



**Australian Government**  
**Civil Aviation Safety Authority**

Instrument number CASA EX122/18

I, CHRISTOPHER PAUL MONAHAN, Executive Manager, National Operations & Standards, a delegate of CASA, make this instrument under subregulations 11.160 (1), 11.205 (1) and 11.245 (1) of the *Civil Aviation Safety Regulations 1998*.

A handwritten signature in black ink that reads 'Christopher P. Monahan'.

Christopher P. Monahan  
Executive Manager, National Operations & Standards

9 September 2018

**CASA EX122/18 — Flight in Class D Airspace near Sunshine Coast  
Aerodrome (Sunshine Coast Sports Aviators) Instrument 2018**

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**1 Name**

This instrument is *CASA EX122/18 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Sports Aviators) Instrument 2018*.

**2 Duration**

This instrument:

- (a) commences on the day after it is registered; and
- (b) is repealed at the end of 31 August 2019.

**3 Definitions**

*Note* In this instrument certain terms and expressions have the same meaning as they have in CASR. These include *ATS provider* and *hang glider*.

In this instrument:

**AA** means Airservices Australia, ARN 202210, in its capacity as the ATS provider at Sunshine Coast aerodrome.

**Association** means Sunshine Coast Sports Aviators Inc., ABN 50 243 762 940.

**duty pilot** means the member of the Association responsible for overseeing and facilitating hang gliding and paragliding operations at the Point Cartwright site.

**exempt operation** means an operation:

- (a) conducted wholly within Class D airspace at the Point Cartwright site; and
- (b) covered by an LoA that is in effect; and
- (c) the pilot in command for which is:
  - (i) a member of the Association; and
  - (ii) a financial member of the HGFA.

**HGFA** means Hang Gliding Federation of Australia Inc, ARN 217853.

**LoA** means a letter of agreement between the Association and AA relating to the conduct of the hang glider or paraglider operations from the Point Cartwright site.

*Note* The LoA in effect at the commencement of this instrument is Letter of Agreement “LoA\_3318”, version 2, dated 26 February 2015.

**paraglider** has the meaning given by section 2 of Civil Aviation Order 95.8.

**Point Cartwright site** means the following locations:

- (a) location A, being defined as the area bounded by:
  - (i) the line from Beacon Lighthouse at coordinates Lat. 26° 40’ 47”, Long. 153° 8’ 18” to the point at the northern end of the residential area at coordinates Lat. 26° 41’ 47”, Long. 153° 8’ 10”; and
  - (ii) the line that corresponds to the line mentioned in subparagraph (i) that is 100 m offshore; and
  - (iii) the lines that connect the corresponding endpoints of the lines in subparagraphs (i) and (ii).
- (b) location B, being defined as the area bounded by:
  - (i) the line following the coastline from coordinates Lat. 26° 40’ 16”, Long. 153° 6’ 36” to coordinates Lat. 26° 40’ 42”, Long. 153° 7’ 8”; and
  - (ii) the line that corresponds to the line mentioned in subparagraph (i) that is 100 m offshore; and
  - (iii) the lines that connect the corresponding endpoints of the lines in subparagraphs (i) and (ii).

#### **4 Exemption**

The pilot in command of a hang glider or a paraglider conducting an exempt operation is exempt from compliance with sub-subparagraph 7.1 (i) (iii) of Civil Aviation Order 95.8.

#### **5 Conditions**

The exemption is subject to the condition that the pilot must:

- (a) before commencing the exempt operation, confirm with the duty pilot that the operation has been cleared by AA;
- (b) not conduct the exempt operation higher than 300 ft above mean sea level;
- (c) comply with any conditions set out in the LoA that is in effect at the time of the operation.

*Note* Civil Aviation Order 95.8 contains various other conditions for operating hang gliders and paragliders. These include requirements to fly only in V.M.C., to comply with the HGFA operations manual and to comply with rules or directions made by HGFA.

