

EXPLANATORY STATEMENT

Select Legislative Instrument No. 166, 2014

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

Civil Aviation Act 1988

*Civil Aviation Legislation Amendment (Airworthiness and Other Matters—2014 Measures No. 1)
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) updates the airworthiness certification standards for manned free balloons (a balloon that is capable of carrying one or more persons, is not tethered, and is equipped with controls that enable the altitude of the balloon to be controlled). It also 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 certain regulations relating to certification and airworthiness requirements for aircraft and parts.

The Regulation updates Part 31 of CASR to make the Australian airworthiness standards for manned free balloons the airworthiness standards set out in the United States of America Federal Aviation Regulations and those published by the European Aviation Safety Agency (EASA) as in force from time to time. This harmonises the Australian standards with the current international standards, thereby ensuring that the Australian standards maintain an appropriate level of safety and also benefiting the Australian aviation industry by increasing flexibility and opportunities for Australian designers, particularly in relation to international acceptance of Australian designs of manned free balloons.

The amendment of Part 31 of CASR only applies to applications for new Australian type certificates (a certificate that approves the design of a type of aircraft against the applicable airworthiness requirements) made after the date of commencement of the Regulation, and for those changes to existing designs for which the current standards do not provide an acceptable level of safety.

The Regulation also amends Part 21 of CASR in relation to international agreements made by the Australian Government or CASA for reciprocal acceptance of airworthiness design and certification approvals for aircraft and aeronautical products. The amendments improve the clarity and consistency of the various provisions in Part 21 of CASR relating to the acceptance of foreign approvals via international agreements.

This ensures that Australia can fully meet its obligations under the Chicago Convention and other bilateral agreements, as well as facilitate the making of future international agreements for reciprocal acceptance of airworthiness design and certification approvals for the benefit of the Australian civil aviation industry. The amendments do not change the standards for granting an approval.

The Regulation also amends regulation 21.255 of CASR in relation to changes to an approved design organisation's design assurance system manual. Regulation 21.255 had been interpreted to mean all changes to an approved design organisation's design assurance system manual must be approved by CASA, regardless of how minor the change may be. The amendment provides for minor amendments to the design assurance system manual that do not substantively change the design assurance system to be made by the approved design organisation without approval by CASA. This reduces the regulatory burden for Australian design organisations.

The Regulation also amends regulation 42.430 of CASR in relation to fitting parts to an aircraft that were previously removed from another aircraft. Part 42 of CASR commenced in June 2011 as part of CASA's regulatory reform program to update and transfer the continuing airworthiness regulations from CAR to CASR. Regulation 42.430 only mentioned parts removed under Part 42 of CASR, and therefore effectively excluded parts that were removed under the previously applicable CAR regulations. The amendment removes the restriction on parts removed under CAR.

Consultation

A notification document explaining the proposed amendments to Part 31 of CASR and an exposure draft of the proposed regulations were made available for public review and comment on 13 March 2014 via the CASA website, the joint CASA/industry Standards Consultative Committee (SCC) forum and the SCC Certification Standards Sub-Committee forum for a four week period. CASA only received one comment, which was supportive of the proposed amendments.

A notification document explaining the proposed international agreements amendments was made available for public review and comment on 30 June 2014 via the CASA website, the joint CASA/industry SCC forum and the SCC Certification Standards Sub-Committee forum. Comments closed on 18 July 2014. CASA received four requests for further information on the international agreements amendments; three from Australian design organisations and one from EASA. In each case CASA provided the information that was available at the time of the request. CASA received no comments that were unsupportive of the amendment.

The design assurance system manual amendments are a clarification of the recently made *Civil Aviation Legislation Amendment (Subpart 21.J) Regulation 2013*. The intended policy, which is clarified by the amendments, has been provided to industry in the explanatory, advisory and training material issued by CASA since the making of the *Civil Aviation Legislation Amendment (Subpart 21.J) Regulation 2013*. CASA has received no comments that object to the design assurance system manual amendments.

The amendment of regulation 42.430 of CASR is to provide in the regulations for the transitional policy for the *Civil Aviation and Civil Aviation Safety Amendment Regulations 2010 (No. 1)*. The omission in the regulations was brought to CASA's attention by industry representatives and the policy for the amendment was developed in consultation with those industry representatives.

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: 14704 and 15291).

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 *Civil Aviation Legislation Amendment (Airworthiness and Other Matters—2014 Measures No. 1) Regulation 2014* commences on the day after registration.

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 (Airworthiness and Other Matters—2014 Measures No. 1) 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) updates the airworthiness certification standards for manned free balloons. It also 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 certain regulations relating to certification and airworthiness requirements for aircraft and parts.

