

## **Explanatory Statement**

### **Civil Aviation Regulations 1988**

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

#### **Exemption — agricultural rating (incendiary dropping at or above 500 feet)**

#### **Exemption — CASR Part 137 (incendiary dropping above or below 500 feet)**

#### **Purpose**

The purpose of this exemption is to renew an earlier almost identical exemption relating to aircraft operations for dropping incendiary for controlled burning.

#### **Legislation**

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

#### **Legislation for exemption from CASR 1998**

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 CASR 1998, the *Civil Aviation Regulations 1988* (**CAR 1988**) or the Civil Aviation Orders (the **CAOs**). Under subregulation 11.160 (3) of CASR 1998, CASA may grant an exemption of its own initiative. Under subregulation 11.170 (3), in deciding whether to grant an exemption, CASA must regard as paramount the preservation of an acceptable level of aviation 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 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.

#### **Dropping operations**

Under paragraph 5.01 (2) (a) of CAR 1988, a flight crew rating is required for flying in agricultural operations. Under subregulation 2 (1) of CAR 1988, an agricultural operation is defined as the broadcasting of substances from an aircraft for agricultural purposes.

Under regulation 150 of CAR 1988, the pilot in command of an aircraft may not permit anything to be dropped from the aircraft. However, matter may be dropped to initiate controlled burning in accordance with directions issued by CASA. Under regulation 5 of CAR 1988, CASA may issue such directions in the form of CAOs.

CASA has issued relevant dropping directions in CAO 29.5. Under paragraph 4.11 of CAO 29.5, the pilot in command of a dropping operation must possess the qualifications set out in the Appendix. The Appendix requires that for the purpose of dropping of incendiaries to initiate controlled burning, the pilot in command must hold a commercial pilot licence and have 250 hours' experience as pilot in command. The pilot in command must also either: hold an agricultural rating; or complete the training specified for low flying aerial stock mustering in paragraph 1 of Appendix I

of CAO 29.10 (5 hours dual training) and hold certification from an approved pilot for that training (under paragraph 1 of Appendix II of CAO 29.10).

### **Low flying**

Under subregulation 157 (1) of CAR 1988, the pilot in command of an aircraft must not fly over a non-populous area at lower than 500 feet except with a CASA permit or in certain permitted circumstances.

### **Aerial application operations**

Part 137 of CASR 1998 deals with aerial application operations, other than in rotorcraft. It is construed to cover the aerial application not only of water but also of incendiaries for controlled burning and other firefighting purposes.

Under subregulation 137.175 (1) of CASR 1998, an aeroplane may not be used for an application operation that involves firefighting unless the relevant emergency control authority (*ECA*) responsible for firefighting has yet to assume control of the fighting of the fire, or, if it has assumed control of the firefighting, has asked the person to carry out the operation. The pilot is authorised to conduct the operation at the request of the ECA only if he or she has more than 500 hours as pilot in command in application operations.

Under regulation 137.235 of CASR 1998, an operator must not allow an aeroplane to be used for an application operation (including fire fighting) unless the pilot in command is authorised to do so. An explanatory Note reminds readers that for this purpose, the pilot must hold a commercial pilot (aeroplane) licence or an air transport pilot (aeroplane) licence issued under regulation 5.09 of CAR 1988; and an agricultural pilot (aeroplane) rating of grade 1 or 2, issued under regulation 5.14 of CAR 1988; and a single engine aeroplane class endorsement, and any special design feature endorsement required for the aeroplane, issued under regulation 5.23 of CAR 1988.

### **Background**

Under previous instruments (CASA EX27/08, CASA EX13/10 and CASA EX32/10), CASA has granted an exemption from Part 137 of CASR 1998 (and agricultural pilot rating requirements) to certain operators (and their pilots) for dropping incendiaries. This was a grandfathering provision to protect the position of operators who had been in the business of incendiary dropping before the requirements of Part 137 of CASR 1998 were imposed.

