

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Exemption — conduct of aerial application (fire fighting) operations by DC-10 aircraft

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of 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.

Exemption from provisions of CASR 1998

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) provides that 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) of CASR 1998, 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 of CASR 1998, 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.

CAR 1988 (157)

Subregulation 157 (1) of CAR 1988 requires that the pilot in command of an aircraft must not fly the aircraft over:

- (a) any city, town or populous area, at a height lower than 1 000 feet; or
- (b) any other area at a height lower than 500 feet.

For the purpose of carrying out fire fighting operations under this exemption, the DC-10 aircraft to which it applies, which is registered in the United States of America and flown by a crew qualified in that country, is required to fly at a lower height than the minimum applicable under subregulation 157 (1) of CAR 1988. The instrument therefore exempts the operator from compliance with subregulation 157 (1).

The exemption is subject to conditions. The flight crew must have undergone an annual proficiency check and whatever recurrent training is required to enable them to carry out such operations in the United States of America. They must also hold current licences and authorisations that permit them to carry out operations of the kind permitted under this exemption. In addition, the aircraft must be flown in accordance with the aircraft operator's operations manual as considered acceptable by CASA.

The aircraft operator is an Australian operator, A. G. Airwork, trading as AGFLITE and Super Spread Aviation (the *operator*).

CAR 1988 (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. The DC-10 aircraft is a multi-engine aircraft with a maximum take-off weight in excess of 5 700 kg.

The nature of the short-term contract work for this aircraft makes it impractical to endorse CASA Flying Operations Inspectors on type to permit a CAR 217 organisation to be established by the Air Operator's Certificate holder. However, an equivalent level of safety can be provided by ensuring that the flight crew meets the competency requirements stipulated in the exemption and follows the operator's operations manual. In addition the exemption requires that a CASA Team Leader Flying Operations (*TLFO*), or a Flying Operations Inspector approved by a TLFO, assesses the crew's competence in relation to compliance with the aircraft operator's operations manual and operations in Australian airspace. The operator's chief pilot must also sight, verify and keep copies of the crew's licences, aircraft endorsements, medical certificates and proficiency check documents.

The instrument, therefore, exempts the operator from the requirement to have a training and checking organisation.

CAR 1988 (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 flight crew must follow the flight check system for the aircraft that complies with Federal Aviation Administration of the United States of America standards.

CASR 1998 (Part 137)

Part 137 of CASR 1998 deals with aerial application operations. Aircraft used for aerial application operations, including fire fighting, must comply with its requirements unless exempted from doing so. Exemptions have been provided from the following provisions.

CASR 1998 (137.025)

Regulation 137.025 of CASR 1998 provides that for aerial application operations an aircraft must conform to a type certificate or a type acceptance certificate in the normal, restricted or utility category. The aircraft has been issued with a transport category certificate of airworthiness. Under the exemption, the certificate of airworthiness and all certificates, manuals and other documents that relate to the safe operation of the aircraft must be sighted and verified before the operator is allowed to carry out operations.

CASR 1998 (137.235)

Regulation 137.235 of CASR 1998 provides that an operator must not allow an aircraft to be used for an aerial application operation unless the pilot is authorised to do so. The pilots of an aircraft under regulation 137.235 of CASR 1998 are required to hold licences, agricultural pilot ratings and class endorsements issued under CAR 1988. The flight crew hold qualifications issued in the United States of America that CASA considers sufficient to ensure the safe operation of the aircraft the subject of the exemption.

CASR 1998 (137.240)

Regulation 137.240 (1) of CASR 1998 provides that an operator must not allow an aircraft to be used for an aerial application operation and the pilot in command must not commence such an operation unless the pilot holds a valid annual proficiency check. The proficiency check referred to is set out in regulation 137.240. The operator and pilots of the aircraft are exempted from compliance with those requirements on condition that the pilots satisfy whatever qualifications are required to enable them to carry out fire fighting operations in the United States of America during the duration of the exemption.

Legislative Instruments Act

Subregulation 308 (4) of CAR 1988, and regulation 11.215 of CASR 1998, declare any exemption to which they apply 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 is required by the operator to facilitate fire fighting operations. A similar exemption would be issued to any operator who requested it and could meet equivalent safety conditions.

The instrument commences on the day after it is registered and stops having effect at the end of 31 March 2009.

The exemption has been made by a delegate of CASA appointed under subregulation 7 (1) of CAR 1988 and regulation 11.260 of CASR 1998.