

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX89/23 — Crew Life Jackets (SMA-2160 Series) Exemption Instrument 2023

##### Purpose

The purpose of this instrument is to make a number of exemptions from, and directions about, Part 91, Part 133 and Part 138 of the *Civil Aviation Safety Regulations 1998* (*CASR*) in relation to crew members' use of a certain life jacket.

The life jacket is the SMA-2160 Series constant wear life preserver (the ***SMA-2160 life jacket***) as used in the following helicopter operations:

- Australian air transport operations
- aerial work operations
- private operations.

This equipment is manufactured by Safety Marine Australia, trading as CH Smith Marine Pty Ltd, ACN 009 503 593, ARN 503511 or the other iterations of the company as registered in the States and Territories, as applicable.

##### Legislation — exemptions

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.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160(1), and for subsection 98(5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98(5A).

Subsection 98(5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160(2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160(3), CASA may grant an exemption on application, or on its own initiative.

Under subregulation 11.170(3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A(1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

Under regulation 11.205, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition. Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230(1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230(3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned

by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft, etc.).

### **Legislation — directions**

Under paragraph 11.245(1)(a) of CASR, for subsection 98(5A) of the Act, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Under subregulation 11.245(2), CASA may issue such a direction only if CASA is satisfied that it is necessary in the interests of safety, only if the direction is not inconsistent with the Act, and only for the purposes of CASA's functions.

Under regulation 11.250, a direction ceases to be in force on a day specified in the instrument or, if no day is specified, 1 year after the instrument commences. Under subregulation 11.255(1), it is an offence to contravene a direction under regulation 11.245 that is applicable to the person.

### **Legislation — Part 91 of CASR**

Part 91 of CASR is a comprehensive code of general flight and operational safety rules for Australian registered aircraft wherever located, and for foreign registered aircraft in Australian territory. Part 91 contains the baseline rules for “private operations”.

Under subregulation 91.810(1) of CASR, the Part 91 Manual of Standards (that is, the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020* (the **Part 91 MOS**)) may prescribe requirements relating to:

- (a) the fitment and non-fitment of equipment to an aircraft; and
- (b) the carrying of equipment on an aircraft; and
- (c) equipment that is fitted to, or carried on, an aircraft.

Under subregulation 91.810(2), it is an offence to contravene the MOS requirement.

By virtue of item 16 of the Table in subregulation 91.035(1) of CASR, the life jacket requirements under the Part 91 MOS apply for Part 138 aerial work operations.

Under subsection 26.02(2) of the Part 91 MOS, before an Australian aircraft begins a flight, any equipment that is required to be fitted to, or carried on, the aircraft under Chapter 26 (other than equipment required under Division 26.16, which is not presently relevant) must be compliant with the requirements of, or approved under, Part 21 of CASR.

Under subsection 26.56(2) of the Part 91 MOS, when certain aircraft begin certain flights, they must carry the following:

- (a) for each infant on board — a life jacket, or another equally effective flotation device, that may have a whistle;
- (b) for each other person on board — a life jacket that must have a whistle.

Under subsection 26.58(2) of the Part 91 MOS, a person on board a rotorcraft must wear a life jacket if the flight is over water to or from a helideck.

Under subsection 26.56(1) of the Part 91 MOS, these requirements apply to an aircraft flight:

- (a) if the aircraft is a seaplane or an amphibian; or
- (b) for a single-engine aircraft that is not a seaplane or an amphibian — if, during the flight, the aircraft is flown further over water than the distance from which, with the engine inoperative, the aircraft could reach an area of land that is suitable for a forced landing; or
- (c) for a multi-engine aircraft that is not a seaplane or an amphibian — if during the flight the aircraft is flown more than 50 NM from an area of land that is suitable for a forced landing.

