

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX72/25 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Free Flyers Association Inc.) Instrument 2025

Purpose

Sunshine Coast Free Flyers Association Inc. (the *Association*) is an association incorporated in Queensland. Members of the Association operate hang gliders and paragliders from a site at Point Cartwright near Maroochydore, Queensland (the *Point Cartwright site*). The site is within 10 nautical miles of Sunshine Coast aerodrome, which is a controlled aerodrome.

The purpose of *CASA EX72/25 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Free Flyers Association Inc.) Instrument 2025* (the *instrument*) is to permit the operation of an unpowered hang glider or paraglider operated by the Association within Class D controlled airspace within 10 nautical miles of the controlled aerodrome at Sunshine Coast and without carriage of two-way radio communication to the control tower.

This is achieved by exempting the pilot in command of an unpowered hang glider or paraglider operated by the Association at the Point Cartwright site from compliance with certain provisions of *Civil Aviation Order 95.8 (CAO 95.8)*, subject to conditions that address the aviation safety risk arising from the grant of the exemption. The provisions concerned are:

- (a) sub-subparagraph 10.1(k)(ii), which prohibits aircraft operating under the scheme in CAO 95.8 from flying within 10 nautical miles of a controlled aerodrome; and
- (b) sub-subparagraph 10.1(k)(iii) and subparagraph 10.2(b), which prohibit aircraft operating under the scheme in CAO 95.8 from flying in Class C or D airspace that is above 300 feet above mean sea level (*AMSL*), within 10 nautical miles of a controlled aerodrome or in restricted airspace unless the aircraft is carrying radio communications equipment capable of two-way communication with air traffic control.

The instrument also issues directions to the Association, the Association's duty pilot and the Association's tower contact officer.

A similar instrument, which granted exemptions from the operation of subparagraph 10.1(k) of CAO 95.8 to the Sunshine Coast Sports Aviators, a club that many of the members of the newly formed Association were also members of, was repealed at the end of 1 December 2024: see *CASA EX04/22 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Sports Aviators) Instrument 2022* (the *expired instrument*).

Legislation

Civil Aviation Order 95.8

CAO 95.8 applies to hang glider and paraglider aircraft. It contains exemptions from specified provisions of the *Civil Aviation Safety Regulations 1998 (CASR)* subject to conditions, such as the pilot being issued a certificate by a relevant sport aviation body (which in this case is the Sports Aviation Federation of Australia Limited (*SAFA*)) or being supervised by an instructor approved by SAFA (paragraph 9.1 of CAO 95.8). Another of the

conditions imposed, by subparagraph 10.1(k) of CAO 95.8, limits the airspace in which an aircraft may be flown.

Subsection 10 sets out the flight conditions that apply, including flight height, location and airspace restrictions.

Sub-subparagraph 10.1(k)(ii) of CAO 95.8 prohibits aircraft operating under the scheme in CAO 95.8 from flying within 10 nautical miles of a controlled aerodrome.

Sub-subparagraph 10.1(k)(iii) and subparagraph 10.2(b) prohibit aircraft operating under the scheme in CAO 95.8 from flying in Class C or D airspace that is above 300 feet AMSL, within 10 nautical miles of a controlled aerodrome or within restricted airspace, unless the aircraft is carrying radio communications equipment capable of two-way communication with air traffic control.

Exemptions

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.

Subpart 11.F of CASR provides for the granting of exemptions from particular legislative provisions. 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 a provision of CASR or 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. CASA has regard to the same test when deciding whether to renew an exemption on its own initiative.

Regulation 11.205 of CASR provides that CASA may impose conditions on an exemption if they are 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.

Directions

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.

Legislation Act 2003

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.

Background

Members of the Association operate hang gliders and paragliders from the hang-gliding site at Point Cartwright near Maroochydore, Queensland. Although the Point Cartwright site is within 10 nautical miles of Sunshine Coast aerodrome, which is a controlled aerodrome, the Association's members have been able to use the site because their operations have, for many years, been exempted from compliance with relevant provisions of CAO 95.8 despite the proximity of the site to Sunshine Coast aerodrome.

The Association has applied to CASA to re-establish operations previously permitted at Point Cartwright, in particular, by requesting the grant of a new exemption to replace the expired instrument.

Airservices Australia (**AA**), which is the air traffic service provider at Sunshine Coast aerodrome, supports the granting of the exemption.

