**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**Exemption – recency requirements for night flying – Virgin Australia International Airlines Pty Ltd**

**Legislation**

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

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 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 requirements set out in the subregulation.

Paragraphs 5.109 (1) (b) and 5.170 (1) (b) of CAR 1988 both prescribe 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.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The exemption allows Virgin Australia International Airlines Pty Ltd (the ***operator***) to use an approved flight simulator to satisfy recency requirements instead of relying on flights in an aeroplane. The exemption also modifies the period for recency, requiring pilots in command to have carried out at least 1 night take-off and 1 night landing in 90 days and at least 3 night take-offs and 3 night landings in 180 days.

The exemption permits the operator to rely on flight simulators to meet the recency requirements and allows 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. The tests and procedures in the training and checking organisation require approval 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. 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 Instruments Act 2003*.

**Consultation**

The operator applied for the earlier exemption (CASA EX163/12) and has applied for this instrument to renew the previous exemption. Due to the nature of international operations, the operator requires this instrument to ensure its pilots can operate with current night recency requirements. Since the issue of the previous exemption, there have been no known incidents resulting from a pilot in command operating under the exemption. CASA considers that no further consultation is appropriate or necessary as the instrument applies only to this aircraft operator.

**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. It expires at the end of 31 October 2014, as if it had been repealed by another instrument.

[Instrument number CASA EX118/13]

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Exemption – recency requirements for night flying – Virgin Australia International Airlines Pty Ltd**

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 pilots in command operating Virgin Australia International Airlines Pty Ltd (the ***operator***) aircraft from night flying recency requirements prescribed by paragraphs 5.109 (1) (b) and 5.170 (1) (b) of the *Civil Aviation Regulations 1988*.

The legislative instrument revokes and replaces an earlier exemption (CASA EX163/12) which also granted a night flying recency exemption to the operator’s pilots.

Given the nature of international operations, the primary purpose of the exemption is to allow the operator to use approved type simulators to satisfy their pilot’s recency requirements and also provides a longer period in which recency is deemed to be current. The exemption is subject to conditions directed by CASA in the interest of air safety.

**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**