

## Explanatory Statement

### Civil Aviation Regulations 1988

#### Direction — use of ADS-B in foreign registered aircraft engaged in private operations

##### Purpose

The purpose of this direction is to mandate the carriage of serviceable automatic dependent surveillance – broadcast (**ADS-B**) avionics equipment in foreign registered aircraft when conducting private operations (**foreign registered private aircraft**) under the Instrument Flight Rules (**I.F.R.**) within Australia's airspace jurisdiction. The change will be effective from 2 February 2017, and brings the requirements for foreign registered aircraft into line with those applying within Australia's aviation jurisdiction to Australian registered, and other foreign registered, aircraft.

##### Legislation for the direction — CAR 209 direction

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 209 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), the operator and the pilot in command of an aircraft engaged in a private operation must comply with the provisions of CAR 1988 and with such additional conditions as CASA from time to time directs in the interests of safety (a **direction**).

CASA issued a direction, CASA 521/09, amended in 2012, directing the operator and each pilot in command of a foreign registered private aircraft within Australia's jurisdiction, to comply with requirements set out in Schedule 1 of the direction instrument for ADS-B carriage.

ADS-B avionics is a modern aircraft surveillance system for Air Traffic Control using ground stations to receive radio signals transmitted by ADS-B equipped aircraft. Using ADS-B avionics, an aircraft is able to broadcast its identity, position, altitude, velocity and many other flight parameters with a degree of accuracy, integrity and reliability that is better than secondary surveillance radar.

Under clause 7 in Schedule 1 of the amended direction, since 12 December 2013, if a foreign registered private aircraft operates at or above FL 290, it must carry serviceable ADS-B transmitting equipment that complies with an approved equipment configuration, unless the aircraft owner, operator or pilot has written authorisation otherwise from CASA.

Clause 7 operates in conjunction with provisions of *Civil Aviation Orders 20.18, 82.1, 82.3 and 82.5* for domestic and foreign aircraft engaged in aerial work, charter and regular public transport operations. In this way, the ADS-B requirements apply (according to their terms) to all Australian and foreign registered aircraft operating in compliance with their Air Operators' Certificates or otherwise within the scope of the Act.

##### Policy background

CASA has decided to enhance the safety and efficiency of air traffic management provided by the national air traffic service provider, Airservices Australia, by mandating the carriage in Australian territorial airspace of serviceable ADS-B avionics equipment in foreign registered private aircraft operating under the I.F.R. in

any classification of airspace and at any altitude. The change will be effective from 2 February 2017.

This change is in addition to the existing mandate, in effect from 12 December 2013, for carriage of serviceable ADS-B by both Australian and foreign registered aircraft when operating at or above FL 290. That mandate remains unaffected by this change. The new mandate brings the requirements for foreign registered private aircraft into line with those applying to Australian registered and other foreign registered aircraft.

In practice, the change affects turboprop and piston-engine foreign registered aircraft, which do not normally operate at or above FL 290 and hence would not otherwise be captured by the existing mandate.

### **Direction**

The direction, therefore, remakes CASA 521/09, subject only to 2 required changes. It was decided to remake the direction, rather than issue another amendment to it, in the interests of clarity and accessibility for relevant foreign registered private aircraft pilots and operators.

The 2 required changes are as follows. The new direction inserts a new clause 7A into Schedule 1 to the effect that, on and after 2 February 2017, a foreign registered private aircraft that is operated under the I.F.R. and is flying into or out of Australian territory, or operating in Australian territory, must carry serviceable ADS-B equipment that complies with an approved equipment configuration.

Under clause 8 of Schedule 1 of the previous direction (CASA 521/09 as amended), the prior mandate to carry serviceable ADS-B equipment at or above FL 290 does not apply if CASA issues an authorisation, or, subject to certain conditions, the equipment becomes unserviceable. Under amendment No. 2, a consequential change is made to clause 8 to mention new clause 7A so that clause 8 also applies for the new mandate.

A drafting change makes the words of the direction (section 4) more closely follow the wording in section 7 of the Act enabling CASA to act with respect to foreign registered aircraft.

Apart from correction of typographical errors, the direction is otherwise identical to CASA 521/09 (as amended) which was fully explained in the Explanatory Statements that accompanied that instrument and its previous amendment (see FRLI references: F2009L04118 and F2012L00034).

