

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Exemption — flight data recording

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 the Civil Aviation Safety Authority (**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 the Civil Aviation Orders (the **CAOs**).

Civil Aviation Order 20.18 (**CAO 20.18**) sets out instruments and equipment required for Australian aircraft engaged in certain classes of operations. Subsection 6 of CAO 20.18 requires installation of flight data recorders (**FDRs**) on certain kinds of aircraft with maximum take-off weight (**MTOW**) over 5 700 kg.

The Federal Aviation Administration (**FAA**) of the USA requires installation of FDRs in aircraft on the basis of the operational category and the number of passenger seats.

The Cessna aircraft model 525B was type certificated by the FAA without an FDR, as an FDR is not required under the FAA regulations. The aircraft is of a new design which incorporates the innovations and safety enhancements that are available on the current generation of aircraft. While CASA accepts the type design of the aircraft, in the absence of an exemption, an Australian registered Cessna aircraft model 525B cannot legally fly without being fitted with an FDR as its MTOW is slightly over 5 700 kg.

It is difficult to show that the Australian FDR requirements add significantly to safety over those applying in the USA. This is particularly the case for the requirement to retrofit an FDR to a Cessna aircraft model 525B.

CASA intends to review the requirements for FDRs in CAO 20.18. Pending future changes to the CAO, the exemption allows the Cessna aircraft model 525B to be flown without the installation of an FDR for private operations.

Legislation for exemption from Regulations

Under subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**), CASA may grant an exemption from compliance with a provision of CAR 1988. Under subregulation 11.170 (3), 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) 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 11.210, it is an offence to fail to comply with a condition of an exemption.

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.

Legislative Instruments Act

Under regulation 5A of CAR 1988, if CASA has issued a CAO, and CASA later issues an exemption that in any way affects the operation of the CAO, the later instrument is a disallowable instrument for the purposes of 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 under section 17 of the LIA has not been undertaken in this case. The instrument is of a minor or machinery nature. It also remakes instrument CASA EX80/09 which ceases to have effect at the end of 30 September 2011.

The exemption commences on 1 October 2011 and stops having effect at the end of 30 September 2014.

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

[Instrument number CASA EX115/11]