Under subsection 26.56(3), the section does not apply if:

- (a) the aircraft is flown over water for the purpose of climbing after take-off from, or descending to land at, an aerodrome; and
- (b) the aircraft is flown in accordance with a navigational procedure that is normal for the climb or descent at the aerodrome.

The requirement under subsection 26.02(2) of the Part 91 MOS is that equipment must be compliant with the requirements of, or approved under, Part 21 of CASR. A life jacket mentioned in paragraph 26.56(2)(b) of the MOS is one that is carried on a helicopter. A life jacket that conforms to the Australian Technical Standards Order, ATSO-1C13 “Life Preservers”, would be one that was compliant with the requirements of, or approved under, Part 21 of CASR.

An ATSO (short for Australian Technical Standard Order) is a minimum performance standard prescribed by the Part 21 Manual of Standards for specified articles used on civil aircraft.

An ATSO authorisation is:

- a CASA design and production approval issued to the manufacturer of an article that has been found to meet a specific ATSO, ETSO (short for European Technical Standard Order) or TSO (short for Technical Standard Order)
- a CASA production approval issued to the manufacturer of an article manufactured in accordance with the Federal Aviation Administration of the United States of America (FAA) letter of TSO design approval.

### **Legislation — Part 133 of CASR**

Part 133 applies to rotorcraft used in Australian air transport operations. Part 133 works with Part 91 to provide a comprehensive code of safety rules for air transport operations using rotorcraft.

Under subregulation 133.360(1) of CASR, the Part 133 Manual of Standards (that is, the *Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020* (the **Part 133 MOS**)) may prescribe requirements relating to:

- (a) the fitment and non-fitment of equipment to an aircraft; and
- (b) the carrying of equipment on an aircraft; and
- (c) equipment that is fitted to, or carried on, an aircraft.

Under subregulation 133.360(2), it is an offence to contravene the MOS requirement.

Under subsection 11.02(1) of the Part 133 MOS, before a registered rotorcraft begins a flight, any equipment that is required to be fitted to, or carried on, the rotorcraft under Chapter 11 must meet the requirements of, or be approved under, Part 21 of CASR.

Under subsection 11.49(2) of the Part 133 MOS, when certain kinds of rotorcraft begin certain flights, they must carry the following:

- (a) for each infant on board — a life jacket, or another equally effective flotation device, that may have a whistle;
- (b) for each other person on board — a life jacket that must have a whistle.

Under subsection 11.49(1) of the Part 133 MOS, these requirements apply to a rotorcraft flight if:

- (a) for a single-engine rotorcraft, or a multi-engine rotorcraft, flown in performance class 3 — the rotorcraft will be flown further over water than the distance from which, with 1 engine inoperative, the rotorcraft could reach land; or
- (b) for a multi-engine rotorcraft — the rotorcraft will be flown over water more than 50 nautical miles from land; or
- (c) in the event of an emergency happening during the take-off and initial climb stage, or approach and landing, or baulked landing stage, of the flight — the rotorcraft is reasonably likely to land in water; or
- (d) the flight is to, or from, a helideck.

Under subsection 11.49(3), subject to subsection (5), during a relevant flight, each person for whom a life jacket is required to be carried by this section must wear the life jacket.

Under subsection 11.49(5), the section does not apply if:

- (a) the rotorcraft is flown over water for the purpose of climbing after take-off from, or descending to land at, an aerodrome; and
- (b) the rotorcraft is flown in accordance with a navigational procedure that is normal:
  - (i) for the take-off, or take-off and initial climb, stage of the flight; or
  - (ii) from 1 000 ft during the approach and landing, or baulked landing stage of the flight.

The requirement under subsection 11.02(1) of the Part 133 MOS is that equipment must be compliant with the requirements of, or approved under, Part 21 of CASR. A life jacket mentioned in paragraph 11.49(2)(b) of the MOS is one that is carried on a helicopter. A life jacket that conforms to the Australian Technical Standards Order, ATSO-1C13 “Life Preservers”, would be one that was compliant with the requirements of, or approved under, Part 21 of CASR.

