

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Exemption — Rotary Air Force 2000 two place gyroplanes

Section 98 of the *Civil Aviation Act 1988* (the **Act**) provides that the Governor-General may make regulations for the purposes of the Act and in relation to the safety of air navigation.

Exemption from provisions of CAR 1988

Subregulation 308 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that CASA may, in relation to a particular aircraft or specified type or category of aircraft, exempt that aircraft, type or category from compliance with the regulations.

Subregulation 308 (3) provides that the exemption is subject to the aircraft complying with any conditions specified by CASA as being necessary in the interests of safety.

Under subregulation 308 (4), the exemption is a disallowable instrument for section 46A of the *Acts Interpretation Act 1901*.

Exemption from provisions of CASR 1998

Under subregulation 11.160 (1) of *Civil Aviation Safety Regulations 1998* (**CASR 1998**), CASA may grant an exemption from compliance with a provision of CASR 1998. Under regulation 11.160, CASA may grant an exemption on its own initiative.

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), 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 not to comply with a condition of an exemption.

Under regulation 11.125, an exemption must be published on the World Wide Web. Under subregulation 11.230 (1), an exemption ceases on the day specified within it (but no longer than 2 years after its commencement) or, if no day is specified, 2 years after its commencement.

Particulars of exemption

The exemption permits a Rotary Air Force 2000 two place gyroplane (**RAF 2000**) to operate in controlled airspace without being subject to previous restrictions. It replaces a previous exemption CASA EX40/2004 which stopped having effect at the end of November 2006.

This aircraft requires an exemption because it exceeds the maximum weight specified under Civil Aviation Order 95.12.1 (**CAO 95.12.1**). CAO 95.12.1 is a general exemption which applies to gyroplanes with a maximum weight of not more than 600 kilograms. This exemption is subject to the same conditions as the expired exemption, subject to some alterations to reflect changes to CAO 95.12.1. The conditions reflect the fact that recreational aircraft of this type are flown by persons at their own risk. The exemption is also subject to operational limitations that reflect the design limitations of the aircraft.

Legislative Instruments Act

Subregulation 308 (4) of the *Acts Interpretations Act 1901* states that an exemption under subregulation 308 (1) is 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 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 simply renews an instrument and has the same effect as the expired instrument.

The instrument comes into effect on 1 December 2006. It stops having effect at the end of 30 November 2008.

The exemption has been made by the Deputy Chief Executive Officer, Operations, a delegate of CASA, under regulation 308 of CAR 1988 and regulation 11.160 of CASR 1998.

[Instrument number CASA EX67/06]