Overview of instrument

The instrument exempts the pilot in command of an unpowered hang glider or paraglider from compliance with sub-subparagraphs 10(1)(k)(ii) and (iii), and subparagraph 10.2(b), of CAO 95.8 when conducting an **exempt operation** (as defined in the instrument) in a defined area around Point Cartwright, Maroochydore, subject to the conditions and directions set out in the instrument and a Letter of Agreement between the Association and AA. In effect, it will authorise hang gliding and paragliding operations in the defined area, which is within 10 nautical miles of the controlled aerodrome at the Sunshine Coast.

Documents incorporated by reference

The instrument incorporates two documents by reference, as follows:

Letter of Agreement

AA supports the granting of the exemption on the basis that hang gliding and paragliding operations at Point Cartwright are conducted in accordance with a Letter of Agreement between the Association and AA, which describes the terms on which AA and the Association will cooperate to permit the conduct of exempt operations and to ensure that the operations do not conflict with aircraft operating at Sunshine Coast aerodrome.

A note to the definition of the term ***Letter of Agreement*** in section 3 of the instrument identifies that the current Letter of Agreement was agreed to on 25 May 2025.

However, if circumstances change, AA and the Association require the flexibility to agree on a new Letter of Agreement after the instrument commences.

In accordance with subsection 98(5D) of the Act, the whole of the Letter of Agreement is incorporated in the instrument, as the Letter of Agreement exists from time to time, as follows:

- (a) paragraph 4(1)(a) provides that the exemption in section 4 applies only if there is a Letter of Agreement in force between the Association and AA relating to the conduct of unpowered hang glider or paraglider operations from the Point Cartwright site, when the exempt operation concerned is conducted;
- (b) paragraph 5(c) makes the exemption in section 4 subject to the condition that the pilot in command must comply with the Letter of Agreement as existing at the time the exempt operation is conducted;
- (c) paragraph 8(5)(a) directs the tower contact officer to comply with any condition set out in the Letter of Agreement that is in effect at the time the exempt operation for which they are tower contact officer is conducted.

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

Association's procedures for a tower contact officer

In accordance with subsection 98(5D) of the Act, the whole of the Association's procedures for a tower control officer (which are set out in the document titled Sunshine Coast Free Flyers Carties Briefing Version 4 dated 5 June 2025) are incorporated as in force from time to time by paragraph 8(5)(b) of the instrument, which directs a tower control officer to comply with all applicable provisions of the procedures in effect at the time the exempt operation is conducted.

The Association will have a copy of its procedures for a tower contact officer and will provide it to tower contact officers. By prior arrangement with CASA, a copy of the procedures in effect can be made available for viewing free of charge at any office of CASA.

Content of instrument

Preliminary

Section 1 names the instrument.

Section 2 states that the instrument commences on the day after it is registered and will be repealed at the end of 30 September 2028. A note explains that, for regulation 11.250 of CASR, the directions in sections 6, 7 and 8 cease to be in force when the instrument is repealed.

Section 3 contains definitions for the instrument. An important definition is ***exempt operation***, which is defined to be an operation conducted wholly within Class D airspace at the Point Cartwright site, being an operation that is covered by a Letter of Agreement and the pilot in command for which is both a member of the Association and a financial member of SAFA.

Another important term defined in section 3 is ***Point Cartwright site***, which is defined as the area with a vertical limit of SFC-300ft AMSL and lateral limits being the area bounded by a polygon with specified vertices. The effect of the definition is to create a roughly rectangular area that is the location of the Point Cartwright site.

Exemption

The relevant exemption is in section 4. Subsection 4(1) provides that the exemption in the section applies only if there is a Letter of Agreement in force between the Association and AA relating to the conduct of unpowered hang glider or paraglider operations from the Point Cartwright site, when the unpowered hang glider or paraglider operation concerned is conducted. (The Letter of Agreement in effect at the commencement of the instrument is the Letter of Agreement, document number 3581, dated 5 June 2025 that was agreed to on 25 May 2025.) In addition, the exemption applies only if the pilot in command for the operation is both a member of the Association and a financial member of SAFA.

