

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — recency requirements for night flying (National Jet Express Pty Ltd)

Legislation

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

Subregulation 5.109 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that a commercial (aeroplane) pilot (the holder of a commercial aeroplane pilot licence) must not fly an aeroplane carrying another person unless the pilot satisfies the requirements set out in the subregulation.

Subregulation 5.170 (1) of CAR 1988 provides that an air transport (aeroplane) pilot (the holder of an air transport aeroplane pilot licence) must not fly an aeroplane carrying another person unless the pilot satisfies the requirements set out in the subregulation.

Paragraphs 5.109 (1) (b) and 5.170 (1) (b) of CAR 1988 both mention certain requirements (**recency requirements**) that the pilot must have satisfied in the immediately preceding period of 90 days, being requirements relating to take-offs and landings at night. These requirements are that the pilot has, within the period, carried out at least 3 take-offs and 3 landings at night, while flying the aeroplane as pilot in command, or as pilot acting in command under supervision or in dual flying; alternatively, in that period the pilot must have satisfactorily completed an aeroplane proficiency check that was completed at night or passed a flight test that was conducted at night for the issue, or renewal, of an aeroplane pilot rating.

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, or a provision of the Civil Aviation Orders (the **CAOs**). 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 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.

The exemption allows National Jet Express Pty Ltd, trading as Cobham Aviation Services Australia – Regional Services (the **operator**) to use an approved flight simulator to satisfy recency requirements instead of relying on flights in an aeroplane. It differs from paragraphs 5.109 (1) (b) and 5.170 (1) (b) of CAR 1988 in that it allows the recency requirement to be satisfied by 3 night take-offs and 3 night landings in the immediately preceding 90 days that have been carried out in an approved flight simulator or an aircraft of the same type. Alternatively, if that

requirement is not satisfied, it requires the pilot to have completed, in the immediately preceding 180 days, a proficiency check in an approved flight simulator or an aircraft of the same type.

The operator must have a current CASA approved training and checking organisation.

The conditions in the instrument are largely consistent with the requirements of the International Civil Aviation Organization (**ICAO**) and the European Joint Aviation Regulations.

The exemption would allow the operator to rely on flight simulators to meet the recency requirements and would also allow the operator to rely on normal line flying and on its training and checking organisation instead of requiring the pilot to undergo special flight tests as may be required by CASA.

Legislative Instruments Act

For subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from compliance with a provision of the regulations or the CAOs. An instrument issued under paragraph 98 (5A) (a) of the Act is a legislative instrument if the instrument is expressed to apply to a class of persons or aircraft. The exemption applies to a class of persons. The exemption is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instrument Act 2003*.

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* as it does not raise any human rights issues. It does not engage any of the applicable rights or freedoms.

Consultation

Consultation within the aviation industry as a whole has not taken place. The exemption is in a form consistent with ICAO and European standards. Any operator whose procedures and training and checking organisation is considered by CASA to make satisfactory provision for testing and training pilots for night flying operations would be granted an equivalent exemption.

It renews a previous exemption, CASA EX103/10, which expired at the end of November.

Commencement and making

The exemption commences on 1 December 2012 and stops having effect at the end of 30 November 2015.

The exemption has been made by a delegate of CASA under regulation 11.260 of CASR 1998.

[Instrument number CASA EX176/12]