



Australian Government
Civil Aviation Safety Authority

Instrument number CASA EX44/09

I, MICHAEL DAVID QUINN, Deputy Chief Executive Officer, Operations, a delegate of CASA, make this instrument under subregulation 308 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*.

A handwritten signature in black ink, appearing to read 'Mick Quinn', written over a horizontal line.

Mick Quinn
Deputy Chief Executive Officer
Operations

2 June 2009

Exemption — display of lights at night and in poor visibility

1 Duration

This instrument:

- (a) commences on the day after it is registered; and
- (b) stops having effect at the end of 31 May 2011.

2 Application

This instrument applies to the State of New South Wales, acting through NSW Police known as the Police Integrity Commission, Aviation Reference Number 755412 (the *operator*), and any pilot in command of the operator's aircraft.

3 Exemption

The operator and any pilot in command of the operator's aircraft are exempt from complying with the requirements of subregulation 195 (1) of CAR 1988 relating to the display of aircraft lights at night and in conditions of poor visibility.

4 Conditions

The exemption is subject to the conditions mentioned in Schedule 1.

Schedule 1 Conditions

- 1 The operator must ensure that the pilot in command of his or her aircraft operates the aircraft under the Instrument Flight Rules.
- 2 The pilot in command must advise Air Traffic Control (*ATC*) when the aircraft is operating without the display of external lights.

- 3 The pilot in command or the operator must advise ATC when the aircraft is returned to normal operations with the external lights displayed.
 - 4 The pilot in command of the aircraft must display external lights when asked to do so by ATC.
 - 5 The pilot in command of the aircraft must display external lights on the aircraft if the pilot of another aircraft asks for the external lights to be displayed for the purpose of identifying the operator's aircraft as traffic.
 - 6 The pilot in command of the aircraft must display external lights on the aircraft if he or she is aware of proximate traffic and there is a potential risk of collision.
 - 7 The operator's operations manual must contain procedures in Part D for operations without external lights displayed including guidance on the considerations and circumstances that constitute grounds for such operations.
-

Explanatory Statement

Civil Aviation Regulations 1988

Exemption — display of lights at night and in poor visibility

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation.

Subparagraph 195 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that at night and in conditions of poor visibility, the operator and pilot in command of an aircraft must display lights in relation to the aircraft.

The State of New South Wales, acting through NSW Police known as the Police Integrity Commission (the **Commission**) is a law enforcement agency responsible for covert physical surveillance of nominated Commission targets. The Commission has an Air Operator's Certificate which permits it to carry out covert surveillance operations. Some of these operations require that external lights on the aircraft be turned off. Such operations are not carried out frequently. The exemption will permit the Commission to carry out covert operations without displaying external lights on the aircraft.

To mitigate the risks associated with such operations, conditions have been imposed. These include that the operations must be conducted under the Instrument Flight Rules, external lights must be displayed at the request of Air Traffic Control (**ATC**). ATC must be advised when external lights are not going to be displayed.

Legislative Instrument Act

Subregulation 308 (4) of CAR 1988 declares an exemption to be a disallowable instrument. 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. The exemption is, therefore, a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

Consultation under section 17 of the LIA has not been undertaken in this case. The instrument is an exemption requested for law enforcement purposes and relates to a particular operator. It also remakes a previous instrument (CASA EX20/07) which ceases to have effect at the end of May 2009.

The instrument commences on the day after it is registered. It stops having effect at the end of 31 May 2011.

The instrument has been made by a delegate of CASA in accordance with subregulation 7 (1) of CAR 1988.

[Instrument number CASA EX44/09]