

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 40, 2014**

Issued by the authority of the Minister for Infrastructure and Regional Development

*Civil Aviation Act 1988*

*Civil Aviation Legislation Amendment (Part 21) Regulation 2014*

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 for the purpose of carrying out and giving effect to the provisions of the *Convention on International Civil Aviation* (Chicago Convention) relating to safety and in relation to the safety of air navigation, being regulations with respect to any other matters for 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 Amendment Regulation (the Regulation) makes various minor amendments to the *Civil Aviation Regulations 1988* (CAR) and the *Civil Aviation Safety Regulations 1998* (CASR) to provide clarification and improve functionality of certain regulations relating to certification and airworthiness requirements for aircraft and parts.

Under Subpart 21.E of CASR, a person may apply to CASA for approval of the design of a major change to an aircraft, aircraft engine or propeller. Such an approval is issued as a supplemental type certificate (STC). However, Subpart 21.E does not currently provide for specific approval of a variation of an STC after the STC has been issued. Consequently, any variation can only be approved via a reissue of the STC, which is unnecessarily onerous in many cases.

The Regulation inserts new provisions in Subpart 21.E of CASR that provide for the holder of an STC to be able to apply for approval of a variation of the STC, and for a variation of an STC to be approved by CASA, an approved design organisation or an individual who has been authorised by CASA to grant such approvals.

Regulation 21.007 of CASR provides that unrepaired damage to an aircraft may be approved as a permissible unserviceability, which permits continued operation of the aircraft with the defect. The Regulation clarifies requirements for approval of an unrepaired defect under regulation 21.007. The Regulation replaces the term 'damage' with the term 'defect' in the associated provisions. This harmonises the terminology with Part 42 of CASR and clarifies the scope of regulation 21.007, particularly in relation to certain kinds of defects, such as fluid leaks and inoperative parts that could previously have been considered to not be within the meaning of damage but are clearly within the meaning of defect.

In addition, the Regulation specifies that a defect may only be approved if the aircraft with the defect complies with the airworthiness standards that applied for existing certification of the design of the aircraft, and that an approval under regulation 21.007 may only be granted for a limited period, not to exceed one year from the day the approval is given.

The Regulation also clarifies the status of the European Aviation Safety Agency (EASA) in relation to the list of recognised foreign countries in CASR. In particular, it provides that a reference to the national airworthiness authority (NAA) of a recognised country includes a reference to EASA, whether or not EASA is performing a function on behalf of a recognised country. This allows the recognition of approvals and certificates issued by EASA as being issued by the NAA of a recognised foreign country.

### **Consultation**

A notification document explaining the amendments was made available for public review and comment on 10 January 2014. It was also made available via the CASA website and the joint CASA/industry Standards Consultative Committee (SCC) forum, the SCC Certification Standards Sub-Committee forum and the SCC Maintenance Standards Sub-Committee forum. Targeted consultation with certain operators and design organisations that are directly affected by the Regulation was also carried out in December 2013, in particular in relation to the provisions for approval of an unrepaired defect in an aircraft.

CASA received a total of five comments from industry. Those comments were supportive of the amendments, although several respondents commented that the one year limit for approval of an unrepaired defect as a permissible unserviceability would be unnecessarily restrictive for certain minor defects on certain types of aircraft. It is agreed there may be certain defects that would meet the requirements for approval as a permissible unserviceability for more than one year; however, it is considered that this timeframe is appropriate as a general limit given that the Regulation does not preclude subsequent approvals if the requirements continue to be met.

### **Regulation Impact Statement**

The Office of Best Practice Regulation assessed that the amendments will have minor or machinery impacts and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 16333, 16318 and 16301).

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

A statement of Compatibility with Human Rights is at [Attachment A](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Details of the Regulation are set out in [Attachment B](#).

The main amendments of the *Civil Aviation Legislation Amendment (Part 21) Regulation 2014* commence on 1 May 2014. Minor consequential amendments commence on 1 September 2014.

Authority: Subsection 98(1) of the  
*Civil Aviation Act 1988*

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

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

### **Civil Aviation Legislation Amendment (Part 21) Regulation 2014**

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**

The Amendment Regulation (the Regulation) makes various minor amendments to the *Civil Aviation Regulations 1988* (CAR) and the *Civil Aviation Safety Regulations 1998* (CASR) to provide clarification and improve the functionality of the regulations. It does not substantially alter the existing policies and practices.