Notwithstanding claims by some suppliers of the SMA-2160 life jacket, it does not have an ATSO authorisation.

### **ATSO authorisations**

The references to Part 21 of CASR in subsection 26.02(2) of the Part 91 MOS, and subsection 11.02(1) of the Part 133 MOS in effect call up regulation 21.305 of CASR, which provides that, whenever a material, part, process, or appliance is required to be approved under Part 21, it may be approved:

- (a) under an Australian Parts Manufacturer Approval; or
- (b) under an ATSO authorisation or letter of ATSO design approval; or
- (c) in conjunction with type certification procedures for an aircraft, aircraft engine or propeller; or
- (d) under Subpart 21.N; or
- (da) in a manner prescribed by the Part 21 Manual of Standards; or
- (e) in any other manner approved by CASA.

### **Background**

In the course of its regulatory activities, CASA discovered that an unknown number of helicopter operators who were required under the Part 91, 133 and 138 MOSs to carry Part 21 of CASR approved life jackets were using equipment that was labelled “ATSO SMA-2160 series” life jackets.

However, although SMA hold an ATSO for its the Roaring Forties 2100 series life jackets, it did not hold a ATSO for the SMA-2160 series constant wear life jackets.

Various operators, including emergency service operators, had purchased and were using the SMA-2160 series life jackets in the honest, but mistaken belief that it was compliant with the ATSO.

It was, therefore, necessary for CASA to make an assessment of the safety status of the SMA-2160 series constant wear life jackets to determine whether, supported by an exemption, it would be safe for relevant operators to continue to use the life jacket for a limited period of time pending the ATSO certification of the SMA-2160 series constant wear life jackets, or until the operators acquired compliant life jackets.

CASA was satisfied that, regarding the safety of air navigation as the most important consideration, an exemption subject to appropriate conditions would preserve an acceptable level of safety and the safety of air navigation would thereby be maintained.

The exemption instrument only applies to SMA-2160 series constant wear life jackets that relevant operators already possess, or have on order at the commencement of the instrument.

The operator means the operator conducting a relevant operation who:

- (a) on and after the date that this instrument commences — equips their helicopter crew members with a SMA-2160 life jacket that was in the possession of the operator immediately before the commencement of this instrument; or
- (b) in the period up to immediately before the commencement of this instrument — had already ordered, but not received, such a lifejacket for such a purpose.

Relevant operation means a flight of a helicopter to which any of the following Parts of CASR apply:

- (a) Part 91;
- (b) Part 133;
- (c) Part 138.

### **Description of exemptions and direction**

The details of the exemption instrument, including the conditions to which its application is subject, are set out in Appendix 1. The conditions apply principally to the relevant *operators*. However, the desired safety outcome is supported by a direction to pilots in command that, before a relevant flight, the pilot must be satisfied that the applicable conditions have been actioned, or complied with, by the operator.

### **Legislation Act 2003 (the LA)**

Exemptions under Subpart 11.F of CASR are “for subsection 98(5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption instrument is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98(5AA) of the Act, an exemption issued under paragraph 98(5A)(a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption instrument is generic in nature and applies to classes of persons. It is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under section 15G, and sections 38 and 42, of the LA.

### **Sunsetting**

As the exemption instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunseting provisions) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The exemption instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators both domestic and international.

In this case, the instrument is a temporary measure and will be repealed at the end of 13 December 2024.

Thus, in practice, no sunseting avoidance issues arise. The fact that the instrument is formally not subject to sunseting does not, therefore, impact on the potential for parliamentary oversight.

### **Incorporations by reference**

Under subsection 98(5D) of the Act, the instrument may apply, adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act as that non-legislative

instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made).

Under paragraph 15J(2)(c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained. There are no such specific documents.

