

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 124

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

Civil Aviation Act 1988

Civil Aviation Safety Amendment Regulations 2006 (No. 1)

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 any other 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)(s) of the Act provides that the power to make regulations includes the power to make regulations for, or in relation to, the planning, construction, establishment, maintenance, operation and use of facilities used for (inter alia) air traffic services, an aeronautical radio navigation service, and an aeronautical telecommunications service.

The Regulations effect a number of minor amendments to Part 171 ‘Aeronautical Telecommunication Service and Radionavigation Service Providers’ of the *Civil Aviation Safety Regulations 1998* (the Principal Regulations) which have resulted from a Post Implementation Review (PIR) of the Principal Regulations and associated supporting material.

The objective of the PIR was to amend any regulatory or supporting documentation, if that would lead to safety improvement, clarify any ambiguity, or address requirements that were unworkable, unnecessary, superseded, or unable to be clearly interpreted.

For the purposes of consultation, CASA published a Notice of Proposed Rule Making – NPRM 0406AS – *Aeronautical Telecommunication Service and Radionavigation Service Providers – Proposed Amendments to Civil Aviation Safety Regulations (CASR) Part 171*, on 6 December 2004. Responses to the NPRM closed 11 February 2005.

The NPRM 0406AS sought comments from the aviation community and the public on proposals to amend the Principal Regulations (Part 171) and the supporting documentation; the Manual of Standards for Part 171 (MOS Part 171) and the Advisory Circular (AC) 171-1(0) – ‘Aeronautical telecommunication and radio navigation service providers - Guidelines for complying with the Part 171 requirements and standards’. One written response to the NPRM was received by the closing date. This response was submitted by Airservices Australia, the sole approved Part 171 service provider in Australia. The comments were considered and evaluated and changes to the proposals have been incorporated where relevant.

The Regulations clarify requirements relating to the obligations on Part 171 service providers before making any changes to the level of the provider's aeronautical telecommunication or radionavigation services, and omit several existing regulations that were found to be unnecessary.

In addition to the Regulations, CASA will also amend the associated MOS Part 171 to clarify the requirements and revise the standards in relation to a Part 171 service provider's Safety Management System (SMS). The MOS Part 171 amendments will be achieved under a separate legislative instrument made by CASA.

The Office of Regulation Review (ORR) has assessed that the Regulations have only a minor impact on business, are considered minor and machinery in nature and do not substantially alter existing arrangements and that the preparation of a Regulation Impact Statement (RIS) 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.

ATTACHMENT**Details of the proposed Civil Aviation Safety Amendment Regulations 2006 (No. 1)****Regulation 1 - Name of Regulations**

Regulation 1 provides that the title of the Regulations is the *Civil Aviation Safety Amendment Regulations 2006 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 provides that the Regulations 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*.

Schedule 1 – Amendments**Item [1] - Subregulation 171.010 (1), definitions of *aerodrome operator agreement*, *AIS agreement*, *ATS provider agreement*, *support service*, *support-service agreement***

Item [1] omits the definitions of *aerodrome operator agreement*, *AIS agreement*, *ATS provider agreement*, *support service* and *support-service agreement*. These definitions no longer apply, as a result of the amendments in the Schedule.

Items [2], [3] and [4] - Subregulation 171.035 (1), Subregulation (2A) and Subregulation (3) - Changes by service provider to service

Item [2] substitutes a revised subregulation 171.035 (1).

Item [3] inserts a new subregulation 171.035 (2A).

Item [4] substitutes a revised subregulation 171.035 (3).

The amendments clarify the provisions that apply to service providers that want to make a change to their telecommunication or radionavigation service. In particular, the amendments set out those kinds of changes to service for which a service provider must gain prior CASA approval before it makes the changes. It had been found in practice that the existing wording of the subregulation did not provide sufficient clarity of what constitutes a change in service, and it has proven to be difficult for the Part 171 service provider to determine what type of changes should be referred to CASA. The new subregulation 171.035 (2A), together with the revised subregulation 171.035 (3), set out the procedure that applies in having the change approved by CASA.

Items [5] and [10] - Regulations 171.045 and 171.130 – Agreements with other bodies

Items [5] and [10] omit regulation 171.045 and regulation 171.130 respectively. The original intent of these regulations was to require Part 171 service providers to establish written agreements with other nominated bodies with whom the Part 171 service provider necessarily interfaces in service provision. CASA's objective in originally placing this requirement in Part 171 was to ensure that appropriate interface arrangements were in place for the maintenance of services such as aerodrome cabling, emergency power supplies, maintenance of privately owned nav aids, security of installations, access to premises, etc.

However, in practice there have been instances where, despite the endeavours of the Part 171 service provider to establish the required agreements with other bodies such as aerodrome operators, commercial or other factors have precluded such agreements being established. This has placed the Part 171 service provider in a position where it cannot totally comply with the regulations.

The Regulations replace the existing requirements with alternate requirements for a service provider to establish interface arrangements, as part of a Part 171 service provider's Safety Management System, the standards for which are set out in the Manual of Standards (MOS) Part 171.

Item [6] - Paragraph 171.055 (b) – Test transmissions

Item [6] makes a minor amendment to paragraph 171.055 (b) in order to clarify the requirements on service providers to identify test transmissions of electromagnetic signals that are normally used for air traffic control or radio navigation from the normal operational transmissions of those signals, (subparagraph 171.055(b)(ii)). The amendment also adds a provision that the transmission can be identified as a test transmission when it commences, such as a voice message identifying that it is a test transmission. The amendment is required because, with the existing wording, the regulation cannot always be complied with in practice.

Items [7] and [11] - Regulation 171.060 and Regulation 171.135 – Post-accident performance inspection procedure

Items [7] and [11] omit regulation 171.060 and regulation 171.135 respectively, their provisions having been overtaken with the enactment of the *Transport Safety Investigation Act 2003*. It is inappropriate for matters that now fall within that Act to be duplicated in these regulations.

Items [8] and [9] - Regulation 171.086 and Regulation 171.125 – Safety management system

Items [8] and [9] simply rearrange the structure of the existing provisions for safety management systems. Subpart C of the regulations deals with the 'Obligations and privileges of service providers', and Subpart D deals with the 'Contents of operations manuals'. Existing regulation 171.125, in Subpart D, requires a service provider to have a Safety Management System, and details the requirements for it. The material in that regulation is moved into a new regulation 171.086 placed in Subpart C.

Regulation 171.125 is amended to state a requirement for a service provider's operations manual to include information about the Safety Management System. The sole purpose of the amendments under these schedules is to improve the structure of the regulations by placing the requirements in the more appropriate Subpart of the regulations, without changing the existing regulatory provisions.

Item [12] - Subregulation 171.250 (3) – Certificate

Item [12] inserts a new subregulation 171.250 (3) that requires CASA to issue a replacement certificate to a service provider, if that is necessary, following CASA approving a change to a service provider's telecommunication or radionavigation service, as provided for in amended regulation 171.035 (as referred to at Items [2], [3], and [4] above).