

## **Explanatory Statement**

### **Civil Aviation Regulations 1988, Civil Aviation Order 100.5**

#### **Exemption — time-in-service recording on maintenance release**

#### **Determination — non-application of part of Civil Aviation Order 100.5**

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 — CAR 1988**

Under subregulation 43B (1) of the *Civil Aviation Regulations 1988* (*CAR 1988*), it is an offence if, on completion of a day's flying operations, the owner, operator or pilot in command of the aircraft fails to record on the maintenance release the total time-in-service of the aircraft on that day.

Under subregulation 308 (1) of 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), before making an exemption, CASA must take into account any relevant considerations relating to the interests of safety. Under subregulation 308 (3), CASA may make an exemption subject to any condition specified in the exemption as being necessary in the interests of safety.

#### **Background**

Regulation 43B was inserted in CAR 1988 in 1992. Before this, the larger airlines were exempt from the requirement for such time-in-service recording. The larger airlines have, in the main, highly complex computerised infrastructures to control and manage aircraft maintenance. Regulation 43B presented these airlines with considerable difficulty because their computer programs are not programmed for this particular information and would require substantial alteration to enable compliance with regulation 43B. The kind of information involved is provided in an alternative form through the aircraft's approved system of maintenance.

In these circumstances, CASA considers that the requirement for daily recording of time-in-service for each Class A aircraft is neither necessary nor appropriate.

#### **Instrument — exemption**

The instrument, therefore, exempts the owner, operator and pilot in command of a Class A aircraft from the specific time-in-service recording requirements of regulation 43B of CAR 1988. Class A aircraft are Australian aircraft certificated in the transport category or used under an Air Operator's Certificate that authorises regular public transport operations.

#### **Conditions**

The exemption is subject to conditions. The operator of the aircraft must ensure that the aircraft's approved system of maintenance includes an approved recording method for time-in-service which is sufficient to meet the continuing airworthiness requirements of the aircraft. The operator must also include details of the recording method in the operator's maintenance control manual prepared for regulation 42ZY of CAR 1988.

#### **Legislation — CAO 100.5**

Under subregulation 43 (1) of CAR 1988, maintenance releases for Australian aircraft may only be issued in the manner and form that CASA directs or approves. Under subregulation 43 (2), CASA may give directions specifying the information to be entered on a maintenance release before it is issued. Under subregulation 5 (1), where

CASA has power to issue directions it may do so in Civil Aviation Orders. Paragraph 6.5 of Civil Aviation Order 100.5 (**CAO 100.5**) contains directions specifying the information to be entered on a maintenance release.

Subparagraphs 6.5 (d), (e) and (f) of CAO 100.5 set out requirements to record time-in-service and related information which, for the reasons mentioned above, are neither necessary nor appropriate for Class A aircraft.

Under paragraph 1.2 of CAO 100.5, CASA may issue a determination that a provision of CAO 100.5 does not apply to specified Australian aircraft. Under paragraph 1.3 of CAO 100.5, before making a determination, CASA must take into account any relevant safety considerations. Using this power, CASA has determined in the instrument that subparagraphs 6.5 (d), (e) and (f) of CAO 100.5 do not apply to Class A aircraft. The information that would otherwise be required to be recorded under subparagraphs 6.5 (d), (e) and (f) of CAO 100.5 is adequately dealt with under the conditions for the exemption. Hence, the exemption and the determination are combined in the same instrument.

CASA does not consider that the exemption or the determination will have a detrimental effect on the safety of air navigation.

### **Legislative Instruments Act**

Under subregulation 308 (4) of CAR 1988, an exemption 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. Under subsection 5 (4) of the LIA, if some provisions of an instrument are of a legislative character (i.e. the exemption) and others are not (i.e. the determination), the whole instrument is taken to be a legislative instrument. The instrument 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 replaces, with the same scope and effect, a previous instrument which expires at the end of June 2008 and which was to facilitate the operation of Class A aircraft without prejudicing safety.

The instrument commences on 1 July 2008. It stops having effect at the end of June 2010.

The exemption has been made by a delegate of CASA in accordance with regulation 7 of CAR 1988.

[Instrument number CASA EX42/08]