Explanatory Statement

Civil Aviation Regulations 1988

Amendment of instrument CASA EX55/06

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

Legislation

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. Under subregulation 308 (2) of CAR 1988, before making an exemption, CASA must take into account any relevant considerations relating to the interests of safety. Under subregulation 308 (3) of CAR 1988, CASA may make an exemption subject to conditions specified in the exemption as being necessary in the interests of safety.

Under subregulation 217 (1) of CAR 1988, the operator of an aircraft with a maximum take-off weight of more than 5 700 kg must provide a training and checking organisation (a TCO) to ensure that the crew maintain competency. Under subregulation 217 (2) of CAR 1988, the TCO must provide each crew member with 2 annual competency checks. Under subregulation 217 (3) of CAR 1988, the TCO, and its tests and checks, must be approved by CASA.

Under subregulation 232 (1) of CAR 1988, the operator of an aircraft must establish a flight check system (FCS) for each type of aircraft, setting out the procedures to be followed by the pilot in command and other crew members before and on take-off, on landing, and in emergency situations. Under subregulation 232 (2) of CAR 1988, a FCS is subject to prior approval of CASA and CASA may, at any time, require the system to be revised in a manner specified by CASA. Under subregulation 232 (3) of CAR 1988, the pilot in command of the aircraft must ensure that the procedure checklists are located where they are immediately available to the flight crew. Under subregulation 232 (4) of CAR 1988, the pilot in command must ensure that the flight check system is carried out in detail. Under subregulation 232 (5) of CAR 1988, the operator of an aircraft must not allow it to be flown if the flight check system has not been approved by CASA or, if CASA has required the system to be revised, has not been revised in a manner required.

Sikorsky S64

Under a lease agreement with Erickson Air Crane Incorporated (EAC), Helicorp Pty Ltd uses 3 multi-engine Sikorsky S64 Skycrane helicopters in the aerial work category for firefighting purposes during the 2006-2007 fire fighting season i.e. from 1 November 2006 until 31 May 2007.

Exemption

Both for itself and its pilots in command, the operator requested and obtained an exemption from the requirements to have a TCO and an approved FCS in respect of its operation of the aircraft (see instrument CASA EX55/06). However, one of the aircraft referred to in that instrument will not be operating under the exemption. This amendment replaces the reference to that aircraft with a reference to another aircraft that will require an exemption (the replacement aircraft).

In other respects, the exemption will be unaltered. For instance, the requirements specified in the conditions mentioned in instrument CASA EX55/06 will apply to the replacement aircraft. Particulars of the conditions are set out below.
**Conditions**
The operator must hold a discrete air operator’s certificate for the aircraft and comply with any conditions mentioned in it. Further, the aircraft may only be operated for firefighting purposes and may only carry crew members.

The aircraft may be flown in Australia only by a pilot who meets FAA and EAC check and training proficiency requirements.

The operator’s chief pilot must sight, and verify the currency of, each operating crew member’s licence, aircraft endorsement, medical certificate and most recent proficiency check on the aircraft.

The aircraft must have an FCS that complies with FAA standards. The operator and the pilot in command must ensure that the normal and emergency checklists are immediately available to the crew in flight. The pilot in command must ensure that the flight check system is carried out in detail.

If the aircraft’s checklist information, procedures and instructions are contained in the aircraft’s flight manual, the flight manual may be taken to be the flight check system and it must be immediately available to the crew in flight.

**Legislative Instruments Act**
Subregulation 308 (4) of CAR 1988 declares an exemption to be a disallowable instrument. 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. The exemption 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**
Consultation under section 17 of the LIA has not been undertaken in this case. The instrument amends CASA EX55/06 by changing the serial and registration numbers of one of the aircraft in the instrument from 64-097 and N178AC to 64-064 and N217AC.


The exemption has been made by the Deputy Chief Executive and Chief Operating Officer, a delegate of CASA, in accordance with subregulation 7 (1) of CAR 1988.

[Instrument number CASA EX60/06]