

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Exemption, approval and direction – operation of model aircraft – members of Model Aeronautical Association of Australia

##### Purpose

This legislative instrument gives an exemption, approval and direction with effect to permit certain model aircraft operations under the auspices of the Model Aeronautical Association of Australia Incorporated (the *MAAA*) that would otherwise contravene directions in instrument CASA 96/17.

##### 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*).

Subsection 98 (5D) of the Act provides that 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.

Part 101 of CASR deals with the safety regulation of unmanned aircraft and rockets.

Relevantly for present purposes, Part 101 includes the following Subparts:

- Subpart 101.B that imposes a general prohibition on the hazardous operation of unmanned aircraft
- Subpart 101.C that imposes a range of obligations in relation to the operation of unmanned aircraft generally
- Subpart 101.G that comprises specific provisions for the regulation of model aircraft.

The CASR Dictionary defines *model aircraft* as an aircraft that is used for sport or recreation, and cannot carry a person.

Regulation 101.030 makes provision for CASA to approve areas (*approved areas*) in which unmanned aircraft or rockets may be operated.

Relevantly in Subpart 101.C:

- regulation 101.070 prohibits a person to operate an unmanned aircraft higher than 400 feet (*ft*) above ground level (*AGL*) in controlled airspace except in an approved area for the aircraft and in accordance with air traffic control clearance
- regulation 101.075 prohibits a person to operate an unmanned aircraft above 400 ft AGL within 3 nautical miles (*NM*) of an aerodrome, or over an area that is the movement area or runway of an aerodrome or over an area that is the approach or departure path of an aerodrome, unless permitted under Part 101 or by a permission under regulation 101.080
- regulation 101.085 prohibits a person to operate an unmanned aircraft above 400 ft AGL except in an approved area or as otherwise permitted under Part 101.

Relevantly in Subpart 101.G, regulation 101.400 prohibits the operation of a model aircraft outside an approved area above 400 ft AGL unless the aircraft is kept in sight and is kept clear of populous areas.

Instrument CASA 96/17 (*CASA 96/17*) commenced on 20 October 2017 to give directions to regulate the operation of certain unmanned aircraft in the interests of safety.

Relevantly for present purposes, subsection 4 (1) of CASA 96/17 directs a person not to control an unmanned aircraft within 3 NM of the movement area of a controlled aerodrome. Under subsection 4 (2), the direction in subsection 4 (1) does not apply in respect of the operation of unmanned aircraft in accordance with an exemption under CASR that has effect to permit operation of the unmanned aircraft near the aerodrome.

In addition, subsection 6 (1) of CASA 96/17 relevantly directs a person not to control an unmanned aircraft higher than 400 ft AGL. Under paragraph 6 (2) (f), the direction in subsection 6 (1) does not apply to the operation of a model aircraft in accordance with an approval given by CASA for the purpose of the paragraph.

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, CASA may grant an exemption from a provision of the regulations. Under subregulation 11.160 (2), 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. Under subregulation 11.170 (3) of CASR, in deciding whether to grant 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.

## **Background**

The directions in CASA 96/17 provide for tighter regulation of certain unmanned aircraft operations in the interests of safety. CASA was aware that the directions would impact some operations of model aircraft conducted under the auspices of the MAAA, including flight within 3 NM of controlled aerodromes and higher than 400 ft AGL.

CASA has been consulting with the MAAA to address that impact and has reviewed the MAAA Manual of Procedures (the *MAAA Manual*) that aim to ensure that the operations of its members are conducted safely. Many MAAA officials are familiar with aviation operations and are competent to manage safety risks associated with the operation of model aircraft in a way that is less likely to be true for many other recreational model aircraft users.

In addition, available data discloses no incident involving the MAAA sanctioned operations higher than 400 ft AGL or within 3 NM of a controlled aerodrome. There is no data indicating that such MAAA operations create an unacceptable risk to aviation safety.

The instrument provides interim relief against the directions in CASA 96/17 pending the approval of approved areas under regulation 11.030 of CASR, which constitutes an appropriate mechanism to permit relevant MAAA operations but that cannot be implemented sufficiently quickly to avoid undue disruption to those operations.

