

## Explanatory Statement

### Civil Aviation Act 1988

### Civil Aviation Order 95.55 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 *Civil Aviation Order 95.55 Instrument 2011* replaces the previous Civil Aviation Order 95.55. It contains a new Civil Aviation Order 95.55 (the *new Order*).

The previous Civil Aviation Order 95.55 contained exemptions to allow the operation of aeroplanes that complied with the criteria set out in subsection 1, subject to compliance with the mentioned conditions.

The new Order also applies to certain aeroplanes that meet 1 of the sets of specifications set out in the Order.

There have been changes to the requirements of the previous Order. These changes are generally in accordance with the proposed Part 103 (Sport and recreational aviation operations), the new Part proposed for inclusion in the *Civil Aviation Safety Regulations 1998 (CASR 1998)* for which a Notice of Proposed Rule Making (*NPRM*) has been circulated and which is being prepared in accordance with the mainly favourable response. They should allow those persons flying and constructing aircraft of the types to which the Order refers to operate without restrictions that are no longer considered necessary.

One of the changes has been to increase the maximum weights specified in some of the specifications to 600 kilograms for an aircraft not equipped to land on water and to 650 kilograms for an aircraft equipped to land on water. This is in accordance with equivalent standards in place in overseas countries where many of these aircraft are manufactured. It will allow the operation under the new Order of some aircraft that had previously not met the previous limitations.

The expression *built-up area* used in the previous Order and which was not defined, has been replaced by the defined expression *closely-settled area*. This expression is also used and defined in the proposed Part 103 of CASR 1998.

Subregulation 252A (2) of CAR 1988 is applied in relation to the carriage of emergency locator beacons. In the case of a flight extending more than 50 miles from the point of departure, a 2-place aircraft to which the Order refers needs to be equipped with an approved emergency locator transmitter in accordance with regulation 252A of CAR 1988, or a personal locator beacon approved by CASA for use on such an aircraft.

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 Order has also been prepared to make it as uniform as possible with the other Orders also dealing with sport and recreational aircraft that have been remade at the same time.

Examples of these changes can be found in the flight conditions that deal with flights over bodies of water and the minimum distances from land that an aircraft is permitted to travel. These restrictions have been made as consistent as possible throughout the Orders, having regard to the varying characteristics of the aircraft. As well, the conditions with which the pilots must comply have been altered to ensure consistency with other Orders, including the need on flights above water up to 25 nautical miles from land and beyond gliding distance, for pilots to wear life jackets and the aircraft to carry emergency locator transmitters or personal locator beacons as well as radiocommunication equipment. Aircraft may exceed the limit of 25 nautical miles when flying between Tasmania and mainland Australia, if taking advantage of safer weather conditions.

The Order now allows an aircraft to be less than 100 metres from a public road, a person not associated with the operation of an aircraft or a private dwelling when taking off or landing. However, the aircraft must be distant enough to avoid endangering any person or causing damage to any property and as far as possible from such a person or place, having regard to carrying out a safe take-off or landing.

### **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 of CASR 1998 as mentioned above. The sport and recreational aviation aircraft industry and users of aircraft to which the Order applies were aware of the changes that have been made and have, through the various associations that regulate those aircraft, prepared for their introduction. None of the changes should affect aviation safety.

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

The OBPR does not require a Regulation Impact Statement as the amendments are minor and of a machinery nature.

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 95.55 Instrument 2011]