

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 232

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

Civil Aviation Act 1988

Civil Aviation Safety Amendment Regulations 2009 (No. 2)

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 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.

The Regulations amend the *Civil Aviation Safety Regulations 1998* (CASR) for 'Registration of Aircraft and Related Matters' in relation to the transfer of ownership of a registered aircraft by clarifying the time period for the former owner of an aircraft to notify CASA where the aircraft ownership has changed. Additionally the Regulations extend the period for the new owner to apply to CASA to become the new registration holder (RH) of the aircraft.

Background

Part 47 of the CASR sets out the requirements for Australian aircraft in relation to registration, and became effective on 15 November 2004. CASR required that when an aircraft was sold the former owner of an aircraft had to, 'as soon as practicable', notify CASA that the ownership of the aircraft had changed. The notification would alert CASA that the information recorded in the Civil Aircraft Register would require amendment. That regulation was deficient in that it did not provide the former owner of the aircraft with a specific timeframe in which to submit a notice of transfer of ownership. As a result of the interpretation of the term 'as soon as practicable', notification was often not received by CASA until months after a transfer of ownership had occurred.

Additionally, CASR required the new owner of the aircraft to apply to become the new RH within 14 days after the date the ownership was transferred. If an application was not received by CASA within those 14 days then CASA had to cancel the registration of the aircraft, to ensure that incorrect information was not published in the Civil Aircraft

Register. Cancellation of a registration under such circumstances often resulted in commercial and financial difficulty for the aircraft owner and operator, complaints to the CASA Industry Complaints Commissioner, and additional administrative tasks for CASA. Experience showed that the 14 day timeframe for the new aircraft owner to apply to become the new RH often did not provide sufficient time to submit the application.

Consideration was given to amending the requirement that CASA 'MUST' cancel an aircraft's registration in the case of late notification of a transfer of ownership to 'MAY' cancel'. However, advice from CASA's Legal Services Division indicated that such a change would reduce the effectiveness of the regulations with the following possible results:

- Potential security issues, as CASA and other responsible authorities may not know who has ownership, possession or control of an aircraft;
- Possible exposure of CASA to legal liability because details of the previous RH remain published on the Civil Aircraft Register;
- Airworthiness issues as CASA may not know who is responsible in a practical sense for the maintenance and continuing airworthiness of an aircraft; and
- Incorrect information contained and published in the Civil Aircraft Register.

In consideration of these items CASA has retained the requirement to cancel the registration but the notification period has been extended.

The Amendment

The Regulations amend the CASR to require the former owner to provide notification of a change of ownership to CASA within 14 days, and extends the period for the new owner to apply to become the RH to 28 days.

While the amendments are minor in nature, they facilitate compliance regarding the submission of a transfer of ownership notification, and application to become the new RH, and will reduce the number of cancellations of registrations.

Details of the Regulations are set out in the [Attachment](#).

The Regulations commenced on the day after registration on the Federal Register of Legislative Instruments.

The Act does not specify conditions that needed to be satisfied before the power to make the Regulations was exercised.

Consultation was undertaken through the joint CASA/Industry Standards Consultative Committee (SCC) and the SCC Maintenance Standards Subcommittee supported the amendments.

A Regulation Impact Statement Exemption Number 10365 was obtained from the Office of Best Practice Regulation as the amendments are not expected to result in any additional costs to industry.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Civil Aviation Safety Amendment Regulations 2009 (No. 2)

Details of the Regulations

Regulation 1 – Name of Regulations

Regulation 1 names the Regulations as the *Civil Aviation Safety Amendment Regulations 2009 (No. 2)*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence on the day after they are registered.

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 47.110(4)

This item provides a specific notification period by omitting the words 'As soon as practicable after the transfer' and inserting 'In accordance with the timetable mentioned in subregulation (4A)'.

Item 2 – After subregulation 47.110(4)

This item provides a specific notification period by inserting a new subregulation 47.110(4A) stating that the documents mentioned in subregulation (4) must be given to CASA and the new owner:

- (a) as soon as practicable after the transfer; and
- (b) in any case, within 14 days after the transfer.

Item 3 – Subregulation 47.110(5)

This item extends the application period to become the new Registration Holder of an aircraft by omitting '14' and inserting '28'.

Item 4 – Subregulation 47.110(5), note

This item amends the note in subregulation 47.110(5) to correspond with the requirement that the period for notification has been extended to 28 days.

Item 5 – Paragraph 47.130(5)(b)

This item amends paragraph 47.130(5)(b) to correspond with the requirement that the period for notification has been extended to 28 days.