Under Subpart 21.E of CASR, a person may apply to CASA for approval of the design of a major change to an aircraft, aircraft engine or propeller. Such an approval is issued as a supplemental type certificate (STC). However, Subpart 21.E does not currently provide for specific approval of a variation of an STC after the STC has been issued. Consequently, any variation can only be approved via a reissue of the STC, which is unnecessarily onerous in many cases. The Regulation inserts new provisions in Subpart 21.E of CASR that provide for the holder of an STC to be able to apply for approval of a variation of the STC, and for a variation of an STC to be approved by CASA, an approved design organisation or an individual who has been authorised by CASA to grant such approvals.

Regulation 21.007 of CASR provides that unrepaired damage to an aircraft may be approved as a permissible unserviceability, which permits continued operation of the aircraft with the defect. The Regulation clarifies requirements for approval of an unrepaired defect under regulation 21.007. The Regulation replaces the term 'damage' with the term 'defect' in the associated provisions. This harmonises the terminology with Part 42 of CASR and clarifies the scope of regulation 21.007, particularly in relation to certain kinds of defects, such as fluid leaks and inoperative parts that could previously have been considered to not be within the meaning of damage but are clearly within the meaning of defect. In addition, the Regulation specifies that a defect may only be approved if the aircraft with the defect complies with the airworthiness standards that applied for existing certification of the design of the aircraft, and that an approval under regulation 21.007 may only be granted for a limited period, not to exceed one year from the day the approval is given.

The Regulation also clarifies the status of the European Aviation Safety Agency (EASA) in relation to the list of recognised foreign countries in CASR. In particular, it provides that a reference to the national airworthiness authority (NAA) of a recognised country includes a reference to EASA, whether or not EASA is performing a function on behalf of a recognised country. This allows the recognition of approvals and certificates issued by EASA as being issued by the NAA of a recognised foreign country.

**Human rights implications***Prohibition on retrospective criminal laws*

The Regulation provides clarification of the status of European Aviation Safety Agency (EASA) in CAR and CASR, and removes any doubt that authorisations that have been previously issued on the basis of certain documents issued by EASA are valid. It provides legal certainty of the intent of the regulation that introduced EASA into CAR and CASR. The Regulation is beneficial to the Australian aviation industry and is consistent with existing CASA and industry practices. It does not amend, alter the intent of, or introduce a retrospective commencement of any associated offence provisions.

**Conclusion**

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

Warren Truss, Minister for Infrastructure and Regional Development.

**Details of the *Civil Aviation Legislation Amendment (Part 21) Regulation 2014***

**Section 1 - Name of Regulation**

Section 1 provides that the title of the Amendment Regulation is the *Civil Aviation Legislation Amendment (Part 21) Regulation 2014*.

**Section 2 - Commencement**

Section 2 provides for the following:

1. Sections 1 to 4 and anything in the regulation not elsewhere covered by the commencement table commence on 1 May 2014
2. Schedule 1, which covers the main amendments, commences on 1 May 2014
3. Schedule 2, which covers minor terminology amendments affected by the *Civil Aviation Legislation Amendment (Flight Crew Licensing and Other Matters) Regulation 2013*, commences on 1 September 2014.

**Section 3 - Authority**

Section 3 provides that the Amendment Regulation is made under the *Civil Aviation Act 1988*.

**Section 4 - Schedule(s)**

Section 4 provides that each instrument that is specified in a Schedule to the instrument will be amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument will have effect according to its terms.

**Schedule 1—Amendments commencing on 1 May 2014**

*Civil Aviation Regulations 1988*

**Item [1] — Subregulation 2(1) (definition of permissible unserviceability)**

Item [1] is consequential to item [16]. It amends the definition of permissible unserviceability to include a defect in an aircraft approved under regulation 21.007 of CASR. It also makes minor amendments to improve the clarity of the definition.

**Item [2] to item [3] — Subregulation 42W(3)**

Item [2] to item [3] amend subregulation 42W(3) to improve clarity by incorporating the subregulation 42W(3) note into the text of the subregulation.

**Item [4] — Paragraph 43(10)(b)**

Item [4] is consequential to item [16]. It amends paragraph 43(10)(b) to require a condition associated with a permissible unserviceability approved under regulation 21.007 of CASR to be endorsed on the maintenance release, or alternative document, for the aircraft.

