

EXPLANATORY STATEMENT

CIVIL AVIATION ACT 1988

CIVIL AVIATION REGULATIONS

REQUIREMENT FOR A PROVING TEST UNDER SUBREGULATION 222 (1)

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 5 of the Civil Aviation Regulations (the Regulations), if CASA is empowered or required to issue any direction, instruction or notification or to give any permission, approval or authority, CASA may, subject to any contrary intention, issue the direction or notification or give the permission, approval or authority in Civil Aviation Orders (CAOs) or otherwise in writing. Under regulation 5A of the Regulations, if CASA has issued a CAO and CASA issues a later direction, instruction, notification, permission, approval or authority that is not a CAO and that in any way affects the operation of the CAO, the later document is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Subregulation 222 (1) of the Regulations provides that a new type of aircraft must not be used to carry passengers in a public transport service unless it has passed proving tests in accordance with CASA's requirements.

Paragraph 15.1 of section 20.11 of the Civil Aviation Orders (the Orders) sets out CASA's proving test requirements in relation to emergency evacuation demonstrations. Under subparagraph 15.1.3 of section 20.11, an emergency evacuation demonstration is not required if such a demonstration was carried out in accordance with the requirements of the United States Federal Aviation Regulations and, among other things, a CASA-appointed observer was present at the demonstration and was satisfied with the outcome.

Nauru Air Corporation has applied for an Australian Air Operator's Certificate and intends to apply to have the Boeing B737-400 (4L7) aircraft currently operated by the Corporation transferred to the Australian register.

As a new Australian operator, the Corporation is required to comply with the requirements of sub-section 15 of section 20.11.

CASA is not aware whether the observer referred to in subparagraph 15.1.3 of section 20.11 was present when the relevant demonstration for the Boeing B737-400 (4L7) aircraft was carried out in June 1988. The original type certification demonstration had a passenger complement in excess of 180 passengers.

The internal configuration of the Boeing B737-400 aircraft on which the certification evacuation demonstration was carried out is different to the aircraft operated by the Nauru Air Corporation. The number of passengers carried in the Nauru Air Corporation aircraft will not exceed 130. Moreover, the internal configuration of the aircraft to be operated by Nauru Air Corporation is the same as that in other Boeing B737-400 aircraft already operated by Qantas.

CASA is conscious of the high risk of injury to participants in emergency evacuation demonstrations. In these circumstances, CASA considers that safety will not be compromised if only the proving test now required in the schedule to the exemption is undertaken rather than requiring the operator to comply with the full emergency evacuation demonstration.

The test must be conducted in accordance with the requirements set out in Appendix I of section 20.11 of the Orders, other than those requirements that relate to the evacuation of passengers.

The direction has been issued by District Flight Operations Manager, Melbourne, as a delegate of CASA.

The direction took effect on gazettal.

[EXEMPTION NUMBER: CASA 17/1997]