

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — requirement to wear seat belt and safety harness

Legislation

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

Under subregulation 251 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), seat belts must be worn by all crew members and passengers in various circumstances, including when the aircraft is flying at less than 1 000 feet above the terrain. Under subregulation 251 (3), CASA may direct that a type of safety harness specified in the direction must be worn in place of a seat belt.

Paragraph 4.1 of Civil Aviation Order 20.16.3 (**CAO 20.16.3**) provides for circumstances when a seat belt or a safety harness must be worn. There is no provision for a person to alternate between using a safety harness and a seat belt on the same operation. Paragraph 4.2 of CAO 20.16.3 states that a safety harness or a seat belt must be worn by at least 1 pilot crew member at all times during flight.

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 these Regulations (including CAR 1988) or a provision of the Civil Aviation Orders in relation to a matter mentioned in that subsection. Under subregulation 11.160 (2) of CASR 1998, 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) of CASR 1998, 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.

Instrument

Nautilus Aviation Heli Pty Ltd, trading as Cairns Helicopter School, Down Under Helicopters Australia and Heli Charters Australia, Aviation Reference Number 559795 (the **operator**), operates a helicopter tourism business in North Queensland using several different types of helicopters, including the Robinson R22, R44, Bell B206 and Squirrel AS 350. An aspect of its business is to undertake aerial work or perform tasks with a camera operator that requires greater freedom of movement afforded by a harness compared to a conventional seat belt.

The instrument exempts the pilot in command and crew members of an aircraft operated by the operator from having to comply with seat belt requirements under subregulation 251 (1) of CAR 1988 when undertaking specific aerial work or performing tasks where the assistance of the operating crew or camera operator is required.

Schedule 1 of the instrument limits the exemption only to the direction under subregulation 251 (3) of CAR 1988 that is contained in paragraphs 4.1 and 4.2 of CAO 20.16.3. Schedule 2 imposes conditions on the exemption, including that, among other things, the operator must only conduct operations in visual meteorological conditions, that the operator's operations manual sets out circumstances and procedures for when a safety harness and seat belt may be used, and that the safety harness must enable a crew member to move about without adversely affecting the pilot in command's control or the helicopter's centre of gravity.

Legislative Instruments Act

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. The instrument applies to a class of persons, being pilots in command and crew members of aircraft operated by the operator, and so is a legislative instrument.

In addition, under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the **LIA**), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. Under regulation 5A of CAR 1988, if CASA has issued a CAO, and CASA later issues an exemption that affects the operation of the CAO, the later document is declared to be a disallowable instrument. The instrument affects the operation of paragraphs 4.1 and 4.2 of CAO 20.16.3 and is, therefore, a legislative instrument.

As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The instrument has been made at the request of the operator. In these circumstances, it is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LIA.

Statement of Compatibility with Human Rights

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

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (**RIS**) is not required because the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

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 instrument commences on the day of registration and expires at the end of 30 April 2016, as if it had been repealed by another instrument.

[Instrument number CASA EX106/13]

Statement of Compatibility with Human Rights

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

Exemption — requirement to wear seat belt and safety harness

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 the pilot in command and crew of Nautilus Aviation Heli Pty Ltd, trading as Cairns Helicopter School, Down Under Helicopters Australia and Heli Charters Australia (the **operator**) from having to comply with seat belt requirements under subregulation 251 (1) of the *Civil Aviation Regulations 1988*.

The primary purpose of the legislative instrument is to allow the operator to undertake aerial work or perform tasks with a camera operator that requires greater freedom of movement afforded by a harness compared to a conventional seat belt.

The exemption is subject to conditions imposed by CASA in the interests of the safety of air navigation.

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