#### **6 Directions — duty pilot**

- (1) The duty pilot must ensure that AA has given air traffic control clearance that covers each exempt operation.
- (2) The duty pilot must notify AA promptly when exempt operations have finished for a day, or a part of a day.
- (3) As soon as possible after an incident or accident involving an exempt operation, the duty pilot must report it to CASA.

*Note 1* Reports to CASA can be sent by email to [sport@casa.gov.au](mailto:sport@casa.gov.au).

*Note 2* For regulation 11.250 of CASR, the directions cease to be in force when this instrument is repealed.

## **7 Direction — Association**

The Association must ensure that CASA has a copy of the LoA that is in effect in relation to an exempt operation.

*Note* For regulation 11.250 of CASR, the direction ceases to be in force when this instrument is repealed.

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## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX122/18 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Sports Aviators) Instrument 2018

##### Purpose

The purpose of this legislative instrument is to permit members of Sunshine Coast Sports Aviators Inc. (the *Association*), an association incorporated in Queensland, to operate hang gliders and paragliders from sites near Point Cartwright, Maroochydore. The site is within 16 kilometres of the controlled aerodrome at Sunshine Coast, which means that the operations are otherwise prohibited under sub-subparagraph 7.1 (i) (iii) of Civil Aviation Order 95.8.

##### Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue instruments in relation to the following:

- (a) matters affecting the safe navigation and operation, or the maintenance, of aircraft; or
- (b) the airworthiness of, or design standards for, aircraft.

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (*CASR*) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the Civil Aviation Orders, in relation to a matter mentioned in that subsection. Under subregulation 11.160 (2), an exemption may be granted 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 11.205 (1) of CASR, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.225 of CASR, an exemption must be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Under subregulation 11.245 (1) of CASR, CASA may issue directions about, among other things, any matter affecting the safe navigation and operation of aircraft. Under subregulation 11.245 (2), CASA may only issue a direction if the direction is for the purpose of CASA's functions and not inconsistent with the Act, and if CASA is satisfied that the direction is necessary in the interests of the safety of air navigation. Under regulation 11.250, a direction ceases to be in force on the day specified in the direction. Regulation 11.255 makes it an offence for a person to contravene a direction that is applicable to the person.

Civil Aviation Order 95.8 (*CAO 95.8*) applies to hang glider and paraglider aircraft and contains exemptions from the *Civil Aviation Regulations 1988* subject to conditions, such as the pilot being issued a certificate by the Hang Gliding Federation of Australia Inc (*HGFA*) (paragraph 6.1 of CAO 95.8). Another of the conditions imposed, sub-subparagraph 7.1 (i) (iii) of CAO 95.8, provides that an aircraft must not

be flown except in Class C or D airspace that is below 300 feet above ground level and not within 16 kilometres of a controlled aerodrome.

### **Background**

Members of the Association operate hang gliders and paragliders from the hang-gliding site at Point Cartwright near Maroochydore, Queensland. The site consists of two areas defined by the lengths of coastline and points 100 metres from that coastline.

The site is within 16 kilometres 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 sub-subparagraph 7.1 (i) (iii) of CAO 95.8 despite the proximity of the site to Sunshine Coast aerodrome.

The Association has requested the grant of a new exemption to replace the current exemption, CASA EX150/15, that expires on 31 August 2018.

### **Instrument**

The instrument exempts the pilot in command of a hang glider or paraglider from compliance with sub-subparagraph 7.1 (i) (iii) of CAO 95.8 when conducting an *exempt operation*.

Section 1 names the instrument.

Section 2 states when the instrument commences and when it will be repealed.

Section 3 contains definitions for the instrument. An important definition is *exempt operation*, which is defined to be an operation: (1) conducted wholly within Class D airspace at the Point Cartwright site; and (2) covered by an *LoA* that is in effect; and (3) the pilot in command for which is a financial member of the HGFA and a member of the Association.

Another important term is *LoA*, which is a "letter of agreement" between the Association and Airservices Australia (*AA*) to describe 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 identifies that the current LoA is dated 26 February 2015.

