EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 242

Issued under the authority of the Minister for Transport and Regional Services

Civil Aviation Act 1988

Civil Aviation Amendment Regulations 2005 (No. 2)

Subsection 98 (1) of the Civil Aviation Act 1988 (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. That subsection also provides that the Governor-General may make regulations in relation to the safety of air navigation, being regulations with respect to matters with respect to which the Parliament has power to make laws.

Subsection 9 (1) of the Act specifies, in part, that the Civil Aviation Safety Authority (CASA) has the function of conducting the safety regulation of civil air operations in Australian territory by means that include developing and promulgating appropriate, clear and concise aviation safety standards and issuing certificates, licences, registrations and permits.

Paragraph 98 (3) (a) of the Act provides that the power to make regulations includes the power to make regulations for, or in relation to, registration of aircraft.


Part 47 of CASR commenced on 15 November 2004 and replaced Part 3 of the Civil Aviation Regulations 1988 (CAR). A transition period of one year was provided to enable all existing civil aircraft registrations to be transferred to the new administrative requirements under Part 47 of CASR.

Currently, under Subpart 202.BF, registration will lapse if an application to transition an aircraft from the old regulations to Part 47 is lodged prior to 15 November 2005, but is not processed by CASA prior to that date. This situation clearly disadvantages those aircraft owners who have complied with the regulatory requirements but whose applications were not processed by CASA in time.

The Regulations simplify the requirements related to the obligations of aircraft owners to transition their aircraft from the Civil Aircraft Register administered under the superseded Part 3 of CAR to the Civil Aircraft Register administered under Part 47 of CASR.

The Regulations provide for:

- registration under the old regulations to continue beyond 15 November 2005 until the day CASA registers or refuses to register the aircraft under Part 47 (or cancels the registration);
- a period of 90 days for aircraft owners to provide CASA, on request, with additional information or take an action to complete an application, as necessary to transition an aircraft registration to Part 47;
• discretionary powers for CASA to cancel or suspend registration of an aircraft registered under the old regime, should the owners fail to attend or unsuccessfully attend to a request from CASA to provide additional information within 90 days; and
• transitioning an aircraft for which there are no signatures of the property interest holders, provided that alternative evidence is available to demonstrate a genuine intent to comply with Part 47.

To achieve the intent of the Regulations, CASA will write to aircraft owners that did not apply for registration under Part 47 of CASR before 15 November 2005. The period of 90 days, referred to above, within which the aircraft owners must comply with the CASA request, will start from the date CASA assesses the non-compliant registration.

In addition, CASA will also amend the Advisory Circular AC 47-1 (Aircraft registration and related matters) to explain the implications of cancellation or suspension of an aircraft registration in relation to registration and airworthiness requirements under the transitional provisions.

Public consultation under section 17 of the Legislative Instruments Act 2003 has not been undertaken in this case because the amendments are considered to be administrative and minor or machinery in nature and will not substantially alter existing arrangements except in a beneficial way. However, direct consultation with the joint CASA/aviation industry advisory group, the Standards Consultative Committee (SCC) has been undertaken.

The amendment to Subpart 202BF does not have any safety impact on the operation of aircraft or on the public and property. It is solely aimed to benefit the Australian aircraft owners, by extending the period to transit the registration under the old regulations into Part 47 beyond 15 November 2005, and to simplify some of the existing statutory requirements.

The Office of Regulation Review has assessed that the Regulations are minor or machinery of government in nature and that the preparation of a Regulation Impact Statement is not mandatory.

The Regulations are a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Details of the Regulations are attached.
Details of the Civil Aviation Amendment Regulations 2005 (No. 2)

Regulation 1 - Name of Regulations
Regulation 1 provides that the title of the Regulations is the Civil Aviation Amendment Regulations 2005 (No. 2).

Regulation 2 - Commencement
Regulation 2 provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 - Amendment of Civil Aviation Safety Regulations 1998
Regulation 3 provides that Schedule 1 amends the Civil Aviation Safety Regulations 1998 (CASR).

Regulation 4 - Amendment of Civil Aviation Regulations 1988
Regulation 4 provides that Schedule 2 amends the Civil Aviation Regulations 1988 (CAR).

Schedule 1 – Amendments of Civil Aviation Safety Regulations 1998

Item [1] - Subregulation 202.223 (1) - Registration under CAR to continue
Item [1] replaces existing subregulation 202.223 (1) that states the deadline of 15 November 2005 for transition of aircraft registered under the old regulations to Part 47. The revised subregulation 202.223 (1) now enables aircraft to continue to be registered under the old regulations (Part 3 of CAR 1988) until the Civil Aviation Safety Authority (CASA) registers them under Part 47 of CASR, or cancels the registration.

The objective of the existing provisions would not be achieved by the deadline of 15 November 2005 as the aviation industry, despite the regular advertising campaign reminding them of the transitional deadline date, has been slow in submitting their applications. It is estimated that a significant percentage of aircraft owners will not apply in time or will submit their applications at such a late date that it would be logistically impossible for CASA to process all the applications by the established deadline. The application of the current regulations to these cases will mean the registration of the aircraft will lapse, which will disadvantage those aircraft owners as they will be unable to legally operate the aircraft.

Item [2] inserts three new subregulations 202.225 (4), (5) and (6) to provide operational flexibility to the transition process and to define the course of enforcement actions available to CASA, should it be required.

New subregulation 202.225 (4) enables transition of aircraft registration from CAR to CASR without signatures of the aircraft’s property interest holders, provided that alternative evidence is available to CASA to demonstrate genuine intent to comply with Part 47 of CASR.
New subregulation 202.225 (5) establishes a period of 90 days for aircraft owners to provide CASA with additional information, or take an action to complete an application, as required to support the transition to Part 47. This new provision supports subregulation 202.223 (1), by providing a defined timeframe after 15 November 2005 for owners to respond to CASA’s assessment of the individual status of aircraft whose registration have not been transferred from CAR to CASR.

New subregulation 202.225 (6) provides discretionary powers for CASA to cancel or suspend an aircraft registration under the old regulations if an aircraft owner fails to comply with a request from CASA to supply additional information within the 90 days.

To ensure aircraft registration holders are made aware of these provisions, CASA will amend the Advisory Circular - AC 47-1 (Aircraft registration) to explain the criterion for the cancellation and suspension of aircraft registration under these regulations in relation to registration and airworthiness requirements. A Note to this effect has been added to subregulation 202.225 (6).


Item [3] deletes regulation 202.226 as the provisions of this regulation no longer apply due to the new subregulation 202.223 (1) that redefines the continuation of aircraft registration under the revised transitional provisions. See Item [1].

**Schedule 2 – Amendments of Civil Aviation Regulations 1988**

**Item [1] - Regulation 181X - New registration marks**

Item [1] deletes the reference to regulation 16A, as this regulation was repealed in October 2000 with the commencement of Part 45 of CASR. Regulation 181X of CAR provides for identification of aircraft, by registration mark, that are operating in Reduced Vertical Separation Minimum airspace.