

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Exemption — navigation and anti-collision lights

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.

Paragraph 3 of Appendix V to Civil Aviation Order (*CAO*) 20.18 requires that aircraft must have 2 landing lights except when engaged in private and aerial operations and charter operations not carrying passengers for hire and reward when it must have 1 light.

Subregulation 195 (1) of the *Civil Aviation Regulations 1988* (***CAR 1988***) requires that the pilot in command and the operator of an aircraft must comply with the rules requiring lights to be displayed in relation to the aircraft at night and in conditions of poor visibility.

Subregulation 196 (1A) provides that the operator and pilot in command of an aeroplane in flight, or operating on the manoeuvring area of a land aerodrome, must ensure that the lights required by this regulation to be displayed on the aeroplane are displayed.

Subregulation 196 (3) provides that unless CASA otherwise directs, an aeroplane in flight or operating on the manoeuvring area of a land aerodrome shall display, in addition to navigation lights, an anti-collision light consisting of a flashing red light.

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 the Regulations, including *CAR 1988* or a provision of the *CAOs*, in relation to a matter mentioned in that subsection. Under subregulation 11.160 (2), 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, 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.

The exemption will permit Airvan Flight Services Pty Ltd (the ***operator***) to carry out covert surveillance without displaying some of the required lights. To mitigate against the risks associated with such operations, conditions have been imposed.

#### Legislative Instrument Act

Exemptions issued under regulation 11.160 of *CASR 1998* are issued under subsection 98 (5A) of the Act. Subsection 98 (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 or a class of aircraft. This exemption applies to a class of persons and so is a legislative instrument.

**Consultation**

Consultation under section 17 of the LIA has not been undertaken in this case. The instrument is an exemption requested for covert surveillance and border protection operations. It renews a previous instrument, CASA EX113/09, which expires at the end of December 2011. Similar instruments have been issued to some other operators.

The instrument comes into effect on 1 January 2012 and stops having effect at the end of 31 December 2015.

The exemption has been made by the Associate Director of Aviation Safety, a delegate of CASA, under subregulation 11.260 (1) of CASR 1988.

[Instrument number CASA EX141/11]