

## 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.

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 the *Civil Aviation Regulations 1988* (**CAR 1988**), or a provision of the Civil Aviation Orders (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.

Subregulation 207 (2) of CAR 1988 provides that an Australian aircraft shall not be used in any class of operation 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 CAOs.

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

Subregulation 195 (1) of 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 196 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.

Aerorescue Pty Limited (the **operator**) already operates fast, sophisticated turboprop aircraft at 5 locations around Australia that are equipped with surveillance equipment that can detect personnel, aircraft, and marine craft a long distance from their position. The operator is currently contracted to the Australian Maritime Safety Authority to provide search and rescue capability nationally. The operator provides a platform for covert surveillance. Some of these operations require that external lights on the aircraft are turned off. The exemption will permit 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. The pilot in command and the operator must ensure that the ELTA Radar System is operative. Aircraft must not be closer to another aircraft than 10 nautical miles. That distance may be reduced to 3 nautical miles in the case of a target aircraft as defined.

**Application of *Legislative Instruments Act 2003* (the *LIA*)**

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.

**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 replaces instrument CASA EX04/10 which ceased to have effect at the end of February 2012. A similar instrument would be issued for operations of this nature to any operator who is able to meet all requirements.

**Human Rights Compatibility**

This legislative instrument does not engage any of the applicable rights or freedoms. It is compatible with human rights as it does not raise any human rights issues.

**Commencement and delegation**

The instrument comes into effect on 1 March 2012. It stops having effect at the end of February 2015.

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

[Instrument number CASA EX14/12]