References to provisions of CASR and Manuals of Standards are taken to be as they are in force from time to time, by virtue of paragraph 13(1)(c) of the LA. CASR and MOSs are freely available online on the Federal Register of Legislation.

Incorporated documents are described below, together with the manner of incorporation and how they may be obtained.

### **Exposition and operations manual of an operator**

An exposition or a manual of an operator is a document, or suite of documents, that specifies the scope of the operations and activities conducted by the operator, and sets out the plans, processes, procedures, programs and systems implemented by the operator to comply with the civil aviation legislation.

An exposition or manual, for an operator, generally means the exposition as changed from time to time.

An exposition or manual is not publicly or freely available. It is proprietary to the operator who creates it and owns its intellectual property, and it will generally include commercial in confidence information about the operator's business. The incorporated requirements of expositions and manuals are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligations to make the exposition or manual available to its personnel who have obligations under the document.

However, CASA has previously undertaken that it will, as far as practicable, make arrangements with any relevant operator to make a suitably redacted copy of the exposition available for requested inspection by appointment at a relevant CASA office.

### **Australian Technical Standards Order, ATSO-1C13 "Life Preservers"**

Details of the relevant ATSO minimum performance standard prescribed by the Part 21 Manual of Standards and the ATSO authorisation in the form of the CASA design and production approval are available free from CASA.

### **Consultation**

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult, where possible, in an

appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

For this instrument, CASA carried out informal consultations with a number of helicopter operators who would be affected by the exemption or its absence. They raised no concerns about the contents or conditions of the instrument.

## **Economic and cost impact, and sector risks**

### *Economic and cost impact*

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration. Subsection 9A(3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses, and the community to incur.

The economic impact of a standard refers to the impact a standard would have on the production, distribution, and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

In terms of economic and cost impacts for subsection 9A(3) of the Act, the exemption instrument will, in effect, permit relevant operators to continue to use the SMA-2160 life jackets they have acquired, or have on order, for a period of time while ATSO authorisation issues are addressed. However, the exemption does not extend to any other SMA-2160 life jackets acquired after the commencement of the instrument.

### *Sector risks*

For aviation safety reasons, the exemption instrument is specific to those Part 133 operators who fall within its scope and who choose to take the benefit of the exemptions and comply with its conditions.

## **Environmental impact**

Under subsection 9A(2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the exemption instrument, as compared to the baseline that existed on 1 December 2021, since the instrument does not create any new environmental impacts arising from flight operations.



### **Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required because the exemption instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for exemption or direction instruments (OIA id: 14507).

### **Statement of Compatibility with Human Rights**

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption instrument is compatible with human rights: with its aviation safety focus, it promotes the right to life. By permitting the continued conditional use of the SMA-2160 life jackets, the instrument protects the right to work, and the right to safe and healthy working conditions. The conditions imposed for this continued use may impose some small administrative costs. The equipment maintenance and training costs that may arise from compliance with the conditions would be costs that arise in any case for life jackets regardless of the exemption instrument. Overall, these cost impacts would have no material impact on the right to work, and the right to safe and healthy working conditions.

The exemption instrument, therefore, achieves its purpose and protective goals in a way that is reasonable, necessary and proportionate in the context of aviation safety.

### **Commencement and making**

The instrument commences on the day it is registered, and is repealed at the end of 13 December 2024.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73(2) of the Act.

**Details of:****CASA EX89/23 — Crew Life Jackets (SMA-2160 Series) Exemption Instrument 2023**

---

**1 Name**

This section names the exemption instrument.

**2 Duration**

Under this section, the instrument commences on the day after it is registered; and is repealed at the end of 13 December 2024.

**3 Definitions**

Under this section, key words and phrases are defined, including:

***compliant life jacket*** means a life jacket that is compliant with the requirements of, or approved under, Part 21 of CASR.

***helicopter underwater escape procedures*** means the procedures for underwater escape from an operator's helicopter that the operator must include in:

- (a) its exposition for operations under Part 133; or
- (b) its operations manual for operations under Part 138.