**Item [5] to item [10]**

Item [5] to item [10] are consequential to item [16]. They make minor terminology amendments for consistency with amended regulation 21.007, wherein damage is a subset of defect.

**Item [11] — Paragraph 49(3)(b)**

Item [11] is consequential to item [16]. It amends paragraph 49(3)(b) to require a condition associated with a permissible unserviceability approved under regulation 21.007 of CASR to be set out on the maintenance release, or other document, for the aircraft.

*Civil Aviation Safety Regulations 1998*

**Item [12] to item [14]**

Item [12] through item [14] update the Part 21 table of contents to amend the title for regulation 21.007 and insert new entries for regulation 21.010A and 21.120B.

**Item [15] — Regulation 21.007 (heading)**

Item [15] is consequential to item [16]. It amends the regulation 21.007 heading.

**Item [16] — Subregulation 21.007(1)**

Item [16] amends subregulation 21.007(1) to clarify the scope of regulation 21.007. The term ‘damage’ has been replaced with the term ‘defect’. The terminology and meaning of the term defect has been harmonised with Part 42 of CASR wherein damage is a subset of defect. Regulation 21.007 now also includes defects such as functional failures of systems or parts and exceedance of limits in the instructions for continuing airworthiness (e.g. leak rates, hard landings, engine overspeed).

**Item [17] — Subregulation 21.007(2)**

Item [17] amends subregulation 21.007(2) to provide that a defect may only be approved as a permissible unserviceability for the aircraft if:

1. under regulation 11.055, granting the approval would not be likely to have an adverse effect on the safety of air navigation; and
2. the aircraft with the defect meets the applicable airworthiness standards for the aircraft. The applicable airworthiness standards are defined in subregulation 21.007(3).

An approval under regulation 21.007 may be granted subject to conditions, including inspections and operational limitations, that are necessary to ensure compliance with subregulation (2). However, regulation 21.007 may not be used to approve a modification or repair of the aircraft. Furthermore, a defect may not be approved as a permissible unserviceability if it would lead to non-compliance with a requirement such as an airworthiness directive, a direction issued by the Civil Aviation Safety Authority (CASA) under regulation 38 of CAR or regulation 11.245 of CASR, a certification maintenance requirement or an airworthiness limitation item.

**Item [18] — At the end of regulation 21.007**

Item [18] adds new subregulations 21.007(3) and 21.007(4).

**Subregulation 21.007(3)** provides that the applicable airworthiness standards for the aircraft are the standards that applied for airworthiness certification of the aircraft, or a later version of those standards (provided that the use of the later version would not be likely to have an adverse effect on the safety of air navigation), including any conditions associated with that certification (e.g. special conditions specified on a type certificate).

**Subregulation 21.007(4)** provides that an approval of a permissible unserviceability under regulation 21.007 may only be granted for a limited period. The period may be specified in any appropriate manner (e.g. calendar time, flight time, flight cycles), but the period must not exceed one year from the day the approval is given. If an approval ceases as a result of the approval period expiring then a person may apply for the defect to be approved again – ongoing compliance with the requirements of subregulation 21.007(2) must be demonstrated for any subsequent approval.

**Item [19] — After paragraph 21.009(1)(c)**

Item [19] is consequential to item [21]. It amends regulation 21.009 to provide for approval of technical data associated with a variation of a supplemental type certificate.

**Item [20] — At the end of Subpart 21.A**

Item [20] adds new regulation 21.010A to provide clarification of the status of the European Aviation Safety Agency (EASA) in relation to the list of recognised countries in regulation 21.012 of CASR. These provisions are required to ensure that the intent of the amendment regulation that included EASA in the regulations (see *Civil Aviation Safety Amendment Regulations 2004 (No. 2)*) is supported beyond any doubt in the regulations.

**Subregulation 21.010A(1)** provides that a reference to the national airworthiness authority (NAA) of a recognised country includes a reference to EASA, whether or not EASA is performing a function on behalf of a recognised country.

**Subregulation 21.010A(2)** clearly provides that an authorisation that was previously issued within the intent of the regulations on the basis of a document issued by EASA is and was valid.

**Subregulation 21.010A(3)** clearly provides that a foreign supplemental type certificate cancelled by EASA before 1 May 2014 is taken to have been cancelled by the NAA of a recognised country.

**Item [21] — At the end of Subpart 21.E**

Item [21] adds new regulation 21.120B to provide for approval of variations of supplemental type certificates.

