Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — crew member proficiency for emergency procedures (Virgin Australia International Airlines)

**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. Subregulation 252 (1) of CAR 1988 provides that CASA may give directions with respect to emergency systems and equipment, such as life-saving equipment, on board Australian aircraft. Subregulation 253 (5) provides that the training and testing of crew members and the familiarization of passengers shall be carried out in such manner as CASA specifies to be satisfactory.

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 20.11 (as amended) was issued on 1 February 2009 under the 3 aforementioned provisions of CAR 1988 and applies to all Australian aircraft. CAO 20.11 requires aircraft to carry specified emergency and lifesaving equipment, such as signalling equipment and portable megaphones, as well as specifying the proficiency requirements of crew members executing emergency procedures. Paragraph 12.1 of CAO 20.11 provides that a crew member shall not be assigned, or accept assignment of, emergency duties in an aircraft engaged in a regular public transport operation unless he or she has undertaken and passed the proficiency test specified in Appendix IV of CAO 20.11. Paragraph 12.3 further provides that, among other things, the proficiency test to be undertaken by a crew member is to be conducted by CASA, a person approved by CASA, or the chief pilot of the operator.

Subregulation 11.160 (1) of 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 CAOs, 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**

Virgin Australia New Zealand (***VANZ***) is undertaking a transition of their operating crew to

Virgin Australia International Airlines (the ***operator***) as part of a wider integration project. VANZ operating crew have been trained and assessed in accordance with New Zealand Civil Aviation Authority requirements, which are different to Australian regulatory requirements. However, the VANZ training and checking program has always been oversighted by Virgin Australia Airlines and is similar in content and standards. The operator has, therefore, requested CASA to accept components of the initial safety and emergency procedures training conducted with VANZ operating crew for the purposes of operating in Australian aircraft. This will allow the operator to minimise transitional costs of repeating initial training for transitioned VANZ operating crew.

CASA EX139/14 is an exemption that applies to each operating crew member transitioning from VANZ to the operator. It exempts the operating crew member from the requirements of paragraphs 12.1 and 12.3 of CAO 20.11, but only in relation to the testing of emergency procedures for the flight deck window, the slide jump and the initial wet drill in accordance with Appendix IV of CAO 20.11. Each operating crew member is, therefore, not required to pass the proficiency test specified in CAO 20.11 for those components.

The instrument is subject to 2 conditions, specifically, that each transitioned crew member must produce evidence, upon CASA’s request, from VANZ that he or she has satisfactorily completed the 3 components, and that each crew member is limited to operating on the same aircraft type before his or her transition from VANZ.

**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 that CAO, the later document is declared to be a disallowable instrument. This instrument affects the operation of paragraphs 12.1 and 12.3 of CAO 20.11 and is, therefore, declared to be a disallowable instrument.

Additionally, subregulation 11.160 (1) of CASR 1998 provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the CAOs. An instrument issued under paragraph 98 (5A) (a) 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, being operating crew members transitioning from VANZ to the operator.

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

**Consultation**

The operator has, in consultation with CASA, applied for this exemption. CASA has assessed the operator’s proposal and is satisfied that the operator will be providing an equivalent level of safety under Australian regulatory requirements. 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 the day of registration and expires at the end of September 2017, as if it had been repealed by another instrument.

[Instrument number CASA EX139/14]

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Exemption — crew member proficiency for emergency procedures (Virgin Australia International Airlines)**

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 exempts operating crew members of Virgin Australia New Zealand, who are transitioning to Virgin Australia International Airlines Pty Ltd (the ***operator***), from having to pass a proficiency test for several components of the initial safety and emergency procedures training under Australian regulatory requirements. CASA is satisfied that the operator will be providing an equivalent level of safety and has issued the instrument, subject to conditions in the interests of air safety. The exemption will allow the operator to reduce operating crew transition costs.

**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**