

Explanatory Statement

Civil Aviation Regulations 1988 — regulation 308

Exemption — training and checking organisation, and flight check system

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 308 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that 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.

Subregulation 308 (2) provides that before making an exemption CASA must take into account any relevant considerations relating to the interests of safety.

Subregulation 308 (3) of CAR 1988 provides that CASA may make an exemption subject to conditions specified in the exemption as being necessary in the interests of safety.

CAR 217 (1)

Subregulation 217 (1) of CAR 1988 requires that the operator of an aircraft with a maximum take-off weight of more than 5 700 kg must provide a training and checking organisation. However, CASA instrument EX24/2002 exempts virtually all single engine aircraft engaged in aerial work operations (for example, fire fighting) from regulation 217.

The Sikorsky CH-54B Skycrane helicopter is a large, fire fighting, multi-engine aircraft with a maximum take-off weight in excess of 5 700 kg. Its size brings it within the scope of regulation 217, and its multi-engines place it outside the scope of CASA EX24/2002.

Similar aircraft are operated in Australia each year during the fire season. Approval to fly is given by a discrete Air Operator's Certificate (**AOC**) issued to the operator.

No Australian pilots or CASA Flying Operations Inspectors (**FOIs**) are endorsed on type. The nature of the short-term contract work of these fire fighting helicopters makes it impractical to endorse CASA FOIs on type to permit a CAR 217 organisation to be established by the AOC holder. However, an equivalent level of safety can be provided by ensuring that the operator's meet the competency requirements stipulated by the FAA and the operator's training and checking program.

The instrument, therefore, exempts the operator from the requirement to have a training and checking organisation. Conditions on the exemption require that the operator must hold a discrete AOC for the aircraft which may only be operated for fire fighting purposes. Only pilots who meet the FAA and operator check and training proficiency requirements may fly the aircraft. The operator's Chief Pilot must sight, verify and keep copies of the crew's licences and proficiency check documents.

CAR 232

Subregulation 232 (1) of CAR 1988 provides that the operator of an aircraft must establish a flight check system for each type of aircraft, setting out the procedures to be followed by the pilot in command and other crew members prior to and on take-off, on landing and in emergency situations.

Subregulation 232 (2) of CAR 1988 provides that a flight check system 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.

Subregulation 232 (5) of CAR 1988 provides that an aircraft must not be flown unless the flight check system has been approved by CASA and, if CASA has required the system to be revised, the system has been revised in a manner specified by CASA.

CASA considers that the requirement for the flight check system for this aircraft to be approved involves a significant resource impost on both CASA and the operator with no significant enhancement in safety.

This exemption, therefore, exempts the operator of this aircraft from the requirement to have the flight check system separately approved.

As a condition on the exemption, the operator will be required to have a flight check system that complies with FAA requirements.

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 under section 17 of the LIA has not been undertaken in this case. The instrument is required by the operator to facilitate fire-fighting operations. It would be issued to any operator who requested it and could meet its safety conditions.

The instrument commences on 1 October 2005. It stops having effect at the end of 30 April 2006.

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 EX47/05]