The Regulation updates Part 31 of CASR to make the Australian airworthiness standards for manned free balloons the airworthiness standards set out in the United States of America Federal Aviation Regulations and those published by the European Aviation Safety Agency (EASA) as in force from time to time. This harmonises the Australian standards with the current international standards.

The amendment of Part 31 of CASR only applies to applications for new Australian type certificates made after the date of commencement, and for those changes to existing designs for which the current standards do not provide an acceptable level of safety.

The Regulation also amends Part 21 of CASR in relation to international agreements made by the Australian Government or CASA for reciprocal acceptance of airworthiness design and certification approvals for aircraft and aeronautical products. The amendments improve the clarity and consistency of the various provisions in Part 21 of CASR relating to the acceptance of foreign approvals via international agreement which ensures that Australia can fully meet its obligations under the Chicago Convention and other agreements between Australia and another country. The amendments do not change the standards for granting an approval.

The Regulation restructures regulation 21.005, but the amendments do not change either the requirements to have an aircraft flight manual or the standards for granting an approval of an aircraft flight manual.

The Regulation also amends regulation 21.255 of CASR in relation to changes to an approved design organisation's design assurance system manual. The amendment provides for minor amendments to the design assurance system manual that do not substantively change the design assurance system to be made by the approved design organisation without approval by CASA.

The Regulation also amends regulation 42.430 of CASR in relation to fitting parts to an aircraft that were previously removed from another aircraft. Part 42 of CASR commenced in June 2011 as part of CASA's regulatory reform program to update and transfer the continuing

airworthiness regulations from CAR to CASR. Regulation 42.430 only mentioned parts removed under Part 42 of CASR, and therefore effectively excluded parts that were removed under the previously applicable CAR regulations. The amendment addresses the gap in the regulation and removes the restriction on parts removed under CAR.

The other minor and machinery administrative amendments are associated with the ongoing regulatory reform program and do not substantially alter the existing policies and practices.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

The Regulation provides for minor and machinery technical amendments that either make no substantive changes to the law, or merely clarify, streamline and update existing frameworks.

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 names the Regulation as the *Civil Aviation Legislation Amendment (Airworthiness and Other Matters—2014 Measures No. 1) Regulation 2014*.

Section 2 - Commencement

Section 2 provides that the Regulation commences on the day after it is registered.

Section 3 - Authority

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

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 (CAR)

Item [1] and item [2] Regulation 42W

Item [1] and item [2] amend regulation 42W to provide for international agreements in relation to parts manufacturer approvals. The amendment provides for acceptance of a parts manufacturer approval issued by a national aviation authority (NAA) with which Australia has a relevant agreement. The provisions of regulation 42W apply generally, but an agreement may specify additional terms and conditions that would apply in relation to the particular agreement. These items further provide that the agreement may be an agreement between Australia and a Contracting State or an agreement between Civil Aviation Safety Authority (CASA) and the NAA of a Contracting State.

Item [3] Paragraph 305(1)(b)

Item [3] makes a minor administrative amendment to paragraph 305(1)(b). It was apparent, both in practice and through the ongoing review for transition of the enforcement provisions from CAR to Part 13 of the *Civil Aviation Safety Regulations (CASR)*, that whilst the intent of regulation 305 is clear from subregulation 305(1), the unnecessary complexity of paragraph 305(1)(b) made the regulation easily misunderstood and complicated to apply in certain situations. The amendment improves the clarity of the regulation by removing complexity, reducing the amount of regulatory text and using standardised terminology from the Act.

The amendment to paragraph 305(1)(b) has no substantive effect on the subregulation 305(1A) offence.

Civil Aviation Safety Regulations 1998

Item [4] After regulation 1.005

Item [4] inserts regulation 1.006 to Part 1 to provide that tables of contents are not part of the Regulations. This overrides section 13 of the *Acts Interpretation Act 1901* and allows tables of contents to be updated automatically rather than being amended every time there is an amendment of the Regulations that inserts, omits or changes the heading of one or more regulations.

Item [5] to item [7] Regulation 21.005

Item [5] to item [7] amends regulation 21.005 to provide for international agreements in relation to approvals of aircraft flight manuals. They specifically provide, for the purposes of regulation 21.005, for acceptance of an aircraft flight manual and changes to the manual, issued in accordance with the terms of a relevant international agreement. The provisions of regulation 21.005 apply generally, but an agreement may specify additional terms and conditions that would apply in relation to the particular agreement. These items further provide that the agreement may be an agreement between Australia and a Contracting State or an agreement between CASA and the NAA of a Contracting State.

Regulation 21.005 has been restructured, but the amendments do not change either the requirements to have an aircraft flight manual or the standards for granting an approval of an aircraft flight manual.

