

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 108.10 Instrument 2007

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 38 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, CASA may give directions relating to the maintenance of Australian aircraft for the purpose of ensuring the safety of air navigation.

Subregulation 5 (3) states that if a direction is issued in Civil Aviation Orders (*CAOs*), it is taken to have been served on the person on the date on which the making of the Order is notified in the *Gazette*. Under the *Legislative Instruments Act 2003* (the *LIA*), registration on the Federal Register of Legislative Instruments (*FRLI*) is taken to be the equivalent of gazettal.

Under subregulation 38 (1) of CAR 1988, CASA has issued procedures relating to the inspection of aircraft, aircraft components and aircraft materials for flaws by dye penetrant methods. The instructions have been issued in Civil Aviation Order 108.10 (*CAO 108.10*).

CAO 108.10 was made before 1 January 2000 and under the *LIA*, the Order must be lodged with FRLI before 31 December 2007. The Order is being remade solely for the purpose of ensuring compliance and consistency with the LIA and does not involve any changes in existing law or policy in the Order. However, the opportunity has been taken to update outdated references to legislation and titles in the Order and to introduce gender-neutral wording into the Order.

Legislative Instrument Act

Under subsection 98 (5) of the Act, where the regulations provide for certain instruments to be issued in the form of CAOs, such CAOs are declared to be disallowable instruments. 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. The remake 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

Consultation under section 17 of the LIA has not been undertaken as the instrument is a remake of an existing instrument solely for the purposes of the LIA and is of a minor or machinery nature.

Office of Best Practice Regulation (OBPR)

OBPR does not require a Regulation Impact Statement because the remake is of a minor or machinery nature.

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

The instrument commences on the day after it is registered.