Explanatory Statement

Civil Aviation Regulations 1988

Direction — carriage of cabin attendant in hot air balloon

Subsection 98 (1) of the Civil Aviation Act 1988 (the Act) provides that the Governor-General may make regulations for the purposes of the Act and in the interests of the safety of air navigation.

Under regulation 208 of the Civil Aviation Regulations 1988 (CAR 1988), CASA may give directions as to the operating crew required to be carried on an aircraft having regard to the safety of air navigation. Paragraph 7 and subparagraph 6.1 (a) of Civil Aviation Order 20.16.3 (CAO 20.16.3) were made under regulation 208 and provide, among other things, that aircraft carrying more than 15 and not more than 36 passengers must carry a cabin attendant.

The instrument applies to the balloons with nationality and registration marks VH-KIE and VH-OSI. Because of the design of the balloons and their baskets, CASA does not consider that safety would be compromised if the balloons did not carry a cabin attendant during operations with the full passenger complement of 16.

The direction sets out various conditions that the operator must comply with. This includes the presence of 2 support crew, in addition to the pilot, to supervise and assist in the loading and unloading of passengers.

Conditions include, where 16 passengers are carried, the presence of 2 support ground crew, in addition to the pilot, to supervise and assist in loading and unloading passengers. These ground crew personnel must be located at either end of the basket and the operator’s operations manual must set out the course of training they have undergone to qualify for the role of ground crew.

Other conditions require that the passengers be equally distributed between the balloon’s 4 compartments and that all passengers are able to hear the pilot’s instructions. Apart from subparagraph 6.1 (a) and paragraph 7.1, other relevant provisions of CAO 20.16.3 continue to apply.

Legislative Instruments Act

Under regulation 5A of CAR 1988, if CASA has issued a Civil Aviation Order (CAO), and CASA later issues a direction, instruction, notification, permission, approval or authority that in any way affects the operation of the CAO the later instrument is a legislative instrument by virtue of paragraph 6 (d) (i) of the 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.

As a legislative instrument, 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. Previous directions have been issued for the same purpose to the named operator and to others.

The direction has been issued by a delegate of CASA. It commences on the day after it is registered and stops having effect at the end of 30 June 2009.

[Instrument number CASA 193/06]