

## Explanatory Statement

### Civil Aviation Regulations 1988

#### Exemption — from standard take-off and landing minima – Malaysia Airlines

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

#### Legislation

Under subregulation 257 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, CASA may determine the meteorological minima, that is the visibility requirements for landing or take-off at an aerodrome. Under subregulation 257 (2), the determination must be published in AIP or NOTAMS. Under subregulations 257 (3) and (4), it is an offence for an aircraft to take-off or land if an element of the meteorological minima for that operation is less than that determined for the aircraft at the aerodrome.

The determination of standard meteorological minima for take-off and landing was made in instrument CASA 237/10. The minima are also set out in AIP En Route 1.5, sections 4.3, 4.4 and 4.7. If conditions are met, the minimum visibility for take-off inside or outside Australian territory is 550 metres. If conditions are met, the minimum visibility for landing inside or outside Australian territory is 800 metres, or 550 metres runway visual range. An exemption would be required to operate with lower minimum visibility (*low visibility operations* or *LVO*).

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) of the Act, CASA may grant an exemption from a provision of the Regulations, including CAR 1988, 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 has been issued for Malaysia Airline System Berhad of Subang, Malaysia (the *operator*), an airline based in Malaysia, for the conduct of LVO in Australia. The exemption states the minima for the various aeroplanes, as well as the conditions for their use. For instance, the use of the lower minima will require a higher standard of runway lighting (see clause 7 in Schedule 2).

In essence, the operator must ensure that specified visibility standards are met for take-offs and landings. These may be performed only at aerodromes properly equipped to support the LVO conducted under the exemption. As a foreign aircraft operator, the operator must also conduct its operations in accordance with the approval to conduct LVO issued by the Department of Civil Aviation Malaysia.

### **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 aircraft and so is a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instruments Act 2003* (the **LIA**).

### **Compatibility with human rights and freedoms**

This instrument 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*.

### **Human rights implications**

The instrument sets out technical requirements for the conduct of LVO as described above. The instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

The instrument is compatible with human rights and freedoms.

### **Consultation**

The operator has requested the instrument. No further consultation under section 17 of the LIA has been undertaken in this case. The instrument is required by the operator to enable low visibility take-offs and CAT II and CAT III landings inside Australia consistent with the standards and requirements specified in the instrument which are not considered prejudicial to the interests of safety.

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

The exemption would be of beneficial effect to the operator. OBPR does not require preparation of a Regulation Impact Statement in this case because a preliminary assessment of business compliance costs in the context of similar instruments indicates that it will have only a nil to low impact on business.

### **Making and commencement**

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

The instrument comes into effect on the day after registration. It stops having effect at the end of January 2015.

[Instrument number CASA EX13/12]