Subsection 4(2) grants an exemption to the pilot in command of a hang glider or paraglider conducting an exempt operation from compliance with sub-subparagraphs 10.1(k)(ii) and (iii), and subparagraph 10.2(b), of CAO 95.8 when conducting an exempt operation to the extent that the aircraft is flown in airspace that is within 10 nautical miles of a controlled aerodrome and is not carrying radiocommunications equipment capable of two-way communication with air traffic control.

Section 5 imposes the following conditions on the exemption granted in section 4:

- (a) before commencing the exempt operation, the pilot in command must confirm with the duty pilot and a tower contact officer who is present at the Point Cartwright site that the exempt operation has been cleared by the Sunshine Coast aerodrome tower;
- (b) the pilot in command must not conduct the exempt operation higher than 300 ft above mean sea level;
- (c) the pilot in command must comply with any condition set out in the Letter of Agreement that is in effect at the time of the exempt operation;
- (d) the pilot in command must not commence the exempt operation if 3 or more hang gliders or paragliders conducting an exempt operation are airborne at the Point Cartwright site;

- (e) the pilot in command must carry and use a serviceable UHF radio and remain in two-way communication with the tower contact officer and the duty pilot at any time they are conducting the exempt operation.

Section 6 of the instrument contains directions, under regulation 11.245 of CASR, that apply to the **duty pilot**, who is defined in section 3 as the member of the Association responsible for overseeing and facilitating hang gliding and paragliding operations at the Point Cartwright site. The directions are necessary to ensure that AA's air traffic controllers are aware of when exempt operations are occurring. In particular:

- (a) subsection 6(1) directs the duty pilot to ensure that no more than 3 relevant aircraft are airborne in an exempt operation at the Point Cartwright site at any one time; and
- (b) subsection 6(2) directs the duty pilot to ensure that a tower contact officer is present at the Point Cartwright site at any time that an exempt operation is being conducted at the site, provides their mobile phone number to the Sunshine Coast aerodrome tower and does not leave the Point Cartwright site until either all exempt operations have ceased for that day and the tower contact officer has notified the Sunshine Coast aerodrome tower or the tower has cancelled the clearance of all outstanding exempt operations for that day; and
- (c) subsection 6(3) directs the duty pilot to confirm with the tower contact officer that the exempt operations have been cleared by the Sunshine Coast aerodrome tower before a session of exempt operations commences at the Point Cartwright site and that, when exempt operations are complete for a particular day, the tower contact officer has contacted the Sunshine Coast aerodrome tower to inform the tower that those operations are complete; and
- (d) subsection 6(4) contains a further direction imposing reporting obligations in the event of an incident or accident involving an exempt operation.

Subsection 7(1) directs the Association to ensure that any member of the Association appointed as a duty pilot is provided with sufficient training to comply with the conditions to which the exemption in section 4 is subject, which are set out in section 5, and has been formally authorised by the Association before acting in the role of duty pilot. This requirement ensures that members of the Association are competent to perform the functions of a duty pilot on behalf of the Association and to comply with the conditions to which the exemption is subject.

Subsection 7(2) directs the Association to ensure that any member of the Association appointed as a tower contact officer is provided with sufficient training to comply with the directions in section 8 and has been formally authorised by the Association before acting in the role of tower contact officer. This requirement ensures that members of the Association are competent to perform the functions of a tower contact officer and to comply with those directions.

Subsection 7(3) directs the Association:

- (a) to ensure that exempt operations are not conducted unless CASA has first been provided with a copy of the Letter of Agreement that is in effect in relation to an exempt operation; and
- (b) to inform CASA immediately in writing if any Letter of Agreement is proposed to be replaced, amended or withdrawn; and

- (c) to not replace, amend or withdraw any Letter of Agreement unless the Association has been notified in writing that CASA considers the replacement, amendment or withdrawal to be acceptable.

Subsection 7(4) directs the Association:

- (a) to ensure that CASA is provided with any amendment that the Association proposes to make to the Point Cartwright Risk Assessment; and
- (b) to not make an amendment to that document unless the Association has been notified in writing that CASA considers the amendment to be acceptable.

