Explanatory Statement

Civil Aviation Safety Regulations 1998

**Exemption from paragraph 5.1 of Civil Aviation Order 20.16.3 for Airbus 330 aircraft operated by Qantas Airways Limited**

**Legislation**

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.

Under subregulation 207 (3) of the *Civil Aviation Regulations 1988* (***CAR 1988***), a person must fit, carry or use an instrument or item of equipment only in accordance with the directions (if any) of CASA.

Under regulation 235 of CAR 1988, CASA may give directions with respect to the method of loading of persons and goods (including fuel) on aircraft.

Paragraph 5.1 of Civil Aviation Order (***CAO***) 20.16.3 made in accordance with subregulations 207 (3) and 235 (7) states that all seats (with the exception of those specified in paragraph 5.2) must be adjusted to their upright position for take-off or landing. Paragraph 5.2 applies to injured or incapacitated passengers.

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (***CASR 1988***) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations or the Civil Aviation Orders. 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.

**Exemption**

The exemption excludes from paragraph 5.1 seats of the type specified in the exemption, being Thompson Aero Seating PN.VT10-00 series seats. The exemption is subject to conditions.

**Conditions**

The seats must have been installed in accordance with the standards and limitations applied for the certification of the aircraft or for its modification when installing the seats.

The seats as installed must have been approved by the certifying authority for the aircraft as suitable for use in a reclining position during take-off, taxiing or landing.

The seats must only be used in a reclining position in accordance with the instructions of the operator and the manufacturer. In particular, when in the reclining position, they must not impede ingress or egress by people behind the seat, in case of an emergency.

**Legislative Instruments Act 2003 (the *LIA*)**

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. This exemption was issued under that paragraph and applies to a class of aircraft and to a class of persons, the pilots of the relevant aircraft. Therefore, it is a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

**Statement of Compatibility with Human Rights**

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

**Making and commencement**

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

The instrument commences on the day of registration. It expires at the end of November 2017, as if it had been repealed by another instrument.

[Instrument number CASA EX168/14]

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Exemption from paragraph 5.1 of Civil Aviation Order 20.16.3 for Airbus 330 aircraft operated by Qantas Airways Limited**

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 instrument enables certain passenger seats not to be in the upright position when taking off or landing.

**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**