### **Details of the instrument**

The instrument applies with respect to the *MAAA aircraft* that is defined to be a model aircraft operated by an MAAA member in accordance with the MAAA Manual.

*MAAA member* is defined to be a person who is an affiliate member, associate member, honorary member or probationary member of the MAAA and who has paid any membership fees payable to the MAAA in respect of that membership. The different classes of membership are governed by the MAAA Statement of Rules, defined in the instrument as the *MAAA rules*. The defined term covers the range of individuals who can operate model aircraft under the auspices of the MAAA.

For subsection 98 (5D) of the Act, the classes of MAAA membership in the MAAA rules are incorporated into the instrument by reference. The MAAA rules sets out administrative procedures and governance arrangements for the MAAA organisation.

The MAAA Rules are incorporated as they exist from time to time and are freely available at <https://www.maaa.asn.au/images/pdfs/Statement-of-Rules-17-May-2015.pdf>.

For subsection 98 (5D) of the Act, the MAAA Manual is also incorporated into the instrument by reference. The MAAA Manual sets out the procedures for all aspects of the operation of model aircraft under the auspices of the MAAA. In particular, document “MOP004” that forms part of the MAAA Manual sets out rules for temporarily increasing the maximum height at which model aircraft can be operated under the auspices of the MAAA. In addition, document “MOP061” that forms part of the MAAA Manual sets out rules for operation of model aircraft near aerodromes.

MOP004 and MOP061 respectively include special procedures for operation of model aircraft under the auspices of the MAAA: above 400 ft AGL, and within 3 NM of a controlled aerodrome. These documents are incorporated into the instrument as they exist on 27 October 2017. Restricting the incorporation of the documents as they exist on this date ensures that the special procedures are not changed without CASA’s regulatory oversight.

The other parts of the MAAA Manual are incorporated as they exist from time to time. The other parts of the MAA Manual apply only to the extent that they are not inconsistent with MOP004 and MOP061, to ensure that the requirements of these MOPs are not displaced by later amendments to other parts of the MAAA Manual.

The MAAA Manual is freely available at <https://www.maaa.asn.au/documents-manual-of-procedures>.

Section 3 of the instrument provides an exemption to MAAA members against the offence provision in regulation 11.255 of CASR for breach of a direction given under regulation 11.245. The exemption is limited to the extent that the operation of an MAAA aircraft by an MAAA member would contravene the direction in subsection 4 (1) of CASA 96/17 in relation to the operation of unmanned aircraft within 3 NM of a controlled aerodrome.

Section 4 of the instrument approves an MAAA member, for paragraph 6 (2) (f) of CASA 96/17, to operate an MAAA aircraft above 400 ft AGL.

Due to the definitions in the instrument, the exemption and approval only apply if the aircraft is a model aircraft operated by an MAAA member in accordance with the MAAA Manual.

Section 5 of the instrument directs MAAA not to amend MOP004 or MOP061 in a manner that affects the operation of a model aircraft above 400 ft AGL or within 3 NM of a controlled aerodrome unless the amendment has CASA's prior written approval. This is to ensure that the special procedures for such operations published by MAAA in contemplation of this instrument are not changed without CASA oversight. If those procedures are changed, this instrument will be remade to incorporate the new version of the relevant MOP document.

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

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, being MAAA members, and is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

### **Consultation**

CASA consulted with the MAAA in respect of CASA 96/17 and this legislative instrument addresses feedback arising from that consultation. The MAAA was also consulted on a draft of this instrument. In these circumstances, CASA is satisfied that no further consultation is necessary or appropriate for this instrument for section 17 of the LA.

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

A Regulation Impact Statement (*RIS*) is not required in this case, as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions, approvals and directions (OBPR 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*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

**Making and commencement**

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

The instrument commences on the day of registration and is repealed at the end of 30 April 2018.

[Instrument number CASA EX156/17]

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

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

### **Exemption, approval and direction – operation of model aircraft – members of Model Aeronautical Association of Australia**

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**

This legislative instrument gives an exemption, approval and direction with effect to permit certain model aircraft operations under the auspices of the Model Aeronautical Association of Australia Incorporated that would otherwise contravene directions in instrument CASA 96/17.

#### **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**