

Explanatory Statement

Civil Aviation Regulations 1988

Exemption — recency requirements for night flying (Eastern Australia Airlines Pty Limited and Sunstate Airlines (Qld) Pty Limited)

Legislation

Section 98 of the *Civil Aviation Act 1988* empowers the Governor-General to make regulations.

Subregulation 5.109 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that a commercial (aeroplane) pilot (the holder of a commercial (aeroplane) pilot licence) must not fly an aeroplane carrying another person, unless the pilot satisfies requirements set out in the subregulation.

Subregulation 5.170 (1) of CAR 1988 provides that an air transport (aeroplane) pilot (the holder of an air transport (aeroplane) pilot licence) must not fly an aeroplane carrying another person, unless the pilot satisfies requirements set out in the subregulation.

Paragraphs 5.109 (1) (b) and 5.170 (1) (b) of CAR 1988 both mention certain requirements (**recency requirements**) that the pilot must have satisfied in the immediately preceding period of 90 days, being requirements relating to take-offs and landings at night. These requirements are that the pilot has, within the period, carried out at least 3 take-offs and 3 landings at night, while flying the aeroplane as pilot in command, or as pilot acting in command under supervision or in dual flying; alternatively, in that period the pilot must have satisfactorily completed an aeroplane proficiency check that was completed at night or passed a flight test that was conducted at night for the issue, or renewal, of an aeroplane pilot rating.

The exemption applies to Eastern Australia Airlines Pty Limited and Sunstate Airlines (Qld) Pty Limited. These operators are commonly referred to as Qantaslink. The exemption allows the operators to use an approved flight simulator to satisfy recency requirements instead of relying on flights in an aeroplane. It differs from paragraphs 5.109 (1) (b) and 5.170 (1) (b) of CAR 1988 in that it allows the recency requirement to be satisfied by 3 take-offs and 3 landings in the immediately preceding 90 days that have been carried out in an approved flight simulator or an aircraft of the same type. In addition, if it appears that the required number of take-offs and landings will not be possible, that period of 90 days can be extended up to a maximum of 120 days by the pilot having carried out a take-off and landing at night, during the last 30 days, while line flying under the supervision of a pilot who holds a delegation to issue or renew a rating or conduct a flight test. If neither of the previous requirements have been satisfied then the pilot would need to have successfully undertaken, in the immediately preceding 180 days, an approved test for requalification.

The conditions in the instrument are largely consistent with the requirements of the International Civil Aviation Organization (**ICAO**) and the European Joint Aviation Regulations.

The exemption would allow the operators to rely on flight simulators to meet the recency requirements and would also allow the operators to rely on normal line flying and on its training and checking organisation, instead of requiring the pilot to undergo special flight tests as may be required by CASA. The tests and procedures in the training and checking organisation require approval by CASA.

Legislative Instruments Act

Under subregulation 308 (4) of CAR 1988, an exemption is a disallowable instrument for section 46A of the *Acts Interpretation Act 1901*. 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 instrument 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 within the aviation industry as a whole has not taken place. This instrument is in its terms and conditions the same as instrument CASA EX56/09 which was issued to Qantas Airways Limited. The instrument is in a form consistent with ICAO and European standards. Any operator whose procedures and training and checking organisation is considered by CASA to make satisfactory provision for testing and training pilots for night flying operations would be granted an equivalent exemption.

The exemption commences on the day after it is registered and stops having effect at the end of 30 November 2011.

The exemption has been made by a delegate of CASA in accordance with subregulation 7 (1) of CAR 1988.

[Instrument number CASA EX99/09]