

## **Explanatory Statement**

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

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

##### **Legislation**

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

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 CASA approves or directs. Under subregulation 5 (1) of CAR 1988, where CASA may issue directions under CAR 1988, it may do so in the form of a Civil Aviation Order (**CAO**).

CAO 20.18 sets out directions issued by CASA under regulation 207 in relation to the instruments and equipment to be carried on board aircraft. Paragraph 6.1 of CAO 20.18 requires, among other things, turbine engine aircraft with a maximum take-off weight in excess of 5 700 kg to be fitted with an approved flight data recorder and an approved cockpit voice recorder. 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).

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, in relation to a matter mentioned in that subsection. 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.

##### **Instrument**

The instrument is a reissue of an exemption in the same terms issued in 2013 (CASA EX07/13) which expired at the end of 31 January 2014.

The standards set out in CAO 20.18, which date from the 1960s, have been superseded by newer standards issued in the United States and in Europe. Approval by CASA of the individual instruments and equipment in accordance with subparagraph 6.2 (b) of CAO 20.18 is no longer required.

The majority of commercial air transport aircraft currently operating in Australia are fitted with equipment meeting the newer United States and European standards. These aircraft cannot technically comply with the existing standard in paragraph 6.2 of CAO 20.18. It is necessary, therefore, to issue an exemption to accommodate these aircraft.

The instrument, therefore, exempts applicable aircraft from compliance with subregulation 207 (2) of CAR 1988 in respect of paragraphs 6.1 and 6.2 of CAO 20.18. The exemption is subject to the condition that the aircraft must meet standards at least equivalent to the requirements mentioned in paragraph 6.2, which have been determined by the type certifying authority for the aircraft, or are requirements acceptable to CASA. Aircraft that comply with the existing CAO 20.18 standards are not affected by the exemption.

It was initially proposed to amend CAO 20.18 to incorporate the newer United States and European standards but this work was deferred because it was subsequently determined that the new Part 91 of CASR 1998, currently being drafted, would supersede the CAOs. Before the new regulations are finalised, it is necessary to extend the period of the exemption.

### **Legislative Instruments Act**

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. This instrument affects the operation of paragraphs 6.1 and 6.2 of CAO 20.18 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 is a reissue of an expired exemption which is of beneficial effect to those operators who may continue to take advantage of it while the new regulations are being finalised. 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 instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required (OBPR id: 14507).

### **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 2014 and expires at the end of 31 January 2015, as if it had been repealed by another instrument.

[Instrument number CASA EX06/14]

## **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 aircraft from compliance with subregulation 207 (2) of the *Civil Aviation Regulations 1988* in respect of paragraphs 6.1 and 6.2 of Civil Aviation Order 20.18, which require an aircraft, depending on its maximum take-off weight, to be fitted with either an approved cockpit voice recorder system (**CVR**), or an approved CVR and an approved flight data recorder system (**FDR**).

The standards to which the CVR and FDR are required to comply have been superseded by newer standards issued in the United States and in Europe. The majority of commercial air transport aircraft, which comply with the newer standards, cannot technically comply with existing standards. The exemption is, therefore, necessary to accommodate these aircraft.

The exemption is a reissue of a previous exemption (CASA EX07/13) while new regulations are being drafted to incorporate the newer CVR and FDR standards.

#### **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**