Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — provision of ARFFS service at Port Hedland aerodrome

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

Subpart 139.H of the *Civil Aviation Safety Regulations 1998* (***CASR 1998***) applies to aerodrome rescue and firefighting services (***ARFFS***).

**Airservices Australia**

Airservices Australia (***AA***) holds a certificate of approval issued by CASA under Division 139.H.5 of CASR 1998 to provide ARFFS at various aerodromes and is, therefore, an approved provider, subject to the requirements of Subpart 139.H of CASR 1998 and the Manual of Standards (MOS) – Subpart 139.H (the ***MOS***).

**Exemptions**

Under subregulation 11.160 (1) of CASR 1998, CASA may grant an exemption from compliance with a provision of CASR 1998. AA has applied for an exemption. In deciding whether to grant an exemption, CASA must regard as paramount the preservation of an acceptable level of safety.

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 11.210, it is an offence to fail to comply with a condition of an exemption.

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.

**Purpose**

This exemption will remain in force for a period of 1 year until the end of May 2014. The exemption is being granted for a short period of time in order to facilitate the staged reintroduction of a fully compliant ARFFS at Port Hedland aerodrome.

Up until 2003, AA provided an ARFFS at Port Hedland aerodrome, however, by 2003, utilisation of the airport by passenger carrying aircraft operations had dropped to a point below the threshold at which the service was necessary under the legislative regime then in force.

However, since that time, there has been a steady growth in the use of Port Hedland aerodrome to the point where it now requires the ARFFS to be re-established. In accordance with the requirements of the MOS, the ARFFS is required to be established as an aerodrome category level 7. AA proposes to commence providing an ARFFS at Port Hedland aerodrome from 31 May 2013, however, due to practical limitations imposed by the existing facilities at the aerodrome, and the logistical challenges of recruiting appropriately trained personnel to operate the ARFFS, there will be an interim period where AA is only able to provide the ARFFS at an aerodrome category level 6 standard.

This interim period will last until the end of May 2014 at which point it is expected that a fully compliant aerodrome category level 7 ARFFS will be in operation at Port Hedland aerodrome. In the meantime, exemptions from the provisions of CASR 1998 set out below are required to facilitate the operation of the ARFFS at an aerodrome category 6 level pending the introduction of a level 7 service in May 2014.

Subregulation 139.772 (1) of CASR 1998 requires that an ARFFS provider must provide, among other things, training facilities. Subregulation 139.772 (2) provides that those facilities must comply with any applicable requirement in the MOS. Paragraph 22.1.6.1 of the MOS requires the establishment of “hot fire” training facilities at all ARFFS locations. Port Hedland aerodrome does not have the required “hot fire” training facilities. The exemption to this requirement is subject to a condition which requires AA to ensure that ARFFS personnel at Port Hedland aerodrome have access to “hot fire” training facilities at an appropriately equipped alternate ARFFS facility.

Subregulation 139.775 (1) of CASR 1998 requires an ARFFS provider to ensure that a notice is published in the En-route Supplement Australia (***ERSA***) which sets out the hours of operation of the ARFFS service at an aerodrome. Since AA will not be operating a fully compliant aerodrome category 7 level operation until May 2014, it is not proposed to permanently publish details of the service in the ERSA on its commencement from 31 May 2013. Instead, and as required by the conditions applying to this exemption, AA will be required to publish a Notice to Airmen (NOTAM) to notify users of the aerodrome of the hours of operation of the ARFFS and the level of the service being supplied.

Subregulation 139.835 (1) requires an ARFFS provider to provide the number of qualified personnel specified in the MOS at all times when the ARFFS is operational. During the interim period, AA will only provide an aerodrome category 6 level ARFFS service so an exemption to this subregulation is required to allow the ARFFS to be operated with a level 6 staffing complement. This exemption is subject to the condition that the staffing complement provided by AA at Port Hedland must be maintained at an aerodrome category 6 level standard at times when it is operational.

**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 Civil Aviation Orders. 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 and is, therefore, legislative. As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instruments Act 2003*.

**Consultation**

CASA has consulted extensively with AA and with the operator of Port Hedland aerodrome since February 2013 about the most efficient way to ensure that an ARFFS commences at the aerodrome as quickly as possible.

The staged introduction of the new ARFFS, which will be facilitated by this instrument, was agreed upon at the end of this consultation.

**Commencement and making**

The instrument commences on the day after registration and stops having effect at the end of May 2014 as if it had been repealed by another instrument.

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

[Instrument number CASA EX60/13]

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Exemption — provision of ARFFS at Port Hedland aerodrome**

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**

This legislative instrument is made under subregulation 11.260 (1) of the *Civil Aviation Safety Regulations 1998*. The instrument exempts Airservices Australia (***AA***) from certain requirements specified in the Manual of Standards (MOS) – Part 139.H (the ***MOS***) in relation to the provision of an Aerodrome Rescue and Firefighting Service (***ARFSS****)* at Port Hedland aerodrome.

The exemption is required to allow a period for the establishment of the ARFSS at Port Hedland during which AA will not be able to meet all of the requirements specified in the MOS for the provision of such a service.

**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**