

Explanatory Statement

Civil Aviation Regulations 1988

Exemption — reweigh requirement

Subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**) provides that the Governor-General may make regulations for the Act and the safety of air navigation.

Under subregulation 235 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may give directions about the method of estimating the weight and centre of gravity of an aircraft. Under subregulation 235 (2A) of CAR 1988, it is an offence to contravene a direction.

Under subregulation 235 (11) of CAR 1988, CASA may exempt an aircraft from any of the requirements imposed by subregulation 235 (1).

Under subregulation 5 (1) of CAR 1988, CASA may use Civil Aviation Orders (**CAOs**) to issue the directions mentioned in subregulation 235 (1). Directions were issued in Civil Aviation Order 100.7 (**CAO 100.7**).

Under paragraph 3.2 of CAO 100.7, an aircraft used in commercial operations must be reweighed at certain intervals. For example, a multi-engine aeroplane with a maximum take-off weight of more than 2 000 kgs but not exceeding 2 800 kgs (e.g. a Cessna 310R) must be reweighed or have its weight validated at the first periodic inspection, or the first maintenance release inspection, after the third anniversary of the date on which the aircraft was last weighed or had its weight validated. Weight validation means precise weight calculation based on, for example, changes or additions to the aircraft's equipment since last it was weighed or had its weight validated.

Australasian Jet Pty Ltd (the **operator**) is the commercial operator of the Cessna 310R with nationality and registration marks VH-TLV (the **aircraft**). The aircraft is due for a reweigh or weight validation on the date of its current maintenance release issue, for which it is currently being inspected. However, the aircraft has been booked in for a major inspection commencing not later than 18 September 2006. This will also involve a reweigh or weight validation.

If the requirements of CAO 100.7 were to be strictly observed, this would mean 2, relatively expensive, reweighs or revalidations within a short time of each other with no benefit for the safety of air navigation.

CASA considers that it would not compromise the safety of air navigation to exempt the aircraft from the reweigh and weight validation requirements under CAO 100.7 provided the operator does not fly the aircraft after the proposed major inspection until it had been reweighed or had its weight validated.

Exemption

Using subregulation 235 (1) of CAR 1988, CASA has issued an exemption, in effect from the reweigh and weight validation requirements in paragraph 3.2 of CAO 100.7, but subject to the condition that the aircraft is not to be flown after 18 September 2006 until it is reweighed or had its weight validated.

The instrument commences on 1 September 2006, after it has been registered, and stops having effect at the end of 31 October 2006. The latter date is designed to provide an extended period of operation of the exemption within which the operator may successfully complete the major inspection and reweighing or weight validation of the aircraft.

Notwithstanding this period, the aircraft must not fly after 18 September 2006 unless it has been reweighed or had its weight validated to comply with safety requirements. Once the aircraft is reweighed or had its weight validated in accordance with this exemption, the future reweigh or weight validation requirements of paragraph 3.2 of CAO 100.7 apply in the normal way according to their terms.

Legislative Instruments Act

Under regulation 5A of CAR 1988, if an instrument affects the operation of the CAOs, it is declared to be a disallowable instrument. The exemption affects the operation of paragraph 3.2 of CAO 100.7 and is declared 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, 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 applies beneficially to the unique circumstances of a particular operator.

The exemption has been issued by a delegate of CASA appointed under regulation 7 of CAR 1988.

[Instrument number CASA EX43/06]