



Australian Government
Civil Aviation Safety Authority

I, JOHN FRANCIS McCORMICK, Director of Aviation Safety, on behalf of CASA, make this instrument under subregulation 308 (1) of the *Civil Aviation Regulations 1988*.

A handwritten signature in black ink, appearing to read "John F. McCormick".

John F. McCormick
Director of Aviation Safety

22 March 2011

Civil Aviation Order 95.8 Instrument 2011

1 Name of instrument

This instrument is the *Civil Aviation Order 95.8 Instrument 2011*.

2 Commencement

This instrument commences on the day after it is registered.

3 New Civil Aviation Order 95.8

Civil Aviation Order 95.8 is repealed and a new Civil Aviation Order 95.8 is substituted as set out in Schedule 1.

Schedule 1 Civil Aviation Order 95.8

**Exemption from provisions of the *Civil Aviation Regulations 1988* —
hang-gliders**

1 Application

- 1.1 This Order applies to any aircraft referred to in paragraph 1.2 that is only used:
- (a) in private operations for recreational purposes; or
 - (b) for flying training for the issue of a pilot certificate under this Part.
- 1.2 For paragraph 1.1, the aircraft is:
- (a) a framed hang-glider; or
 - (b) a powered hang-glider; or
 - (c) a paraglider; or
 - (d) a powered paraglider.

2 Definitions

In this Order:

Act means the *Civil Aviation Act 1988*.

authorised person means a person included in a class of persons appointed under regulation 6 of CAR 1988.

CAR 1988 means the *Civil Aviation Regulations 1988*.

closely-settled area, in relation to an aircraft, means an area in which, because of:

- (a) man-made obstructions such as buildings and vehicles; and
- (b) the capabilities of the aircraft;

the aircraft could not be landed without endangering the safety of persons unconnected with the aircraft or damaging property in the area.

empty weight means the actual weight of aircraft to which this Order applies in its airborne configuration including all fittings and equipment but excluding recovery or personnel parachutes.

framed hang-glider means a glider that has a maximum empty weight of less than 70 kilograms and some rigid structure.

glider has the same meaning as in CAR 1988.

HGFA means the Hang Gliding Federation of Australia Inc.

HGFA Operations Manual means a manual acceptable to CASA that is issued by the HGFA and contains the procedures and instructions necessary to ensure an acceptable level of pilot training and proficiency and the safe conduct of hang-gliding operations.

Military Control Zone means a control zone administered by a military authority and so designated in Aeronautical Information Publication or by Notice to Airmen.

Order means Civil Aviation Order.

paraglider means a glider that has an empty weight less than 70 kilograms and has a wing that is inflated and maintains its profile in flight due to the ram-air pressure of the air through which it moves.

powered hang-glider means an aircraft that would be a glider, in particular a framed hang-glider, if it did not have an engine attached.

powered paraglider means an aircraft that is a paraglider with an engine attached.

public road means a street, road, lane, thoroughfare or place open to, or used by, the public for passage of vehicles.

suitable landing area means an area in which an aircraft, to which this Order applies, can be landed without endangering the safety, or damaging the property, of persons unconnected with the aircraft.

3 Exemptions under regulation 308

- 3.1 Subject to paragraph 3.2, a person is exempt from compliance with the following provisions of CAR 1988 while he or she is associated with the flying of an aircraft to which this Order applies:

- (a) Parts 4, 4A, 4B, 4C, 4D, 5 and 7;

- (b) subregulations 83 (1), (2) and (3) in respect of V.H.F. equipment;
 - (c) Part 11 (other than regulations 143, 144, 149, 150, 151, 152, 153 and 156);
 - (d) subregulation 162 (3), from the requirement that an aircraft must alter its heading to the right, when overtaking another aircraft to which this Order or CAO 95.4 applies — but only if:
 - (i) the aircraft being overtaken is engaged in ridge or hill soaring; and
 - (ii) the overtaking aircraft would not pass well clear if the aircraft being overtaken turns away from the ridge or hill; and
 - (iii) the overtaking aircraft has to turn to the left in order to pass between the ridge or hill and the other aircraft;
 - (e) subregulation 163AA (2);
 - (f) paragraphs 166A (2) (d), (e) and (f), provided that an aircraft operating in the circuit area of a non-controlled aerodrome must, as far as practicable, make all turns in the established circuit direction;
 - (g) regulations 207 and 208;
 - (h) regulation 210 as far as advertising of flying training to qualify for a pilot standard specified in the HGFA Operations Manual is concerned;
 - (i) regulation 230;
 - (j) subregulation 243 (1), except when the glider is operating:
 - (i) in controlled airspace, unless Air Traffic Control has authorised the use of an alternative frequency; or
 - (ii) in the vicinity of an aerodrome served by a regular public transport service; or
 - (iii) in the vicinity of an aerodrome designated under regulation 166A;
 - (k) regulations 252 and 258;
 - (l) regulation 322.
- 3.2 The conditions set out in subsections 6 and 7 must be complied with by, and in relation to, such an aircraft.