***operator*** means the operator conducting a relevant operation who:

- (a) on and after the date that this instrument commences — equips their helicopter crew members with a SMA-2160 life jacket that was in the possession of the operator immediately before the commencement of this instrument; or
- (b) in the period up to immediately before the commencement of this instrument — had already ordered, but not received, such a lifejacket for such a purpose.

***relevant operation*** means a flight of a helicopter to which any of the following Parts of CASR apply:

- (a) Part 91;
- (b) Part 133;
- (c) Part 138.

***SMA*** means Safety Marine Australia, trading as CH Smith Marine Pty Ltd, ACN 009 503 593, ARN 503511 or the other iterations of the company as registered in the States and Territories as applicable.

***SMA-2160 life jacket*** means the SMA-2160 constant wear life preserver, manufactured by SMA, and includes its helicopter emergency escape device.

A Note explains that the instrument only applies to legacy SMA-2160 life jackets that are not compliant life jackets, and references the definition of ***operator*** and also section 4.

**4 Application**

Under this section, the instrument applies:

- (a) to the operator of a helicopter; and
- (b) to the pilot in command of a helicopter;

in relation to the use **by a crew member** of an SMA-2160 life jacket in a relevant operation, but only in respect of such a life jacket that was:

- (c) in the possession of the operator immediately before the commencement of the instrument; or
- (d) on order by the operator from the manufacturer before the commencement of the instrument.

## **5 Exemption — CASR Part 91 and Part 138**

- (1) Under this subsection, the pilot in command of a relevant operation is exempted from compliance with subregulations 91.810(2) and (3) of CASR, but only to the extent that the requirement under subsection 26.02(2) of the Part 91 MOS applies to a life jacket for each person mentioned in paragraph 26.56(2)(b) of the MOS who is a crew member.

A Note explains that the requirement under subsection 26.02(2) of the Part 91 MOS is that equipment must be compliant with the requirements of, or approved under, Part 21 of CASR.

A life jacket mentioned in paragraph 26.56(2)(b) of the MOS is one that is carried on a helicopter.

A life jacket that conforms to the Australian Technical Standards Order, ATSO-1C13 “Life Preservers” (as in force from time to time) would be one that was compliant with the requirements of, or approved under, Part 21 of CASR.

The Note points out that, notwithstanding claims by some suppliers of the SMA-2160 life jacket, it does **not** so conform.

The Note also explains that by virtue of item 16 of the Table in subregulation 91.035(1), the life jacket requirements under the Part 91 MOS apply for Part 138 aerial work operations.

- (2) Under this subsection, the exemption is subject to the conditions mentioned in section 7.

## **6 Exemption — CASR Part 133**

- (1) Under this subsection, the operator is exempted from compliance with subregulations 133.360(2) and (3) of CASR, but only to the extent that the requirement under subsection 11.02(1) of the Part 133 MOS applies to a life jacket for each person mentioned in paragraph 11.49(2)(b) of the MOS who is a crew member.

A Note explains that the requirement under subsection 11.02(1) of the Part 133 MOS is that equipment must be compliant with the requirements of, or approved under, Part 21 of CASR.

A life jacket mentioned in paragraph 11.49(2)(b) of the MOS is one that is carried on a helicopter.

A life jacket that conforms to the Australian Technical Standards Order, ATSO-1C13 “Life Preservers” (as in force from time to time), would be one that was compliant with the requirements of, or approved under, Part 21 of CASR.

The Note points out that, notwithstanding claims by some suppliers of the SMA-2160 life jacket, it does **not** so conform.

- (2) Under this subsection, the exemption is subject to the conditions mentioned in section 7.