Section 3 also defines *Point Cartwright site* by reference to lines between prescribed coordinates of latitude and longitude along the coast and 100 metres from the coast (in this statement referred to as *prescribed lines*), as well as lines that connect the corresponding endpoints of the prescribed lines. The effect of the definition is to create 2 roughly rectangular areas that are the "locations" that comprise the Point Cartwright site.

Section 4 contains the exemption, with the effect noted above.

Section 5 imposes conditions on the pilot in relation to the exemption. The pilot must confirm air traffic control clearance for the operations with the duty pilot. Consistent with the operational limitation in CAO 95.8 for operations more than 16 kilometres

from a controlled aerodrome, the pilot must not conduct an exempt operation higher than 300 feet above mean sea level. The pilot must also comply with any conditions in the relevant LoA.

Section 6 of the instrument contains 3 directions for the *duty pilot*, being 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. There are directions that require the duty pilot to obtain clearance from AA before a session of operations commences at the Point Cartwright site, and to notify AA when a session of operations is completed for a day, or a part of a day. These are necessary to ensure that AA's air traffic controllers are aware of when exempt operations are occurring. A third direction imposes reporting obligations in the event of an incident or accident involving an exempt operation. A note explains that, for regulation 11.250 of CASR, the directions cease to be in force when the instrument is repealed.

Section 7 directs the Association to ensure that CASA has a copy of the LoA that is in effect in relation to an exempt operation. A note explains that, for regulation 11.250 of CASR, the direction ceases to be in force when the instrument is repealed.

#### **Document incorporated by reference**

In accordance with subsection 98 (5D) of the Act, the instrument has the effect of applying, adopting or incorporating an LoA by reference, as the LoA exists from time to time. It does so by applying any LoA that is in effect in relation to an exempt operation.

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

#### **Legislation Act 2003 (the LA)**

Subsection 98 (5AA) of the Act states that an instrument issued under paragraph (5A) (a) is a legislative instrument if it applies to a class of persons or a class of aircraft. This exemption applies to a class of persons, being pilots in command of hang gliders and paragliders operating at the Point Cartwright site, and so is a legislative instrument. As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

#### **Consultation**

This instrument is of substantially the same effect as CASA EX150/15. A consultation draft of the instrument was provided to the Association for acceptance of the conditions. The President of the Association agreed that the members would be able to comply with the instrument.

The instrument is issued at the request of the Association with the support of the HGFA Operations Manager. CASA has consulted AA's air traffic control centre for Sunshine Coast aerodrome and the HGFA, both of which expressed support for a new instrument permitting the exempt operations at Point Cartwright. AA recommended a 12 month duration.

In these circumstances, CASA is satisfied that no further consultation on the instrument is necessary or appropriate for section 17 of the LA.

**Statement of Compatibility with Human Rights**

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

**Office of Best Practice Regulation (OBPR)**

A Regulation Impact Statement (*RIS*) is not required because the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

**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 on 31 August 2019.

## Statement of Compatibility with Human Rights

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

### **CASA EX122/18 — Flight in Class D Airspace near Sunshine Coast Aerodrome (Sunshine Coast Sports Aviators) Instrument 2018**

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

Members of the Sunshine Coast Sports Aviators Inc. (the *Association*), an association incorporated in Queensland, operate hang gliders and paragliders from a site at Point Cartwright in Queensland (the *site*). The site is within 16 kilometres of Sunshine Coast aerodrome, which is a controlled aerodrome.

Sub-subparagraph 7.1 (i) (iii) of Civil Aviation Order 95.8 (the *CAO*) prohibits aircraft, operating under the scheme in the CAO, from flying within 16 kilometres of a controlled aerodrome. Therefore, hang glider and paraglider operators require an exemption for the operations.

The exemption is subject to conditions on pilots who are operating at the site, and directions to the Association's duty pilot and to the Association. The duty pilot is an Association member responsible for overseeing and facilitating a session of hang gliding and/or paragliding operations at the site.

#### **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**