**Subregulation 21.120B(1)** provides that only the holder of a supplemental type certificate may apply for a variation of the supplemental type certificate.

**Subregulation 21.120B(2)** provides that a variation of a supplemental type certificate may be approved by CASA, an authorised person or a relevant approved design organisation.

**Subregulation 21.120B(3)** provides the criteria for approval by CASA of a variation of a supplemental type certificate. The criteria are the same as the existing criteria for approval of a supplemental type certificate. In particular:

1. the altered aircraft, aircraft engine or propeller complies with the applicable airworthiness requirements mentioned in subregulations 21.101(1) and (2), or an equivalent level of safety; and
2. no feature or characteristic of the change in type design makes the altered aircraft, aircraft engine or propeller unsafe for its intended use.

**Subregulation 21.120B(4)** provides the criteria for approval by an authorised person or an approved design organisation of a variation of a supplemental type certificate. The criteria are the same as for approval by CASA, except only CASA may make an equivalent level of safety determination.

**Subregulations 21.120B(5) to (7)** provide for a certification activity to be carried out in relation to an application for a variation of a supplemental type certificate.

**Subregulation 21.120B(8)** provides that regulations 21.033 (Inspection and tests) and 21.053 (Statement of conformity) apply in relation to the application, with respect to each change in the type design, as if it were an application for a type certificate under Subpart 21.B. If the

application is made to an authorised person or an approved design organisation then regulations 21.033 and 21.053 apply as if each mention of CASA is a mention of the authorised person or approved design organisation, as applicable.

**Item [22] — Regulation 21.233 (paragraph (b) of the definition of approval activity)**

Item [22] is consequential to item [16]. It amends the definition of approval activity to reflect the amended regulation 21.007.

**Item [23] — Regulation 21.233 (after paragraph (e) of the definition of approval activity)**

Item [23] is consequential to item [21]. It includes approval of a variation of a supplemental type certificate in the definition of approval activity, thereby providing for an approved design organisation to be approved to carry out that activity.

**Item [24] — Regulation 21.233 (after paragraph (d) of the definition of certification activity)**

Item [24] is consequential to item [21]. It includes certifying to CASA in relation to a variation of a supplemental type certificate in the definition of certification activity, thereby providing for an approved design organisation to be approved to carry out those activities.

**Item [25] — After paragraph 21.251(1)(c)**

Item [25] is consequential to item [21]. It includes an application for a variation of a supplemental type certificate in the list of applications for which CASA may authorise an approved design organisation to carry out a certification activity, thereby providing for an approved design organisation to be authorised to carry out those activities.

**Item [26] — Sub-subparagraphs 21.500(2)(a)(i)(B) and 21.502(1)(a)(i)(B)**

Item [26] amends sub-subparagraphs 21.500(2)(a)(i)(B) and 21.502(1)(a)(i)(B) to clarify that the manufacturing approval must be issued by the NAA of a recognised country.

**Item [27] — Paragraph 42.360(3)(c)**

Item [27] is consequential to item [16]. It amends paragraph 42.360(3)(c) to provide for an unrepaired defect approved under amended regulation 21.007 to be deferred.

**Item [28] to item [31] — Part 202 (table of contents)**

Item [28] through item [31] make various consequential amendments to the Part 202 (Transitional) table of contents.

**Item [32] — Before regulation 202.053**

Item [32] inserts a new Subdivision heading to improve clarity.

**Item [33] — Regulation 202.057**

Item [33] is consequential to item [34]. It repeals regulation 202.057 because the provisions of regulation 202.057 are covered by new regulation 202.058A.

**Item [34] — At the end of Division 202.AJ.2**

Item [34] adds new Subdivision 202.AJ.2.B—Amendments made by the Civil Aviation Legislation Amendment (Part 21) Regulation 2014.

**Regulation 202.058A** provides that despite the amendment of regulation 21.007 by this Regulation, a previous approval of damage as a permissible unserviceability under regulation 21.007 continues in force in accordance with its terms.



**Item [35] — Before regulation 202.059**

Item [35] inserts a new Subdivision heading to improve clarity.

**Schedule 2—Amendments commencing on 1 September 2014**

*Civil Aviation Safety Regulations 1998*

Schedule 2 is consequential to the *Civil Aviation Legislation Amendment (Flight Crew Licensing and Other Matters) Regulation 2013*.

**Item [1] to item [4]** make various minor terminology amendments associated with the change of the term NAA to mean national aviation authority.