CASA considers that, provided alternative safety risk mitigators are in place, seasonal fire fighting involving the dropping of incendiaries on behalf of an ECA from, at, or above, 500 feet does not require the pilot in command or the aeroplane operator to satisfy the wide range of requirements mentioned above that arise from various legislative sources not directly related to the specific activity of such incendiary dropping.

Both Part 137 of CASR 1998 and CAO 29.5 require that a pilot must be trained in low flying before conducting any incendiary dropping operations. However, the dropping of incendiary devices is not always conducted at low level. Dropping incendiaries does not have the same risks as the aerial application of agricultural materials, including, for example, the fact that incendiaries operations do not require the same

accuracy of delivery (a reason why low flying and low flying training is not required for safety purposes).

Australian State and Territory fire authorities, through the National Aerial Firefighting Centre Ltd (*NAFC*), have asked CASA to review the regulatory regime around incendiary dropping operations.

### **Exemption**

CASA has done so and resolved to issue various conditional exemptions to pilots and operators.

Thus, a pilot will be exempt from the requirement to have a flight crew rating (required for “agricultural operations”, but otherwise consequentially required by subparagraph 150 (2) (a) (iv) of CAR 1988 for dropping incendiaries).

The pilot will also be exempt from the requirements of paragraph 4.11 of CAO 29.5, made under subregulation 150 (2) of CAR 1988, to the extent that the pilot must comply with the following requirements of Appendix I for dropping incendiaries to initiate controlled burning:

- (a) hold an agricultural pilot (aeroplane) rating or an agricultural pilot (helicopter) rating; or
- (b) have completed training specified in paragraph 1 of Appendix I in CAO 29.10 and certification in accordance with paragraph 1 of Appendix II in CAO 29.10.

This pilot exemption applies only for incendiary dropping at or above 500 feet. The pilot must still have a commercial pilot licence and 250 hours as pilot in command of aeroplanes or helicopters, as appropriate.

The pilot will also be exempt from all of Part 137 of CASR 1998. The operator will also be exempt from Part 137 of CASR 1998, but only conditionally on having detailed operations manual procedures, acceptable to CASA, for the conduct of incendiary dropping operations. Notes in the instrument clarify that the pilot and the operator will still be required to comply with all other applicable legislation, including CAR 1988 and the CAOs. In particular, the conduct of incendiary dropping operations below 500 feet would require a CASA permit.

In substance, the exemption renews CASA EX32/10, which expires at the end of 31 January 2012. The text of the exemption varies from CASA 32/10 to take account of the amendment of regulation 11.160 of CASR 1998 on 27 June 2011.

### **Legislative Instruments 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 and, therefore, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instruments Act 2003* (the *LIA*)

### **Consultation**

Consultation under section 17 of the LIA was undertaken with the NAFC in regard to a previous exemption which is now merely being renewed. The instrument constitutes

an adjustment to requirements for incendiary dropping operations for controlled burning and beneficially exempts operators and pilots from certain requirements provided compensating safety conditions are met. A draft of a previous exemption instrument was provided to the joint CASA/industry Standards Consultative Committee (*SCC*), for comment if required. The *SCC* made no comment on the previous instrument.

**Office of Best Practice Regulation (*OBPR*)**

*OBPR* does not require a Regulation Impact Statement in this case because a preliminary assessment of business compliance costs, in the context of the nature of the instrument, indicates that it will have only a nil to low impact on business.

**Statement of Compatibility with Human Rights**

The following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The exemption, in its nature and contents, is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. It would adjust the requirements for incendiary dropping operations for controlled burning and beneficially exempts operators and pilots from certain requirements provided compensating safety conditions are met.

Therefore, the exemption does not engage any of the applicable human rights or freedoms and it is compatible with human rights as it does not raise any human rights issues.

**Commencement and making**

The instrument commences on 1 February 2012 and stops having effect at the end of 31 January 2015.

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

[Instrument number CASA EX02/12]