

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Exemption — use of ADS-B in aircraft operated by PT Garuda Indonesia

Subsection 98 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that the Governor-General may make regulations for the Act and the safety of air navigation.

Under section 27 of the Act, CASA may issue Air Operators Certificates (*AOCs*) with respect to aircraft for the purpose of safety regulation.

Under sections 27AB, 27AC and 27AD of the Act, applicants must, in particular circumstances, provide CASA with certain manuals and other information, and undertake proving flights, tests and demonstrations.

Under section 27AE of the Act, CASA may require an applicant for a foreign aircraft AOC to provide additional information.

Under section 28 of the Act, CASA must issue the AOC if satisfied that the applicant can comply with the requirements of Australian civil aviation safety legislation.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or the Civil Aviation Orders (the *CAOs*).

Part 82 of the CAOs specifies conditions on AOCs. Civil Aviation Order (*CAO*) 82.5 contains conditions on those AOCs that authorise regular public transport (*RPT*) operations in high capacity aircraft. As defined in paragraph 2.1 of CAO 82.0, *high capacity aircraft* are those certificated as having a maximum seating capacity exceeding 38 seats or a maximum payload exceeding 4 200 kilograms.

Subsection 10 of CAO 82.5 sets out obligations on operators who hold foreign aircraft AOCs for high capacity RPT operations in Australia (the *relevant foreign operators*).

#### CAO 82.5 amendment — foreign aircraft must comply from 12 December 2013

Previously, paragraph 10.8 of CAO 82.5 provided, in effect, that each relevant foreign operator must ensure that, if any of its aircraft carried and used Automatic Dependent Surveillance – Broadcast (*ADS-B*) equipment, it must do so in accordance with subsection 9B of CAO 20.18. Thus, there was no compulsion or requirement to carry or use ADS-B transmitting equipment that complied with the new standards unless the equipment was to be put to operational use. If non-complying equipment was carried, it must be deactivated.

*Civil Aviation Order 82.5 Amendment Instrument 2011 (No. 3)* substitutes a new paragraph 10.8 to the effect that the operator of a foreign registered aircraft must ensure that, if the aircraft is operated in high capacity RPT operations, it complies with the requirements (*directions*) in a new Appendix 4.

The directions in Appendix 4 are virtually identical to the requirements for ADS-B imposed on Australian aircraft. Thus, fitment and operation of approved ADS-B avionics equipment is mandatory on and from 12 December 2013 for all foreign aircraft engaged in

private operations at or above FL 290 (unless CASA has authorised otherwise). Approved equipment is that which meets the approved equipment configuration in Appendix 5.

ADS-B is presently being used for en route ATC surveillance and separation in the Australian FIR outside Secondary Surveillance Radar coverage. For that reason, Appendix 4 requires that any ADS-B transmissions by ADS-B equipped aircraft before the mandatory date of 12 December 2013 must comply with the technical standards in CAO 82.5; non-complying transmissions must be disabled or transmit a NUCp (position integrity) value of zero. The PT Garuda Indonesia, of Jakarta Pusat, Indonesia (**Garuda**) A330-300 aircraft do not transmit position information in accordance with the technical standards. Under the exemption, CASA EX138/12, until such time as the non-complying Garuda aircraft transmit position information based on the standards, they were denied access to ADS-B based separation service by ATC, however, they were allowed use of the ADS-B equipment for identification purposes. CASA EX138/12 was to expire at the end of June 2013.

This instrument revokes and replaces instrument CASA EX138/12, extending its effect until the end of 12 December 2013. This is necessary because of unavoidable slippages in the installation of modification kits in the Garuda aircraft. After 12 December 2013, carriage of ADS-B equipment that complies with the technical standards will be compulsory.

### **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. 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 instrument applies to a class of persons. As a legislative instrument, it is 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 was undertaken in relation to the replaced instrument, CASA EX138/12. CASA consulted with Airservices Australia and Garuda in relation to the use of the non-compliant ADS-B equipment. Garuda accepted the conditions in the instrument for use of the equipment for a limited purpose. Garuda has operated satisfactorily under the revoked instrument. It was not considered necessary to undertake further consultation in relation to its replacement which is in the same terms and only extends its operation for a period of months.

### **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 under subregulation 11.260 (1) of CASR 1998.

The exemption commences on the day after registration and stops having effect at the end of 12 December 2013 as if it had been repealed by another instrument.

[Instrument number CASA EX44/13]

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

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

### **Exemption under regulation 11.160 — use of ADS-B equipment in aircraft operated by PT Garuda Indonesia**

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 permits PT Garuda Indonesia, of Jakarta Pusat, Indonesia (*Garuda*) A330-300 aircraft to use their ADS-B equipment for identification purposes only, until such time as the equipment complies with the relevant standards in Civil Aviation Order 82.5 for use of the equipment.

#### **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**