4 Licence not required

- 4.1 For section 20AB of the Act, a person is authorised to perform a duty essential to the operation of an aircraft to which this Order applies without holding a flight crew licence if he or she complies with the conditions set out in subsections 6 and 7.
- 4.2 In spite of paragraph 4.1, a person must hold a flight radiotelephone operator licence if he or she makes airborne radio transmissions on aeronautical HF frequencies.

Note A licence is not required to make airborne radio transmissions that are not on aeronautical HF frequencies.

5 Aircraft not required to be registered

For paragraph 20AA (1) (b) of the Act, an aircraft, to which this Order applies, is not required to be registered under CAR 1988 when it is flown in accordance with the conditions set out in subsections 6 and 7.

6 General conditions

- 6.1 A person must not act as pilot in command of an aircraft to which this Order applies unless he or she is the holder of a pilot certificate issued by the HGFA or he or she is under the supervision of an instructor approved by the HGFA.
- 6.2 A person must not be issued with a pilot certificate unless he or she has undergone the training for, and met the requirements applicable to, the certificate applied for as specified in the HGFA Operations Manual.
- 6.3 The holder of a pilot certificate is subject to the privileges and limitations specified in the HGFA Operations Manual as being appropriate to the pilot certificate held.
- 6.4 The HGFA may suspend, cancel or otherwise vary a pilot certificate but, unless the HGFA has exercised such power, that certificate must remain in force for the period specified in the HGFA Operations Manual.
- 6.5 A person seeking renewal of a pilot certificate must apply to the HGFA and must meet the renewal requirements applicable to that certificate as specified in the HGFA Operations Manual.
- 6.6 An aircraft to which this Order applies must be operated in accordance with the rules, regulations and directions made by the HGFA for the operation of such aircraft and specified in the HGFA Operations Manual or in any other manual or document of the HGFA.
- 6.7 Upon the request of an authorised person, the owner or operator of an aircraft to which this Order applies must furnish satisfactory evidence that the aircraft meets the weight requirements of this Order.
- 6.8 An authorised person must, at all reasonable times, have access to any aircraft to which this Order applies for the purpose of inspecting the aircraft to determine that it meets the weight requirements of this Order.

7 Flight conditions

- 7.1 Subject to paragraph 8.5, an aircraft to which this Order applies must not be flown:
 - (a) at a height in excess of 10 000 feet above mean sea level unless each person in the aircraft is supplied with oxygen from a supply system approved by CASA or the HGFA; or
 - (b) at a height in excess of 300 feet above ground level unless a serviceable altimeter which meets the standards specified in Civil Aviation Order 103.3 and set to QNH is carried in a position so as to be easily read by the pilot at all times while in flight; or
 - (c) within an area designated by CASA as an area where the operation of hang-gliders would constitute a hazard to other aircraft; or
 - (d) at night; or
 - (e) other than in V.M.C.; or
 - (f) in the case of a framed hang-glider or a paraglider — over a body of water beyond gliding distance from a suitable landing area, unless the operator has a rescue water craft in the vicinity; or
 - (g) in the case of a powered hang-glider or a powered paraglider, over a body of water:
 - (i) beyond gliding distance from a suitable landing area; or

- (ii) beyond a horizontal distance of 25 nautical miles from a suitable landing area — if each occupant wears a life jacket and the aircraft is equipped with a serviceable radiocommunication system and:
 - (A) an approved ELT, or an approved portable ELT, within the meaning of regulation 252A of CAR 1988; or
 - (B) a personal locator beacon that has been approved by CASA for use in such an aircraft.
- (h) within 8 kilometres of a military aerodrome; or
- (i) except in:
 - (i) Class G airspace; or
 - (ii) Class E airspace in V.M.C.; or
 - (iii) Class C or Class D airspace that is below 300 feet above ground level and not within 16 kilometres of a controlled aerodrome; or
 - (iv) Class C or Class D airspace to which sub-subparagraph (iii) does not refer — if in accordance with paragraph 7.6; or

Note Classes of airspace are defined in the *Australian Airspace Policy Statement*.

- (j) over any closely-settled area — below 1 000 feet above terrain, or the lowest height from which the hang-glider could land outside the closely-settled area, whichever is the higher, except that during the launching and landing phase of flight only the requirement to be able to land clear of a closely-settled area applies; or
 - (k) during the launching or landing phase of a flight — unless the aircraft can be launched or landed without endangering the safety of persons unrelated to the launching or landing or damaging unrelated property, and no closer than the distances specified in the HGFA Operations Manual.
- 7.2 An aircraft to which this Order applies must not be flown at any height within a Military Control Zone unless the prior approval of the appropriate military authority has been obtained.
- 7.3 The radiotelephone equipment (if any) fitted to an aircraft must not be used by a person unless the person holds:
- (a) for transmissions on VHF frequencies only — a valid certificate, issued by the HGFA in accordance with the appropriate operations manual, relating to the operation of radiotelephone equipment; or
 - (b) for all transmissions — a flight radiotelephone operator licence.
- 7.4 Except with the written permission of CASA, a person must not carry out acrobatic flight in an aircraft to which this Order applies over a closely-settled area.
- 7.5 A person must not carry out acrobatic flight in an aircraft to which this Order applies unless he or she has taken action to ensure that the following requirements are met:
- (a) any loose articles are made secure in the aircraft;
 - (b) each person attached to the aircraft is secured with a correctly adjusted safety harness.

