

Explanatory Statement

Civil Aviation Regulations 1988

Exemption — flight data recording

Legislation

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

Subregulation 207 (2) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that an Australian aircraft shall not be used in any class of operations unless it is fitted with such instruments and is fitted with or carries such equipment, including emergency equipment, as CASA approves or directs.

Subregulation 5 (1) of CAR 1988 provides that whenever CASA is empowered by CAR 1988 to give directions or approvals, it may do so in Civil Aviation Orders.

Subregulation 21A (1) of CAR 1988 provides that CASA may issue a design standard for an aircraft component for which no appropriate design standard is in force.

Appendix 1 of Civil Aviation Order 103.19 (**CAO 103.19**) sets out the parameters, ranges, accuracy and recording intervals for Flight Data Recorders (**FDRs**).

Civil Aviation Order 20.18 (**CAO 20.18**) sets out instruments and equipment required for Australian aircraft engaged in certain classes of operations. Section 6 of CAO 20.18 requires installation of FDRs on certain types of aircraft.

Virgin Blue Airlines Pty Limited (the **operator**) has become aware that the FDR does not meet all the requirements of Appendix 1 of CAO 103.19 and paragraph 6.2 of CAO 20.18. The instrument exempts the operator from the requirements of Appendix 1 of CAO 103.19 and paragraph 6.2 of CAO 20.18 only to the extent of recording the “press to talk” function for High Frequency Radio System number 2.

Legislative Instruments Act

Subregulation 308 (4) of CAR 1988 declares an exemption 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 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 under section 17 of the LIA has not been undertaken in this case. The instrument is for a particular operator and for a limited period to provide the operator additional time to rectify an identified problem.

The exemption commences on the day after it is registered and stops having effect at the end of September 2010.

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

[Instrument number CASA EX16/10]