

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — from requirement to register an emergency locator transmitter (*ELT*) with the Australian Maritime Safety Authority

Legislation

Subsection 98 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that the Governor-General may make regulations for the Act and the safety of air navigation.

Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue instruments in relation to the following:

- (a) matters affecting the safe navigation and operation, or the maintenance, of aircraft; or
- (b) the airworthiness of, or design standards for, aircraft.

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) provides that, for subsection 98 (5A), CASA may grant an exemption from a provision of these Regulations (including the *Civil Aviation Regulations 1988* (**CAR 1988**)) or a provision of the Civil Aviation Orders (the **CAOs**) in relation to a matter mentioned in that subsection.

Under subregulation 11.160 (2) of CASR 1998, an exemption may be granted to a person, or to a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.205 (1) of CASR 1998, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation.

Under regulation 11.225 of CASR 1998, an exemption must be published on the Internet. Under subregulation 11.230 (1), an exemption ceases on the day specified within it (but no longer than 3 years after its commencement) or, if no day is specified, 3 years after commencement.

Subregulation 252 (1) of CAR 1988 provides that CASA may give directions about the necessary life-saving equipment to be carried on Australian aircraft.

Regulation 5 of CAR 1988 provides that where CASA is empowered to issue directions, it may do so in Civil Aviation Orders.

Directions under subregulation 252 (1) of CAR 1988 have been issued in Civil Aviation Order 20.11 (**CAO 20.11**). Paragraph 5.2.1 of CAO 20.11 provides that an aircraft that is flown over water at a distance from land greater than the permitted distance must carry sufficient life rafts to provide a place in a life raft for each person on board the aircraft. The permitted distances are set out in paragraph 5.2.1.1.

Subsection 6 of CAO 20.11 states that an aircraft required to carry life rafts under paragraph 5.2.1 must carry emergency signalling equipment. This equipment includes emergency locator transmitters (**ELTs**). In the case of an aircraft required to carry more than 1 life raft, it must also carry an approved ELT and an approved portable ELT, or 2 approved portable ELTs. The expressions **approved ELT** and **approved portable ELT** are defined in paragraph 6.7 of CAO 20.11 as having the same meanings as in

subregulation 252A (7) of CAR 1988. As a result, they have to meet the requirements set out in subregulation 252A (5) or (6), whichever is applicable.

Details of exemption

Paragraph 6.6 of CAO 20.11 states that an approved ELT or approved portable ELT carried on an aircraft must be registered with the Australian Maritime Safety Authority before it is used. In the case of high-capacity regular public transport aircraft, or high-capacity charter aircraft, that have not yet been delivered to their operator, it is not practicable to register their approved ELTs, or approved portable ELTs, before delivery because they are embedded in a slide/raft package. Registration would require the ELT to be unpacked and then sent back to the manufacturer for repacking after registration and entry of the Australian code. The delivery crew do not have the means to carry out this task.

The exemption will allow an unregistered ELT or unregistered portable ELT to be used on high-capacity aircraft before they are delivered to the operator.

Under subregulation 252A (2) of CAR 1988, aircraft that are on a flight for a purpose associated with its manufacture, preparation or delivery are exempt from compliance with having to carry, under regulation 252A, approved ELTs, or approved portable ELTs, that are in working order. It should also be noted that exempted aircraft, as defined in subregulation 252A (7), do not have to comply with regulation 252A. The exempted aircraft include high-capacity aircraft. It is CAO 20.11 that makes the regulation 252A requirements applicable to those aircraft. As a result, the exemption is from that CAO.

Legislative Instruments Act

Under regulation 5A of CAR 1988, if CASA has issued a CAO that is not an airworthiness directive and a prescribed direction or exemption is issued, given or granted that has the effect of repealing, amending, or otherwise affecting the operation of anything in the CAO, the prescribed direction or exemption is a disallowable instrument. Because the exemption affects the operation of paragraph 6.6 of CAO 20.11, it is a disallowable instrument under regulation 5A of CAR 1988.

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. As a legislative instrument, 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 removes an anomaly between regulation 252A of CAR 1988 and CAO 20.11 that could cause practical difficulties if not dealt with. It is also a renewal of a previous exemption that expired at the end of July 2011.

The exemption commences on 1 August 2011. It stops having effect at the end of 31 July 2014.

The exemption has been made by a delegate of CASA under regulation 11.260 of CASR 1998.

[Instrument number CASA EX73/11]