EXPLANATORY STATEMENT
CIVIL AVIATION REGULATIONS 1988
PERMISSION AND DIRECTIONS
LEAVING AND BOARDING HELICOPTERS DURING SPECIAL OPERATIONS

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

Subregulation 250 (1) of the Civil Aviation Regulations 1988 (CAR 1988) provides that the operator of an aircraft and the pilot in command must not permit a person to be carried on the wings or undercarriage of any aircraft. Subregulation 250 (2) provides that a person may, with the permission of CASA given in respect of flights of a particular kind, be carried on or in a part of an aircraft that is not designed for the accommodation of the crew or passengers. Subregulation 250 (3) provides that CASA may, when granting a permission, specify conditions subject to which a person may be carried.

Subregulation 251 (1) of CAR 1988 provides that seat belts must be worn by all crew members and passengers in various circumstances, including, unless CASA otherwise directs for the purposes of subregulation 251 (9), when the aircraft is flying at less than 1,000 feet above the terrain.

Subregulation 207 (2) of CAR 1988 provides that an Australian aircraft must not be used in any class of operations unless it is fitted with or carries such equipment, including emergency equipment, as CASA approves or directs. Subregulation 207 (3) provides that the equipment must be fitted, carried or used in accordance with the directions (if any) of CASA.

In accordance with subregulations 207 (2) and (3), paragraph 3.1 of section 20.16.3 of the Civil Aviation Orders (the Orders) provides, among other things, that each crew member and each passenger must occupy a seat of an approved type when the aircraft is flying at a height less than 1,000 feet above the terrain.

This instrument allows passengers in a helicopter engaged in special operations to be carried on the undercarriage for the purpose of leaving or boarding the helicopter. It also allows a passenger not to wear a seat belt, or occupy a seat, at a height less than 1,000 feet above the terrain, when the helicopter is in a hover for the purpose of permitting a passenger to leave or board the helicopter. The term special operation is defined as meaning a search and rescue operation, law enforcement operation, fire fighting operation or training for such an operation, in which it is necessary to leave or board the helicopter when a landing is not possible or safe.
Schedule 1 specifies the operators to whom the instrument applies. Schedule 2 requires the operations to be carried out in accordance with the instructions, as approved by CASA, and set out in the operator’s operations manual.

The instrument replaces a previous instrument (CASA 561/04) to modify the list of specified operators in Schedule 1 by adding Hevi Lift (PNG) Ltd (Hevi Lift). This follows CASA’s consideration of an application from Hevi Lift.

Under regulation 5A of CAR 1988, if CASA has issued an Order, and CASA later issues a direction, instruction, notification, permission, approval or authority that in any way affects the operation of the Order, the later document is a legislative instrument by virtue of paragraph 6 (d) (i) of the Legislative Instruments Act 2003.

The instrument affects the operation of paragraph 3.1 of section 20.16.3 of the Orders which requires that passengers must occupy seats of an approved type in certain circumstances. The instrument is therefore a legislative instrument for the purposes of section 5 of the Legislative Instruments Act 2003. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of that Act.

Consultation under section 17 of the Legislative Instruments Act 2003 has not been undertaken in this case. The instrument has been specifically requested by Hevi Lift.

The instrument has been issued by a delegate of CASA. It takes effect at the start of the day after it is registered on the Federal Register of Legislative Instruments. It stops having effect when it is revoked.

[Instrument Number CASA 56/05]