

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.1 Amendment Order (No. 3) 2006

Legislation

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

Under subregulation 217 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), the operator of an aircraft whose maximum take-off weight exceeds 5 700 kilograms must provide a training and checking organisation (a **TCO**) to ensure that the members of the aircraft's operating crew maintain their competency.

Under subregulation 217 (2), the operator must ensure that the TCO provides 2 annual competency checks of each crew member.

Under subregulation 217 (3), the TCO, and its tests and checks, must be approved by CASA.

Under section 27 of the Act, CASA may issue Air Operators' Certificates (**AOCs**) with respect to aircraft, for the purpose of safety regulation.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or the Civil Aviation Orders (the **CAOs**).

Part 82 of the CAOs specifies conditions on AOCs. CAO 82.1 contains conditions on those AOCs that authorise charter operations or aerial work operations.

Under subparagraph 3.1 (a) of CAO 82.1, each charter operator or aerial work operator who is required to provide a TCO (i.e. who uses an aircraft whose maximum take-off weight exceeds 5 700 kilograms) must do so in accordance with Appendix 2 of that Order.

Under paragraph 3.3 of Appendix 2, each operator may, with the approval of CASA, use flight simulators or synthetic trainers for TCO training and testing purposes. Under paragraph 3.4, the flight simulators and synthetic trainers must be operated and maintained in accordance with procedures and standards prescribed by CASA in its publications entitled *FSD-1 Operational Standards and Requirements — Approved Flight Simulators* (**FSD-1**), and *FSD-2 Operational Standards and Requirements — Approved Synthetic Trainers* (**FSD2**). However, the standards in FSD-1 were superseded by those contained in Manual of Standards (**MOS**) — Part 60 Synthetic Training Devices, made under Part 60 of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**). The reference to FSD-1 is, therefore, out-of-date. The CAO Amendment deletes the reference to FSD-1 and substitutes a reference to the MOS. The name FSD2 is also corrected.

Legislative Instruments Act

Under subsection 98 (4A) of the Act, CAOs made for the purposes of section 28BA of the Act are declared to be disallowable instruments. 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 CAO Amendment 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 under section 17 of the LIA has not been undertaken in this case because the amendments are of a minor or machinery nature designed to correct out-of-date references.

The CAO Amendment is consequential on Part 60 of CASR 1998 and the MOS made under it. Part 60 was the subject of Regulation Impact Statement CASA #0301 (the **RIS**) approved by the Office of Regulation Review. Paragraph 4.19 of the RIS foreshadowed this consequential Amendment and no further RIS is required.

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

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 84A (2) of the Act.

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