

## **Explanatory Statement**

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

#### **Exemption — take-off with residual traces of frost and ice**

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.

#### **Legislation**

Under paragraph 244 (1) (c) of the *Civil Aviation Regulations 1988 (CAR 1988)*, immediately before taking-off, the pilot in command of an aircraft must ensure that all external surfaces of the aircraft are “completely free from frost and ice”.

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

Having taken into account all relevant safety considerations, CASA is satisfied that larger aircraft may be able to operate safely on take-off with residual traces of snow, frost and ice, provided the pilot in command complies with certain safety procedures. The exemption, therefore, permits an aircraft operated by Pionair Australia Pty Ltd, with a maximum take-off weight of more than 5 700 kg, to take off with residual traces of snow, frost and ice, subject to safety conditions.

#### **Conditions**

Under these conditions, before taking-off, the pilot in command must ensure that appropriate de-icing and anti-icing procedures, in accordance with the aircraft flight manual or the manufacturer’s instructions and data, have been used to remove all but residual snow, frost and ice from the aircraft. To ensure that there has been no subsequent build-up of snow, frost or ice, immediately before taking-off, he or she must also be satisfied that any residual snow, frost or ice will not affect the performance of the aircraft or any of its equipment or instruments.

#### **Legislative Instruments Act**

Exemptions issued under regulation 11.160 of CASR 1998 are issued under subsection 98 (5A) of the Act. Subsection 98 (5AA) of the Act states that an instrument issued under paragraph 98 (5A) (a), as this is, is a legislative instrument if it applies to a class of persons or a class of aircraft. This exemption applies to a class of aircraft and so is a legislative instrument.

As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instruments Act 2003* (the **LIA**).

**Consultation**

Consultation under section 17 of the LIA has not been undertaken in this case. The exemption renews instrument CASA EX78/10 (as amended) which ceased to have effect at the end of 30 September 2011.

The instrument comes into effect on the day of registration. It stops having effect at the end of 30 September 2014

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

[Instrument number CASA EX110/11]