- 7.6 An aircraft to which this Order applies may be flown in Class C or Class D airspace if the pilot:
- (a) holds a valid pilot licence (not being a student pilot licence), issued under Part 5 of CAR 1988, that allows the holder to fly in that airspace; and
 - (b) has satisfactorily completed a flight review in accordance with regulation 5.81, 5.108 or 5.169 of CAR 1988.

8 Approval of flights not complying with flight conditions

- 8.1 A person who wants to fly an aircraft to which this Order applies, otherwise than in accordance with the flight conditions set out in paragraph 7.1, may apply to CASA for approval of the flight.
- 8.2 The application must:
- (a) be in writing; and
 - (b) include details of the proposed flight; and
 - (c) be made at least 28 days before the proposed flight.
- 8.3 CASA may, in writing, approve the application.
- 8.4 The approval:
- (a) must specify which of the flight conditions set out in paragraph 7.1 do not apply to the use, by the applicant, of the aircraft in the proposed flight; and
 - (b) may specify conditions to be complied with in relation to the proposed flight.
- 8.5 If the proposed flight takes place in accordance with the approval (including any conditions specified in the approval in accordance with subparagraph 8.4 (b)), the use by the applicant of the aircraft in the flight is not subject to the flight conditions specified in the approval in accordance with subparagraph 8.4 (a).
-

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 95.8 Instrument 2011

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.

Under subregulation 308 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may exempt aircraft, or persons in, on, or otherwise associated with the operation of the aircraft, from compliance with specified provisions of CAR 1988.

The previous Civil Aviation Order 95.8 contained exemptions to allow the operation of hang-gliders, being gliders with a maximum empty weight of not more than 70 kilograms, and powered paragliders, subject to compliance with the conditions mentioned in it.

The *Civil Aviation Order 95.8 Instrument 2011* was made to replace the previous Civil Aviation Order 95.8. It contains a new Civil Aviation Order 95.8 (the *new Order*).

The new Order applies to framed hang-gliders, paragliders, powered hang-gliders and powered paragliders. Though the descriptions differ from the previous Order, the changes are not substantial. Their main purpose is to describe more closely the configuration of the various aircraft. The maximum empty weight of the aircraft is still stated to be 70 kilograms as in the previous Order. The operations of the aircraft are still overseen by the Hang Gliding Federation of Australia Inc. (**HGFA**) in accordance with the HGFA Operations Manual.

The proposed changes from the previous Order are also generally in accordance with the new Part 103 (*Sport and Recreational Aviation Operations*) proposed for inclusion in the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) for which a Notice of Proposed Rule Making (**NPRM**) has been published. The response to the NPRM was mainly favourable.

The new Order also includes new definitions that are in accordance with the proposed Part 103. These are the definitions of *closely-settled area* and *suitable landing area* which are used in the conditions in the Order.

The new Order has also been changed to allow persons flying aircraft of the types to which the Order refers to expand their operations. The previous Order contained no conditions relating to flights over water. The new Order now states that in the case of a framed hang-glider or a paraglider, flights must not be conducted beyond gliding distance from a suitable landing area unless the operator has a rescue water craft in the vicinity. In the case of a powered hang-glider or a powered paraglider, the Order states that flights must be conducted within gliding distance from a suitable landing area, unless each occupant wears a life jacket and the aircraft is equipped with the prescribed safety equipment. If those requirements are met, flights may be conducted up to 25 nautical miles horizontal distance from a suitable landing area. These over-water flight conditions have been included in the interests of aviation safety.

Other changes have been made in the new Order to simplify the provisions, which in the previous Order had been amended piece-meal over the years. The new Order has also been prepared to make it as uniform as possible with other Orders relating to flights in similar light aircraft. For instance, the conditions are now contained in 2 separate subsections (general conditions and flight conditions).

Legislative Instruments Act

Under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the *LIA*), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. Under subsection 95 (5) of the Act, Civil Aviation Orders are declared to be disallowable instruments. The new Order is, therefore, a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The changes are consistent with the NPRM for the proposed Part 103 as mentioned above. In addition, the new Order will be the subject of a Notice of Final Rule Making. The sport aviation industry and users of the aircraft to which it applies were made aware of the changes included in the new Order and have, through the various associations that regulate those aircraft, prepared for their introduction.

Office of Best Practice Regulation (OBPR)

OBPR does not require a Regulation Impact Statement (*RIS*) as the amendments are minor and of a machinery nature. A RIS exemption (OBPR ID No. 190) has been provided.

The instrument commences on the day after it is registered.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Civil Aviation Order 95.8 Instrument 2011]