

EXPLANATORY STATEMENT

Legislative Instrument Civil Aviation AOD 2008/2

Issued by the authority of the Minister for Infrastructure, Transport, Regional Development and Local Government.

Civil Aviation Act 1988

Legislation

Section 34 of the *Civil Aviation Act 1988* (the *Act*) provides that regulations may make provision for, and in relation to, the development, implementation and enforcement of drug and alcohol management plans (DAMPs) covering persons who perform, or are available to perform, safety-sensitive aviation activities (SSAAs), and for, and in relation to, drug and alcohol tests to be conducted by the Civil Aviation Safety Authority (CASA) in respect of persons who perform, or are available to perform, SSAAs. Subsection 9(1) of the Act specifies that CASA has the function of conducting safety regulation of civil air operations by means that include administering Part IV of the Act (which includes section 34).

Subsection 33(1) of the Act provides that a *drug or alcohol test* means:

- (a) a test of a body sample of a person to determine the presence (if any), but not the level, of alcohol or a testable drug in the sample; or
- (b) a test of a body sample of a person to determine the presence (if any), and the level, of alcohol or a testable drug in the sample.

Subsection 33(1) of the Act defines *testable drug* as a drug specified in an instrument under subsection (2). Subsection 33(2) of the Act provides that the Minister may, by legislative instrument, specify a drug for the purposes of the definition of testable drug in subsection (1).

Background

Legislative instrument *Civil Aviation AOD 2008/1*, registered on 23 September 2008, specified drugs for the purposes of the definition of testable drug in subsection 33(1) of the Act.

However, a typographical error in listing the drug “ Δ 9-tetrahydrocannabinol” resulted in the numeral “10” being appended to the name of the drug.

Although it was clear what was intended, and a court would arguably permit use of the slip rule of interpretation to apply this intent, the matter was not beyond doubt. Numerals and symbols are used in the names of certain drugs and it was open to a court to consider that “ Δ 9-tetrahydrocannabinol 10” was not the same substance as that intended to be prescribed as a testable drug, namely “ Δ 9-tetrahydrocannabinol”.

Legislative instrument *Civil Aviation AOD 2008/2*

The instrument, therefore, revokes legislative instrument *Civil Aviation AOD 2008/1* and remakes it with the typographical error removed. No other significant change has been made to the instrument. However, the opportunity has been taken to reformat the instrument consistently with the format of other instruments relevant to CASA, and to list the testable drugs in an order for ease of reference. Those drugs with a symbol or numeral at the beginning of their name are listed first.

Details of the instrument are set out in Attachment 1.

Legislative Instruments Act 2003

Subsection 33(2) of the Act provides that the Minister may, by legislative instrument, specify a drug to be a testable drug.

Subsection 15AE(1) of the *Acts Interpretation Act 1901* provides that if a provision of a law requires or permits an instrument that is described as a legislative instrument to be made, then the instrument so made is a legislative instrument for the purposes of the *Legislative Instruments Act 2003 (LIA)*.

Legislative instrument *Civil Aviation AOD 2008/2* is, therefore, a legislative instrument, 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 considered necessary for this instrument.

Office of Best Practice Regulation (OBPR)

A preliminary assessment of business compliance costs indicates that the instrument as such will have no cost impact on business.

Commencement and making

The instrument comes into effect on the day after it is registered.

The instrument has been made by the Minister for Infrastructure, Transport, Regional Development and Local Government.

[Legislative instrument *Civil Aviation AOD 2008/2*]

Details of Legislative instrument *Civil Aviation AOD 2008/2*

1 Name of instrument

This section provides that the name of the instrument is *Civil Aviation AOD 2008/2* (the *testable drugs specification*).

2 Commencement

This section provides that the instrument commences on the day after it is registered.

3 Revocation

This section provides that the previous instrument, *Civil Aviation AOD 2008/1*, is revoked.

4 Specification of testable drugs for Part IV of the Civil Aviation Act

This section contains the Minister's specification of the drugs in Schedule 1 as testable drugs for the purposes of the definition of *testable drug* in subsection 33(1) of the *Civil Aviation Act 1988*.

Schedule 1 Testable drugs

This Schedule contains a table listing the testable drugs for section 4, as follows:

Item	Testable drug
1	Δ 9-tetrahydrocannabinol
2	6-Acetyl morphine
3	Amphetamine
4	Benzoyllecgonine
5	Cocaine
6	Codeine
7	Ecgonine methyl ester
8	Methylamphetamine
9	Methylenedioxyamphetamine
10	Methylenedioxymethylamphetamine
11	Morphine
