

## **Explanatory Statement**

### **Civil Aviation Regulations 1988**

### **Civil Aviation Safety Regulations 1998**

### **Exemption — from having a training and checking organisation**

#### **Legislation**

Subsection 98 (5A) of the *Civil Aviation Act 1988* (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) of the Act, 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 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) of CASR 1998, 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 217 (1) of CAR 1988 requires that the operator of a regular public transport service, the operator of any aircraft with a maximum take-off weight of more than 5 700 kg, or any operator that CASA specifies, must provide a training and checking organisation.

#### **Background**

A training and checking organisation is intended to ensure that operating crews employed by the operator maintain their competency. The training and checking organisation and the tests and checks for which it provides are, under subregulation 217 (3) of CAR 1988, subject to approval by CASA.

As a result of increases in the size of aerial work aircraft, operators using large aerial work aircraft with a maximum take-off weight that exceeds 5 700 kg are subject to subregulation 217 (1) and are required to have training and checking organisations. Aerial application operations are prescribed in Part 137 of CASR 1998 and include a

flight that is carried for the purpose of applying application material i.e. fertilisers, trace elements, seeds, baits, water, pesticides or other material. For operations of that kind, CASA considers that a formal training and checking organisation is not appropriate and imposes an unnecessary burden on the operators. Therefore, the exemption exempts aerial work operators from compliance with subregulation 217 (1) of CAR 1988.

The exemption is subject to various conditions. The aircraft must be used exclusively for aerial application operations and the operations must be conducted in accordance with the relevant operations manual.

### **Legislative Instruments Act**

Exemptions issued under regulation 11.160 of CASR 1998 are issued under subsection 98 (5A) of the Act which states that the regulations may empower CASA to issue an instrument relating to the safe navigation and operation, or the maintenance, of aircraft. Subsection (5AA) of the Act states that an instrument issued under paragraph (5A) (a) is a legislative instrument if it applies to a class of persons. This exemption applies to a class of persons and so is a legislative instrument.

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. CASA considers that safety will be enhanced if this exemption is granted. The instrument is of a machinery nature.

The exemption commences on the day after registration and stops having effect at the end of 31 July 2013.

The exemption has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Instrument number CASA EX92/11]