



Australian Government

Civil Aviation Safety Authority

Instrument number CASA EX138/16

I, MARK ALAN SKIDMORE, Director of Aviation Safety, on behalf of CASA, make this instrument under the *Civil Aviation Safety Regulations 1998 (CASR 1998)*.

A handwritten signature in black ink, appearing to read 'Mark Skidmore'.

Mark Skidmore AM
Director of Aviation Safety

2 September 2016

Exemption and approval — operating model aircraft (Model Aeronautical Association of Australia Incorporated)

1 Duration

- (1) This section, section 2 and Schedule 1 to this instrument:
 - (a) commence on the day after registration; and
 - (b) are repealed at the end of 31 August 2019.
- (2) Schedule 2 to this instrument:
 - (a) commences immediately after the commencement of the *Civil Aviation Legislation Amendment (Part 101) Regulation 2016*; and
 - (b) is repealed at the end of 31 August 2019.

2 Application

- (1) This instrument applies to a member of the Model Aeronautical Association of Australia Incorporated, Aviation Reference Number 578375 (the *MAAA*), if the member operates a model aircraft using first person view technology.
- (2) In this section:

first person view technology means technology enabling the model aircraft to be piloted:

 - (a) without the member having direct line of sight of the aircraft; and
 - (b) with the member using a live video downlink from a camera fixed to the aircraft.

Schedule 1 — Exemption

For regulation 11.160 of CASR 1998, the member is exempt from compliance with subregulation 101.385 (1) of CASR 1998, subject to the condition that the member operates the model aircraft in accordance with the “First Person View (FPV) Policy”, MOP066, published by the MAAA, as existing from time to time.

Schedule 2 — Approval

For subregulation 101.073 (2) of CASR 1998, the member may operate the model aircraft beyond the person's visual line of sight, subject to the condition that the member operates the aircraft in accordance with the "First Person View (FPV) Policy", MOP066, published by the operator, as existing from time to time.

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption and approval — operating model aircraft (Model Aeronautical Association of Australia Incorporated)

Purpose

The purpose of the instrument is to allow members of the Model Aeronautical Association of Australia (the *MAAA*) to operate a model aircraft using first person view technology if they do so in accordance with accepted procedures and practices.

Legislative background

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations.

Subregulation 101.385 of the *Civil Aviation Safety Regulations 1998* (*CASR 1998*) prohibits a person from operating a model aircraft unless the visibility at the time is good enough for the person to be able to see the model aircraft continuously.

- **Model aircraft** is defined in the CASR Dictionary to mean an aircraft that is used for sport or recreation and cannot carry a person.

Under subregulation 11.160 (1) of CASR 1998, CASA may grant an exemption from compliance with a provision of the regulations. 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 11.170 (3), in deciding whether to grant an exemption, CASA must regard as paramount the preservation of an acceptable level of safety.

Under subregulation 11.205 (1) of CASR 1998, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210, it is an offence to fail to comply with a condition of an exemption.

Under subregulation 11.230 (1), an exemption ceases on the day specified within it (but no longer than 3 years after its commencement), or if no day is specified, 3 years after commencement.

On 29 September 2016, amendments to Part 101 of CASR 1998 will come into effect in accordance with the *Civil Aviation Legislation Amendment (Part 101) Regulation 2016* (the **amendment regulation**). The amendment regulation will insert a new regulation 101.073 into Part 101.

Subregulation 101.073 (1) will provide that a person commits an offence of strict liability if the person operates an unmanned aircraft and the aircraft is not operated within the person's visual line of sight.

Subregulation 101.073 (2) will provide that subregulation (1) does not apply if the person holds an approval under regulation 101.029 to operate the aircraft beyond the person's visual line of sight and any conditions on the approval are complied with.

New subregulation 101.029 (1) will provide that, if a provision in Part 101 refers to a person holding an approval under regulation 101.029, the person may apply to CASA for the

approval. Subpart 11.BA of CASR 1998 will apply to the approval which will be an authorisation within the meaning of Part 11, see the definition of *authorisation* at regulation 11.015 of CASR 1998.

Regulation 11.055 sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation can be granted subject to conditions. Regulation 11.077 provides that a person commits an offence of strict liability if the person breaches a condition of an authorisation.

Legislative instrument

Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue an instrument in relation to matters affecting the safe navigation, and operation or the maintenance of aircraft.

Relevantly, subsection 98 (5AA) provides that an instrument made under paragraph (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons or a class of aircraft.

As the instrument is an exemption made under subregulation 11.160 (1) of CASR 1998 and is expressed to apply to a class of persons and to a class of aircraft, the instrument is a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislation Act 2003*.

Relevantly, under subsection 98 (5D) of the Act, a legislative instrument made under the Act or regulations may incorporate any matter contained in writing as in force or existing at a particular time or from time to time. The instrument would incorporate the “First Person View (FPV) Policy” published by the MAAA as it exists from time to time. The instrument is available on the MAAA website.

Statement of Compatibility with Human Rights

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

Consultation

Consultation has been undertaken with the MAAA in relation to the instrument. The instrument formalises a long-standing acceptance by CASA of the MAAA “First Person View (FPV) Policy” as adequate to permit members of the MAAA to utilise first person view technology and operate a model aircraft using a video downlink from a camera instead of maintaining a direct line of sight.

Making and commencement

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

Sections 1 and 2 and Schedule 1 to the instrument commence on the day after registration and are repealed at the end of 31 August 2019.

Schedule 2 to the instrument commences immediately after the commencement of the amendment regulation.

Statement of Compatibility with Human Rights

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

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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

The legislative instrument would allow members of the Model Aeronautical Association of Australia to operate a model aircraft using first person view technology if they do so in accordance with accepted procedures and practices.

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