Item [8] Paragraph 21.009(1)(ca) (the paragraph (ca) inserted by item 22 of Schedule 1 to the *Civil Aviation Legislation Amendment (Subpart 21.J) Regulation 2013*)

Item [8] makes a minor administrative correction to regulation 21.009 to renumber the second occurrence of duplicated paragraph number 21.009(1)(ca) as paragraph (cb).

Item [9] After regulation 21.010A

Item [9] inserts new regulations 21.010B and 21.010C.

Regulation 21.010B—Definition of *recognised country*

Subregulation 21.010B(1) inserts the definition of *recognised country* into Subpart 21.A. The concept of recognised country extends beyond Subpart 21.B, so the definition has been transferred from regulation 21.012 into Subpart 21.A. This subregulation maintains the recognised country provisions from the repeal of regulation 21.012.

Subregulation 21.010B(2) provides an extended meaning of the term *recognised country* for Subpart 21.B, which provides for international agreements in relation to type certification. It specifically provides for CASA to issue a type acceptance certificate under Subpart 21.B for an aircraft, aircraft engine or propeller that has been type certificated by a Contracting State with which Australia has a relevant international agreement. The provisions of Subpart 21.B apply for the issue of a type acceptance certificate, but an agreement may specify additional terms and conditions that apply in relation to the particular agreement. This subregulation further provides that the agreement may be an agreement between Australia and a Contracting State or an agreement between CASA and the NAA of a Contracting State.

Subregulation 21.010B(3) provides an extended meaning of the term *recognised country* for Subpart 21.E, which provides for international agreements in relation to supplemental type certificates. It specifically provides for the acceptance of a supplemental type certificate issued by or for the NAA of a Contracting State with which Australia has a relevant international agreement. The provisions of Subpart 21.E apply generally, but an agreement may specify additional terms and conditions that apply in relation to the particular agreement. This subregulation further provides that the agreement may be an agreement between Australia and a Contracting State or an agreement between CASA and the NAA of a Contracting State.

Subregulation 21.010B(4) provides an extended meaning of the term *recognised country* for Subpart 21.M, which provides for international agreements in relation to modification/repair designs. It specifically provides, for the purposes of paragraphs 21.470(a), (b) and (c), for the acceptance of a modification/repair design approved by, or under a system approved by, the

NAA of a Contracting State with which Australia has a relevant international agreement. The provisions of regulation 21.470 apply generally, but an agreement may specify additional terms and conditions that apply in relation to the particular agreement. This subregulation further provides that the agreement may be an agreement between Australia and a Contracting State or an agreement between CASA and the NAA of a Contracting State.

Regulation 21.010C—References to countries with which Australia has agreements

Regulation 21.010C provides clarification that international agreements for reciprocal acceptance of airworthiness design and certification approvals may be an agreement between Australia and a Contracting State or an agreement between CASA and the NAA of a Contracting State.

Item [10] Regulation 21.012

Item [10] is consequential to item [9]. It repeals regulation 21.012, which has been moved to regulation 21.010B in Subpart 21.A.

Item [11] Regulation 21.233 (before paragraph (a) of the definition of approval activity)

Item [11] makes a minor administrative amendment to the definition of approval activity in regulation 21.233. It inserts new paragraph (aa) approving an aircraft flight manual under regulation 21.006, which was inadvertently overlooked in the *Civil Aviation Legislation Amendment (Subpart 21.J) Regulation 2013*.

Item [12] to item [16] Regulation 21.255

Item [12] to item [16] amend regulation 21.255 to provide for minor changes to an approved design organisation's design assurance system manual that do not substantively change the design assurance system, to be made by the organisation without approval by CASA under regulation 21.255. However, any change must be made in accordance with the process approved by CASA as part of the organisation's exposition.

Any proposed change to an approved design organisation's design assurance system manual that would substantively change the organisation's design assurance system requires approval by CASA under regulation 21.255.

Item [17] Paragraph 21.303(1)(a)

Item [17] amends paragraph 21.303(1)(a) to improve the clarity of the regulation in relation to Australian Parts Manufacturer Approvals (APMA) for foreign aircraft. Subparagraph 21.303(1)(a)(ii) was inserted by the *Civil Aviation and Civil Aviation Safety Amendment Regulations 2011 (No. 1)* to allow issue of an APMA to manufacture replacement or modification parts for aircraft, aircraft engines or propellers type certificated by the NAA of a recognised country. However, regulation 21.303 did not place the perceived restriction on the issue of an APMA. Subparagraph 21.303(1)(a)(ii), therefore, does not provide the intended permission and only serves to complicate the regulation.

The omission of subparagraph 21.303(1)(a)(ii) removes any doubt that CASA may issue an APMA under subregulation 21.303 for a part for a foreign aircraft, and that a part may be manufactured in accordance with that approval.