## **7 Conditions — the operator**

- (1) Under this subsection, the operator must ensure that each crew member in a relevant operation is supplied with, and wears as appropriate, a compliant life jacket unless the crew member is supplied with an SMA-2160 life jacket.
- (2) Under this subsection, the operator must ensure that the requirements under sections 26.57 and 26.59 of the Part 91 MOS, and subsection 11.49(3) of the Part 133 MOS, as applicable, for the stowage and wearing of life jackets, are complied with in relation to the SMA-2160 life jacket.
- (3) Under this subsection, the operator must ensure that each SMA-2160 life jacket for use during a relevant operation has the following:
  - (a) reflective markings;
  - (b) a whistle;
  - (c) a light;
  - (d) a manual inflation function.
- (4) Under this subsection, the operator must ensure that each SMA-2160 life jacket for use during a relevant operation has passed annual servicing and testing in accordance with the manufacturer's instructions.

A Note explains that an SMA-2160 life jacket includes its helicopter emergency escape device and references the definition of ***SMA-2160 life jacket***.

- (5) Under this subsection, the operator must ensure that the required maintenance for each SMA-2160 life jacket is performed by one of the following:
  - (a) a maintenance organisation approved by CASA under regulation 30 of CAR that is authorised to service and test flotation equipment;
  - (b) a Part 145 organisation that is authorised to service and test flotation equipment;
  - (c) the manufacturer of the SMA-2160 life jacket.
- (6) Under this subsection, the operator must ensure that each crew member in a relevant operation has demonstrated the following to the operator at the intervals mentioned in paragraph (7)(b):
  - (a) competence in the correct stowage of an SMA-2160 life jacket;
  - (b) competence in the correct use and fitment of an SMA-2160 life jacket, including in particular the operation of:
    - (i) the harness buckle system; and
    - (ii) the helicopter emergency escape device;
  - (c) knowledge of, and competency in the use of, the operator's helicopter underwater escape procedures.

A Note explains that these requirements may be satisfied when they are part of the operator's training and checking obligations under Part 133 and Part 138 of CASR.

- (7) Under this subsection, the operator must ensure that each crew member must:
  - (a) before first participating in a relevant operation:
    - (i) have completed training in the matters listed in paragraphs (6)(a), (b) and (c); and
    - (ii) successfully demonstrated competency in each of those matters; and
  - (b) thereafter, successfully demonstrate their competency in the matters listed in paragraphs (6)(a), (b) and (c) as follows:
    - (i) in relation to helicopter underwater escape procedures — subject to subsection (8), at intervals of not more than 3 years after the previous demonstration;
    - (ii) for the matters other than helicopter underwater escape procedures — subject to subsection (8), at intervals of not more than 1 year after the previous demonstration.
- (8) Under this subsection, any demonstration of competency mentioned in this instrument, required to be completed at intervals of 1 or 3 years, that is successfully completed within 90 days before, or after, its due date is taken to meet the requirements mentioned in paragraph (7)(b) as if it had been completed on the due date.
- (9) Under this subsection, the operator must ensure that a crew member does not wear an SMA-2160 life jacket unless:
  - (a) the SMA-2160 life jacket complies with the requirement of subsections (3), (4) and (5); and
  - (b) the crew member meets the requirements of subsection (6).
- (10) Under this subsection, the operator must ensure that a copy of this instrument is included in:
  - (a) its exposition for operations under Part 133; or
  - (b) its operations manual for operations under Part 138.
- (11) Under this subsection, the operator must keep a record of the required maintenance that was carried out on each SMA-2160 life jacket.
- (12) Under this subsection, the operator must keep a record of each instance that a crew member demonstrated knowledge and competence of the matters mentioned in subsection (6).
- (13) Under this subsection, the operator must:
  - (a) keep the record mentioned in subsection (11) for at least 3 years after the record was created; and
  - (b) keep the record mentioned in subsection (12) for at least 5 years after the crew member ceases to be a member of the operator's personnel.

