

## Explanatory Statement

### Civil Aviation Regulations 1988

#### Permission and direction — helicopter special operations

##### Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation.

Under subregulation 151 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, the pilot in command of an aircraft in flight must not allow persons or objects to be picked up by the aircraft. Under subregulation 151 (3), CASA may give prior written authority for the pilot to do so, subject to conditions specified in the authority.

Under subregulation 250 (1) of CAR 1988, the operator of an aircraft and the pilot in command must not permit a person to be carried on the wings or undercarriage. Under subregulation 250 (2), a person may, with CASA's permission given in respect of certain flights, be carried on, or in a part of, an aircraft that is not designed for the accommodation of the crew or passengers. Under subregulation 250 (3), CASA may, when granting a permission, specify conditions subject to which a person may be carried.

Under subregulation 251 (1) of CAR 1988, seat belts must be worn by all crew members and passengers in various circumstances, including when the aircraft is flying at less than 1 000 feet above the terrain. However, under subregulation 251 (9), CASA may direct that a seat belt need not be worn in this particular circumstance.

Under subregulation 207 (2) of CAR 1988, an Australian aircraft must not be used in any class of operations unless it is fitted with or carries such equipment, including emergency equipment, as CASA approves or directs. Under subregulation 207 (3), the equipment must be fitted, carried or used in accordance with CASA's directions (if any). Under subregulation 207 (4), in giving a direction CASA must have regard only to the safety of air navigation.

In accordance with subregulations 207 (2) and (3) of CAR 1988, paragraph 3.1 of Civil Aviation Order 20.16.3 (**CAO 20.16.3**) provides, among other things, that each crew member and each passenger must occupy a seat of an approved type when the aircraft is flying at a height less than 1 000 feet above the terrain. Paragraph 4.1 of CAO 20.16.3 provides that seat belts must also be worn at certain times.

A *special operation* is described in Schedule 1 as a helicopter search and rescue operation, an emergency medical services operation, a law enforcement operation, a firefighting operation, or training for 1 of those operations, in which it is necessary to leave or board the helicopter when a landing is not possible or safe. There are some circumstances where, for suitably trained and experienced operators and personnel, emplaning and deplaning in the hover or partial hover is a safer option than live-load winching when a landing is not possible or safe.

The instrument is designed to facilitate such emergency operations (or training for them) by the State of New South Wales Police Service.

The instrument allows passengers in a helicopter that is engaged in special operations and in the hover to be carried on the undercarriage for the purpose of leaving or boarding the helicopter. It also allows a passenger not to wear a seat belt, or occupy a seat, at a height less

than 1 000 feet above the terrain, when the helicopter is in the hover for a passenger to leave or board the helicopter during the special operation.

Under Schedule 2, the operations may only be carried out in accordance with the instructions, approved by CASA, set out in the operator's operations manual.

### **Legislative Instruments Act**

Under regulation 5A of CAR 1988, if CASA has issued a Civil Aviation Order (*CAO*), and CASA later issues an instrument that in any way affects the operation of the CAO, the later instrument is declared 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 affects the operation of paragraphs 3.1 and 4.1 of CAO 20.16.3 which requires that passengers must occupy seats of an approved type in certain circumstances. It is, therefore, a legislative instrument for the purposes of section 5 of the LIA. 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 one of a number of instruments, prepared at the request of the operator, to allow emergency operations to be carried out.

The instrument commences on the day after registration and stops having effect at the end of November 2014.

The instrument has been made by a delegate of CASA under regulation 11.260 of the *Civil Aviation Safety Regulations 1998*.

[Instrument number CASA 485/11]