Item [18] Paragraph 21.470(d)

Item [18] amends paragraph 21.470(d) to provide clarification in relation to international agreements for modification/repair design approvals. It clarifies that the agreement may be an agreement between CASA and the NAA of a Contracting State or an agreement between Australia and a Contracting State.

Item [19] Part 31

Item [19] repeals Part 31 - Airworthiness standards for manned free balloons, and inserts a new Part 31 - Airworthiness standards for manned free balloons. The new provisions are explained below.

Regulation 31.001 – Airworthiness standards

This regulation provides that the airworthiness standards for manned free balloons are the airworthiness standards set out in Part 31 of the Federal Aviation Regulations (FAR) and the European Aviation Safety Agency (EASA) CS-31GB and CS-31HB, as in force from time to time, with the changes provided under this Part.

It also specifically provides that a manned free balloon meets the airworthiness standards for the regulations if the balloon meets the standards set out in Part 31 of the FARs, or EASA CS-31HB and CS-31GB.

Regulation 31.002 – Incidental provisions

This regulation provides for the application of the incidental provisions of Part 31 of the FARs and EASA CS-31HB and CS-31GB, i.e. the provisions that are not airworthiness standards. This includes provisions that exist to help give meaning or clarify the regulations, such as definitions of terms and acceptable means of compliance.

Regulation 31.003 – Changes to Part 31 of the FARs

This regulation provides that any references in Part 31 of the FARs to the FAA or the Administrator are to be taken as a reference to CASA, which provides for CASA to carry out any functions that may be carried out by the FAA under Part 31 of the FARs.

Regulations 31.004 and 31.005 – Changes to EASA CS-31HB and CS-31GB

These regulations provide for any references to the Agency to be taken as a reference to CASA, which provides for CASA to carry out any functions that may be carried out by EASA under CS-31HB and CS-31GB.

Regulation 31.006 – Approvals under Part 31 of the FARs

This regulation provides for CASA to give, suspend or cancel an approval as mentioned in Part 31 of the FARs. It also provides that an approval given by or for the FAA under Part 31 of the FARs is taken to have been given by CASA, and that CASA may suspend or cancel such an approval if it is necessary in the interests of aviation safety.

Regulations 31.007 and 31.008 – Approvals under EASA CS-31HB and CS-31GB

This regulation provides for CASA to give, suspend or cancel an approval as mentioned in EASA CS-31HB or CS31-GB. It also provides that an approval given by or for EASA under EASA CS-31HB or CS31-GB is taken to have been given by CASA, and that CASA may suspend or cancel such an approval if it is necessary in the interests of aviation safety.

Item [20] to item [23] Regulations 42.015 and 42.270

Item [20] to item [23] amend regulations 42.015 and 42.270 to provide for international agreements in relation to parts manufacturer approvals. They specifically provide for acceptance of a parts manufacturer approval issued by an NAA with which Australia has a relevant agreement, including reporting any defects related to the part. The provisions of regulations 42.015 and 42.470 apply generally, but an agreement may specify additional terms and conditions that apply in relation to the particular agreement. These items further provide that the agreement may be an agreement between Australia and a Contracting State or an agreement between CASA and the NAA of a Contracting State.

Item [24] Paragraph 42.301(1)(c)

Item [24] amends paragraph 42.301(1)(c) to provide clarification in relation to international agreements for permissions to carry out maintenance. It clarifies that the agreement may be an agreement between Australia and a Contracting State or an agreement between CASA and the NAA of a Contracting State.

Item [25] Paragraphs 42.430(2)(a) and (b)

Item [25] amends regulation 42.430 to provide for parts that were removed from an aircraft under the maintenance regulations in CAR.

Item [26] Part 1 of the Dictionary (at the end of the definition of *national aviation authority*)

Item [26] amends the definition of *national aviation authority* to recognise the Civil Aviation Department of Hong Kong, China (HKCAD). The Hong Kong Special Administrative Region is not a separate Contracting State, so it is necessary to make special provision for the HKCAD to be treated as an NAA of China.

Item [27] Part 1 of the Dictionary (definition of *recognised country*)

Item [27] is consequential to item [9]. It amends the definition of *recognised country* to refer to new regulation 21.010B.

Item [28] to item [33] Part 2 of the Dictionary – Clause 37—References to *flight manual*

Item [28] to item [33] amends clause 37 of Part 2 of the Dictionary in relation to approvals of aircraft flight manuals and changes to aircraft flight manuals. It inserts mention of approved design organisations, which was inadvertently overlooked in the *Civil Aviation Legislation Amendment (Subpart 21.J) Regulation 2013*. It also specifically provides for approvals granted in accordance with the terms of an international agreement between Australia and a Contracting State or between CASA and the NAA of a Contracting State.