

## **Explanatory Statement**

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

#### **Exemption — carriage of cockpit voice recorders and flight data recorders**

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

#### **Legislation**

Subregulation 207 (2) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that a person must not use an Australian aircraft in any class of operations unless it is fitted with such instruments, and is fitted with or carries such equipment, as the Civil Aviation Safety Authority (**CASA**) approves or directs. Under regulation 5 (1) of CAR 1988, where CASA may issue directions under CAR 1988, it may do so in the form of Civil Aviation Orders (**CAOs**).

Civil Aviation Order 20.18 (**CAO 20.18**) sets out instruments and equipment required for Australian aircraft engaged in certain classes of operations.

Paragraph 6.1 of CAO 20.18 provides that certain aircraft referred to in the paragraph must not be flown unless equipped with an approved flight data recorder system and an approved cockpit voice recorder system. Paragraph 6.2 of CAO 20.18 requires these systems to meet standards specified in CAO 103.19 and CAO 103.20 and makes the approval subject to a condition relating to replay (subparagraph 6.2 (b) of CAO 20.18).

These requirements are considered too restrictive. The standards set out in the CAOs, which date from the 1960s, have been superseded by new standards issued in the United States of America and Europe. In addition, approval by CASA of the individual instruments in accordance with subparagraph 6.2 (b) of CAO 20.18 is no longer required.

The exemption, therefore, exempts the specified aircraft from compliance with paragraphs 6.1 and 6.2 of CAO 20.18, if they meet standards at least equivalent to the requirements mentioned in paragraph 6.2, that have been determined by the type certifying authority for the aircraft, or are requirements acceptable to CASA.

#### **Background**

The instrument is a re-issue of an exemption in the same terms issued in 2011 (CASA EX12/11) which expired at the end of January 2011. It was originally proposed to amend CAO 20.18 to incorporate the new recording systems standards but this was deferred because it was considered that new regulations would supercede the CAO. However, finalisation of the new regulations is not yet complete.

The majority of commercial air transport aircraft currently operating in Australia are fitted with equipment meeting the newer standards. Strictly speaking they cannot comply with the older standard in paragraph 6.2 of CAO 20.18. It is necessary, therefore, to re-issue the exemption for a further period to accommodate this circumstance. Aircraft which comply with the existing standard are not affected by the exemption.

**Legislative Instruments Act**

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 CAOs, in relation to a matter mentioned in that subsection. 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 aircraft. 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 (the LIA)*.

**Consultation**

Consultation under section 17 of the LIA has not been undertaken in this case. The instrument is a re-issue of an expired exemption which is of beneficial effect to those operators who may continue to take advantage of it.

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at Attachment 1.

**Making and Commencement**

The exemption has been made by a delegate of CASA relying on the power of delegation in subregulation 11.260 (1) of CASR 1998.

The exemption commences on 1 February 2013 and stops having effect at the end of 31 January 2014.

[Instrument number CASA EX07/13]

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Exemption – carriage of cockpit voice recorders and flight data recorders**

This Legislative 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*.

### **Overview of the Legislative Instrument**

The Legislative Instrument exempts specified aircraft from compliance with paragraphs 6.1 and 6.2 of Civil Aviation Order 20.18 (*CAO 20.18*), if they meet standards at least equivalent to the requirements mentioned in paragraph 6.2, that have been determined by the type certifying authority for the aircraft, or are requirements acceptable to CASA. The majority of commercial air transport aircraft currently operating in Australia are fitted with equipment meeting the newer standards. Strictly speaking they cannot comply with the older standard in paragraph 6.2 of CAO 20.18.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Civil Aviation Safety Authority**