## **8 Direction — operator and pilot in command**

Under this section, within 14 days of any occurrence that requires the use of a SMA-2160 life jacket by a crew member in the water during an abnormal situation or an emergency situation, the operator and the pilot in command must each ensure that CASA's Flight Standards Branch is provided with a written report on the general nature of the occurrence, but including in particular details of the use and performance of the SMA-2160 life jacket.

A Note explains that CASA collects this information for the purpose of the ongoing evaluation of the use and effectiveness of the SMA-2160 life jacket in securing the flotation, correct orientation, and survival of the wearer in the water.

A second Note explains that CASA's Flight Standards Branch can be notified via the use of an email address.

## **9 Direction — pilot in command**

Under this section, before a relevant operation, the operator's pilot in command must ensure that the applicable conditions under section 7 have been actioned or complied with.

A Note explains that the exemption under section 5 is from an obligation that is otherwise on the pilot in command to ensure that only compliant life jackets are used. The exemption under section 6 is from an obligation that is otherwise on the operator to ensure that only compliant life jackets are used. Section 7 imposes conditions on the operator only. To ensure safety, it is necessary that the pilot in command also take responsibility to be satisfied that the conditions have been complied with before commencing a relevant operation.

## Statement of Compatibility with Human Rights

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

### CASA EX89/23 — Crew Life Jackets (SMA-2160 Series) Exemption Instrument 2023

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 purpose of this instrument is to make a number of exemptions from, and directions about, Part 91, Part 133 and Part 138 of the *Civil Aviation Safety Regulations 1998* (*CASR*) in relation to crew members' use of certain life jackets, namely, the SMA-2160 constant wear life preserver (the **SMA-2160 life jacket**). This equipment is manufactured by Safety Marine Australia, trading as CH Smith Marine Pty Ltd, ACN 009 503 593, ARN 503511 or the other iterations of the company as registered in the States and Territories, as applicable.

In the course of its regulatory activities, CASA discovered that an unknown number of helicopter operators who were required under Parts 91 and 133 of CASR to carry Part 21 of CASR approved life jackets were using equipment that was labelled "ATSO SMA-2160 series" life jackets.

However, although SMA hold an ATSO for its the Roaring Forties 2100 series life jackets, it did not hold a ATSO for the SMA-2160 series constant wear life jackets.

Various operators, including emergency service operators, had purchased and were using the SMA-2160 series life jackets in the honest, but mistaken, belief that it was compliant with the ATSO.

It was, therefore, necessary for CASA to make an assessment of the safety status of the SMA-2160 series constant wear life jackets to determine whether, supported by an exemption, it would be safe for relevant operators to continue to use the life jacket for a limited period of time pending the ATSO authorisation of the SMA-2160 series constant wear life jackets, or until the operators acquired compliant life jackets.

CASA was satisfied that, regarding the safety of air navigation as the most important consideration, an exemption subject to appropriate conditions would preserve an acceptable level of safety and the safety of air navigation thereby maintained.

#### Human rights implications

The legislative instrument engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the **ICCPR**)

- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the *ICESCR*)
- the right to work under Article 6 of the *ICESCR*.

***Right to life under the ICCPR***

***Right to safe and healthy working conditions under the ICESCR***

Although the instrument contains exemptions from various provisions in Parts 91 and 133 of CASR, it does so in the context of substitute, and acceptable, conditions and directions in the interests of aviation safety. To the extent that the conditions are expected to play a critical part in the avoidance of accidents and incidents, the instrument may reasonably be said to support the right to life, and to contribute to safe and healthy working conditions on board relevant Part 91 and Part 133 aircraft.

***Right to work under the ICESCR***

Permitting for a temporary period, the continued use of the SMA-2160 series life jackets will enable normal helicopter operations to continue pending the resolution of the ATSO authorisation process.

**Conclusion**

This legislative instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that is reasonable, necessary and proportionate in the interests of aviation safety.

**Civil Aviation Safety Authority**