

## **Explanatory Statement**

### **Civil Aviation Act 1988**

### **Civil Aviation Order 20.18 Amendment Instrument 2013 (No. 1)**

#### **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 207 (2) of the *Civil Aviation Regulations 1988* (**CAR 1988**), a person must not use an Australian aircraft in a class of operation if the aircraft is not fitted with the instruments and equipment approved and directed by CASA. In approving or directing, CASA may have regard only to the safety of air navigation.

Under subregulation 5 (1) of CAR 1988, where CASA is empowered to issue certain instruments such as approvals or directions, it may do so in a Civil Aviation Order (**CAO**).

For subregulation 207 (2) of CAR 1988, CASA made CAO 20.18 setting out the approval and directions for aircraft instruments and equipment to meet basic operational requirements.

#### **Background**

Paragraph 10.1 of Civil Aviation Order 20.18 required that “In the case of a charter or regular public transport aircraft, all instruments and equipment fitted to the aircraft must be serviceable before take-off”. The use of these words has caused uncertainty. It was decided to ensure that they were regarded as referring to instruments required under subregulation 207 (2).

#### **Details of the CAO amendment**

The CAO amendment clarifies the meaning by specifically mentioning that the paragraph only applies to instruments or equipment that an aircraft carries or is fitted with under subregulation 207 (2). To avoid doubt the amendment also adds a note after paragraph 10.1 describing the instruments and equipment to which it applies.

#### **Legislative Instruments Act**

Under subregulation 5 (1) of CAR 1988, if CAR 1988 empowers CASA to issue instruments such as approvals or directions, CASA may do so in the form of CAOs. Under subsection 98 (5) of the Act, where regulations provide for an instrument to be issued in the form of a CAO, the CAO so made is declared to be a disallowable instrument. 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. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

#### **Consultation**

As this CAO amendment only formalises what is an accepted interpretation as published by CASA (see CASA ruling 1/2004), in addition to omitting an invalid cross-reference, the amendment is considered to be minor and machinery in nature and CASA has not conducted further consultation.

**Compatibility with human rights and freedoms**

A statement of compatibility with Human Rights is at Attachment 1.

**Regulation Impact Statement**

The Office of Best Practice Regulation (**OBPR**) does not require preparation of a Regulation Impact Statement in this case. The OBPR assessed that the proposed CAO amendment is machinery in nature and no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 14415).

**Commencement and making**

The CAO amendment takes effect on the day after registration. It has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

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## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **CIVIL AVIATION ORDER 20.18 AMENDMENT INSTRUMENT 2013 (NO. 1)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Under subregulation 207 (2) of the *Civil Aviation Regulations 1988*, a person must not use an Australian aircraft in a class of operation if the aircraft is not fitted with the instruments and equipment approved and directed by CASA. In approving or directing, CASA may have regard only to the safety of air navigation.

CASA made Civil Aviation Order 20.18 (**CAO 20.18**) setting out the approval and directions for aircraft instruments and equipment to meet basic operational requirements.

Paragraph 10.1 of CAO 20.18 required that “In the case of a charter or regular public transport aircraft, all instruments and equipment fitted to the aircraft must be serviceable before take-off”. The use of these words has caused uncertainty.

The purpose of this instrument is to amend CAO 20.18 to clarify the meaning of paragraph 10.1 by specifically mentioning that paragraph 10.1 only applies to instruments or equipment that an aircraft carries or is fitted with under subregulation 207 (2). To avoid doubt the amendment also adds a note after paragraph 10.1 describing the instruments and equipment to which it applies.

In addition, the instrument omits an invalid cross-reference in Appendix V, which relates to emergency lighting equipment.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms. It’s only purpose is to remove doubt as to the meaning of provisions in CAO 20.18.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Civil Aviation Safety Authority**