### ***Legislative Instruments Act 2003 (the LIA)***

The direction is considered, from its nature and effects, to be a legislative instrument for section 5 of the LIA. The direction also applies to a class of operators (pilots and operators of foreign registered private aircraft) and, therefore, complies with the requirements for an instrument to be a legislative instrument to the extent that subsections 98 (5A) and (5AA) of the Act apply to regulation 209 of CAR 1988. The direction is, therefore, a legislative instrument, subject to registration, and tabling and disallowance in the Parliament, under sections 24, 38 and 42 of the LIA.

### **Consultation**

Consultation on the direction was undertaken as follows. On 5 November 2013, CASA published for public comment a Notice of Proposed Rule Making (**NPRM**) for carriage, from 2 February 2017, of ADS-B avionics in foreign registered aircraft operating in Australian territory. By the closing date of 10 January 2014, CASA had received 2 responses to the NPRM.

One respondent indicated full agreement with the proposal. The other respondent indicated support for the proposal if it allowed for an acceptable alternative US FAA standard (FAA TSO-C106) for relevant altitude source equipment. CASA considers that, by legislatively deeming CAO-required imported equipment to have been approved by CASA if it complies with certain “recognised country” manufacturing standards, paragraph 21.502 (1) (a) of the *Civil Aviation Safety Regulations 1998*, already makes relevant altitude source equipment that complies with such an FAA standard (FAA TSO-C106) another equivalent system in effect authorised in writing by CASA in accordance with paragraph 5 (b) of Part B of Schedule 2 of the direction. The guidance material detailed in Advisory Circular (AC) 21.45 has been amended to clarify this.

There has also been on-going consultation with the Australian Strategic Air Traffic Management Group (ASTRA), an industry representative body specialising in air traffic management issues, which agrees with the proposals.

### **Office of Best Practice Regulation (OBPR)**

A Regulation Impact Statement (**RIS**) is not required for OBPR in this case because OBPR assessed the proposed direction and determined that it will have minor impact only. Therefore, no further analysis in the form of a RIS was required (OBPR ID: 15265).

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

The 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*. A Statement of Compatibility with Human Rights is at Attachment 1.

### **Commencement and making**

The direction commences on the day after registration but will not take effect until 2 February 2017. It is expected that this long lead-in time will enable all relevant operators of foreign registered private aircraft to equip their aircraft with compliant ADS-B avionics in time to meet the terms of the safety mandate.

The direction has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Instrument number CASA 61/14]

## Statement of Compatibility with Human Rights

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

### **Civil Aviation Regulations 1988**

#### **Direction — use of ADS-B in foreign registered aircraft engaged in private operations**

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 purpose of this direction is to mandate, in the interests of aviation safety, the carriage of serviceable automatic dependent surveillance – broadcast (**ADS-B**) avionics equipment in foreign registered aircraft when conducting private operations (**foreign registered private aircraft**) under the Instrument Flight Rules within Australia's airspace jurisdiction. The change will be effective from 2 February 2017, and brings the requirements for foreign registered aircraft into line with those applying within Australia's aviation jurisdiction to Australian registered, and other foreign registered, aircraft.

Australian registered aircraft are already subject to the same mandate. Other foreign registered aircraft, operating under conditional air operators' certificates issued by CASA under the *Civil Aviation Act 1988* will be subject to the same mandate through Civil Aviation Order (**CAO**) amendments being made at the same time as this direction. The direction, therefore, achieves uniformity in the application of the ADS-B mandate within Australia's aviation jurisdiction.

ADS-B avionics is a modern aircraft surveillance system for air traffic control using ground stations to receive radio signals transmitted by ADS-B equipped aircraft. Using ADS-B avionics, an aircraft is able to broadcast its identity, position, altitude, velocity and many other flight parameters with a degree of accuracy, integrity and reliability that is better than secondary surveillance radar.

The mandate embodied in the direction, and the other related CAO amendments, is a reasonable and proportionate response to technological developments in airspace management which enhance aviation safety.

In practice, the change affects turboprop and piston-engine foreign registered aircraft, which do not normally operate at or above flight level 290 and hence would not otherwise be captured by the already existing ADS-B safety equipment mandate.

#### **Human rights implications**

The 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*. The instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.