobart tower of AA before a session of operations commences at the Single Hill site. The other direction requires the duty pilot to notify the Hobart tower when a session of operations is completed. These are necessary to ensure that Hobart tower is aware when hang glider or paraglider operations are occurring or have ceased.

Section 8 of the instrument gives a direction to the THPA to ensure that CASA has a copy of the written agreement that is in effect in relation to an exempt operation.

***Legislation Act 2003***

Paragraph 98(5A)(a) of the Act provides that the regulations may empower CASA to 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, and paragraph 98(5AA)(b) 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 aircraft.The exemption in the instrument applies in relation to a class of persons, being members or guests of the THPA, and a class of aircraft, being hang gliders and paragliders.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.

**Sunsetting**

Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument because the instrument relates to aviation safety and is made under CASR (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 1 December 2024, 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**

This instrument is of substantially the same effect as CASA EX36/21. It was issued at the request of the THPA. The THPA has consulted AA’s Hobart Tower which has expressed its continued support for the THPA’s operation at the Single Hill site. SAFA was also consulted and expressed its support for the instrument.

The THPA was consulted on the instrument. In these circumstances, CASA is satisfied that no further consultation on the instrument is necessary or appropriate 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.

The instrument replaces an instrument that will be repealed and there will be no change to the 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 in which the operations will be held because it will lead participants in, and spectators of, the events to visit that community.

**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**

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 1 April 2024 and is repealed at the end of 1 December 2024.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**CASA EX13/24 — Flight in Class D Airspace near Hobart Aerodrome Exemption 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**

Members of the Tasmanian Hang Gliding and Paragliding Association (the ***THPA***) operate hang gliders and paragliders from a site at Single Hill in Tasmania. The site is within 10 nautical miles of a controlled aerodrome, Hobart aerodrome. Therefore, hang glider and paraglider operators require an exemption from compliance with sub-subparagraph 10.1 (k) (ii) of Civil Aviation Order 95.8 which prohibits the operation of such aircraft in Class D airspace within 10 nautical miles of a controlled aerodrome.

The exemption is subject to conditions on pilots who are operating at the Single Hill site.

The instrument also issues directions to the duty pilot and the THPA. The duty pilot is a THPA member responsible for overseeing and facilitating a session of hang gliding or paragliding operations at the Single Hill site.

The conditions and directions are imposed by CASA in the interests of the safety of air navigation.

**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**