Section 8 contains directions that apply to the ***tower contact officer***, defined in section 3 as a member of the Association, appointed by the Association to be the ground-based person who is available to be contacted by the Sunshine Coast aerodrome control tower in relation to hang gliding and paragliding operations at the Point Cartwright site on that day. The tower contact officer for a particular day or part of a day is directed to:

- (a) provide their mobile phone number to the Sunshine Coast aerodrome tower and be contactable by the tower at all times on that day by the Sunshine Coast aerodrome tower via mobile phone; and
- (b) be in two-way communication via UHF with any hang glider or paraglider conducting an exempt operation that is airborne at the Point Cartwright site on that day or part of a day; and
- (c) be present at the Point Cartwright site at any time that an exempt operation is being conducted on that day or part of a day, and remain at the site until all exempt operations have ceased for the day and the Sunshine Coast aerodrome tower has been informed, until a handover has been completed or until the tower cancels the clearance of all outstanding exempt operations for that day; and
- (d) use their best endeavours to ensure that no more than 3 unpowered hang gliders or paragliders that are conducting an exempt operation are airborne at the Point Cartwright site at any one time on that day or part of a day; and
- (e) comply with any condition set out in the Letter of Agreement that is in effect at the time the exempt operation is conducted and all applicable provisions of the Association's procedures for a tower contact officer that are in effect at the time the exempt operation is conducted.

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.

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 sub-subparagraphs 10.1(k)(ii) and (iii), and subparagraph 10.2(b), of CAO 95.8, namely members of the Association and visiting pilots, potentially including international pilots flying under the auspices of SAFA with temporary visiting membership.

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.

Sunset provisions

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunset 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 30 September 2028, 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 sunset provisions does not affect parliamentary oversight of this instrument.

Consultation

This instrument is of substantially the same effect as previous instruments on this subject, including the expired instrument.

The instrument is issued at the request of the Association with the support of SAFA's Operations Manager. Relevant stakeholders were consulted by the Association all of whom advised they had no issues with the Association's proposed operations at Point Cartwright.

CASA has consulted AA's air traffic control centre for Sunshine Coast aerodrome and SAFA, each of which expressed support for a new instrument permitting the exempt operations at Point Cartwright, on substantially the same terms as the expired instrument, subject to the terms of the Letter of Agreement.

The Association, SAFA and AA were consulted on the terms of the instrument. The Association was provided with a copy of the draft instrument and agreed to the terms, and no objection to the instrument was received from SAFA or AA.

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.

As the instrument replaces an expiring 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 in which the operations will be held because it will allow members of the Association, many of whom live in the region, to participate in the operations. If other Association members come from elsewhere to participate, that would also provide a benefit to the regional 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 reference number: OIA23-06252).

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 30 September 2028.

Statement of Compatibility with Human Rights

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

CASA EX72/25 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Free Flyers Association Inc) Instrument 2025

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

Sunshine Coast Free Flyers Association Inc. (the *Association*) is an association incorporated in Queensland. Members of the Association operate hang gliders and paragliders from a site at Point Cartwright near Maroochydore, Queensland (the *Point Cartwright site*). The site is within 10 nautical miles of Sunshine Coast aerodrome, which is a controlled aerodrome.

The purpose of this legislative instrument is to permit the operation of an unpowered hang glider or paraglider operated by the Association within Class D controlled airspace within 10 nautical miles of the controlled aerodrome at Sunshine Coast and without carriage of two-way radio communication to the control tower.

This is achieved by exempting the pilot in command of an unpowered hang glider or paraglider operated by the Association at the Point Cartwright site from compliance with certain provisions of *Civil Aviation Order 95.8 (CAO 95.8)*, subject to conditions that address the aviation safety risk arising from the grant of the exemption. The provisions concerned are:

- (a) sub-subparagraph 10.1(k)(ii), which prohibits aircraft operating under the scheme in CAO 95.8 from flying within 10 nautical miles of a controlled aerodrome; and
- (b) sub-subparagraph 10.1(k)(iii) and subparagraph 10.2(b), which prohibit aircraft operating under the scheme in CAO 95.8 from flying in Class C or D airspace that is above 300 feet above mean sea level, within 10 nautical miles of a controlled aerodrome or in restricted airspace unless the aircraft is carrying radio communications equipment capable of two-way communication with air traffic control.

This legislative instrument also issues directions to the Association, the Association's duty pilot and the Association's tower contact officer.

A similar instrument, which granted exemptions from the operation of subparagraph 10.1(k) of CAO 95.8 to the Sunshine Coast Sports Aviators, a club that many of the members of the newly formed Association were also members of, was repealed at the end of 1 December 2024: see *CASA EX04/22 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Sports Aviators) Instrument 2022*.

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