

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — navigation and anti-collision lights (Aerorescue)

Legislation

Subsection 98 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that the Governor-General may make regulations for the Act and the safety of air navigation. Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

Subregulation 207 (2) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that an Australian aircraft shall not be used in any class of operation unless it is fitted with such instruments and is fitted with or carries such equipment, including emergency equipment, as CASA approves or directs.

Subregulation 5 (1) of CAR 1988 provides that whenever CASA is empowered by CAR 1988 to give directions or approvals, it may do so in the Civil Aviation Orders (the **CAOs**). Clause 3 of Appendix V to Civil Aviation Order 20.18 (**CAO 20.18**) requires that aircraft must have 2 landing lights except when engaged in private and aerial work operations, and charter operations not carrying passengers for hire and reward, whereupon the aircraft must have 1 landing light fitted.

Subregulation 195 (1) of CAR 1988 requires that the pilot in command and the operator of an aircraft must comply with the rules requiring lights to be displayed in relation to the aircraft at night and in conditions of poor visibility.

Subregulation 196 (1A) of CAR 1988 provides that the operator and pilot in command of an aeroplane in flight, or operating on the manoeuvring area of a land aerodrome, must ensure that the lights required by this regulation 196 to be displayed on the aeroplane are displayed. Subregulation 196 (3) provides that unless CASA otherwise directs, an aeroplane in flight, or operating on the manoeuvring area of a land aerodrome, shall display, in addition to navigation lights, an anti-collision light consisting of a flashing red light.

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.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character

(including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Instrument

Aerorecue Pty Limited (the *operator*) operates fast, sophisticated turboprop aircraft at 5 locations around Australia that are equipped with surveillance equipment that can detect personnel, aircraft, and marine craft a long distance from their position. The operator is contracted to various government agencies mentioned in Schedule 1 of the instrument to provide search and rescue capability, border protection or covert surveillance nationally. Some of these operations require that external lights on the aircraft not be turned on. The instrument will permit the operator to carry out covert surveillance without displaying some of the required lights.

To mitigate against the risks associated with such operations, conditions have been imposed in Schedule 2 of the instrument. The pilot in command and the operator must ensure that the ELTA Radar System is operative. The operator's aircraft must not be closer than 10 nautical miles to another aircraft, except in the case of a target aircraft where that distance may be reduced to 3 nautical miles.

The instrument also repeals an existing exemption issued to the operator on the same terms (CASA EX14/12), which expires at the end of February 2015.

Legislative Instruments Act 2003 (the LIA)

Under subparagraph 6 (d) (i) of 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, which was in force before the commencement of the LIA, 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 exempts the operator from the requirements of clause 3 of Appendix V 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 operator has applied for the renewal of the exemption. CASA has conducted an assessment process and is satisfied with the operator's operational processes. It is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LIA.

Making and commencement

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

The instrument commences on 1 March 2015 and expires at the end of February 2018, as if it had been repealed by another instrument.

[Instrument number CASA EX40/15]

Statement of Compatibility with Human Rights

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

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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 Aerorescue Pty Limited (the *operator*) from requirements to display navigation lights for the purpose of conducting search and rescue, surveillance and border protection operations on behalf of various government agencies. Some covert operations require that the navigation lights be turned off.

The instrument is subject to conditions that CASA has imposed in the interests of aviation safety.

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