

EXPLANATORY STATEMENT

Select Legislative Instrument No. 204, 2014

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

Civil Aviation Act 1988

Civil Aviation Safety Amendment (Cape Town Convention) 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 *International Interests in Mobile Equipment (Cape Town Convention) Act 2013* and the *International Interests in Mobile Equipment (Cape Town Convention) (Consequential Amendments) Act 2013* passed through Parliament in June 2013 with bipartisan support. The Acts set the legislative framework for Australia's accession to the *Cape Town Convention* and provides for instruments to be made under the legislation to give it effect in Australia. CASA received policy approval from the Minister for Infrastructure and Regional Development in July 2014, for the *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014* being made under the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013* and the subject amendments to Part 47 of the *Civil Aviation Safety Regulations 1998 (CASR)*. The legislative rules require consequential amendments to Part 47 of CASR 1998 to ensure consistency with the *Cape Town Convention* and the legislative rules.

The Amendment Regulation (the Regulation) makes various changes to provisions under Part 47 of CASR 1998 (Part 47) with regards to registration of aircraft, identification of the registered operator of an aircraft, transfer of ownership and suspension and cancellation of registration, to take into account the operation of the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013* and proposed *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014*.

The Regulation gives effect to obligations on Australia that will arise upon the entry into force of the *Cape Town Convention* for Australia as well as the *Protocol To The Convention On International Interests In Mobile Equipment On Matters Specific To Aircraft Equipment*. Under the Protocol, persons who have certain financial interests in aircraft objects (creditors) operated by third parties (debtors) may authorise other persons (authorised party) to order the de-registration and export of those aircraft objects, for example in the event of insolvency or default by the debtor. Further, authorised parties may certify a designee (certified designee) to exercise the powers of the authorised party.

The Regulation also makes a small number of other minor or machinery amendments to Part 47.

Part 47 presently contemplates that a person may apply for an aircraft to be registered for a particular period, and that CASA must only register the aircraft for such a period if the application is granted. CASA will remove the provisions that support the temporary registration of aircraft. This is because there is no practical purpose in the current provision. If a registration is only required for a certain period then the registration holder can request cancellation at the relevant time under CASR Subpart 11.D – Variation, suspension and cancellation of authorisations at holder’s request.

The Regulation also updates subregulation 47.165(3) of CASR 1998 to allow CASA to approve a change of an aircraft’s current registration mark (like a car’s registration number) through the issuing of an approval letter. Issuing a certificate of registration showing the new mark and amending the Register would occur on the date of effect for the change of the mark.

The Regulation also provides a new regulation in Part 47 to allow registered operators (RO) to cancel their own appointment. While it is implicit that an RO could do this, CASA considers it useful to have the power stated explicitly in the regulations.

The Regulation also states what a notice of cancellation must include and that it must be given no later than two days after the date of cancellation.

Consultation

There has been extensive consultation on the policy issues associated with implementation of the Cape Town Convention. Discussion papers were released in 2003, 2008 and 2010, and views from industry indicated broad support for accession. The question of accession has also been subject to Parliamentary scrutiny through the consideration of the National Interest Analysis by the Joint Standing Committee on Treaties. The enacting legislation (and consequential amendment to the *Civil Aviation Act 1988 (CAAct)*) was subject to public and parliamentary scrutiny as part of the standard legislative processes, including debate in both Houses of Parliament.

This enabling legislation amended CASA’s functions under the CAAct to include any functions conferred on CASA under either the legislation or legislative rules made under legislation. A public consultation process on the draft *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014* was conducted in August 2014 with the draft legislative rules and an accompanying discussion paper made available on the Department of Infrastructure and Regional Development’s website for comment. Submissions during the consultation period indicated industry support for the current form of the legislative rules.

In line with the Department of Infrastructure and Regional Development’s timeframe for finalisation of the Part 47 amendment package with the Federal Executive Council (ExCo) in early December 2014, CASA released an ‘Exposure draft’ of the proposed *Civil Aviation Safety Amendment (Cape Town Convention) Regulation 2014* onto their Standards Consultative Committee (SCC) forum located on the CASA website in early November 2014, for the information of the SCC members and in the interests of transparency, pending approval of the amendments by ExCo.

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: 17172).

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 Safety Amendment (Cape Town Convention) Regulation 2014* is drafted to commence immediately after the commencement of the *International Interests in Mobile Equipment (Cape Town Convention) Rules 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 Safety Amendment (Cape Town Convention) Regulation 2014

This Bill/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 instrument gives effect to obligations to be imposed on the Civil Aviation Safety Authority (CASA) by the proposed International Interests in Mobile Equipment (Cape Town Convention) Rules 2014 (the Rules). The Rules implement financial security measures for persons who are creditors in respect of aircraft above a specified size.

The obligations to be imposed by the Rules affect CASA's administration of the Australian civil aircraft register, through amendments to Part 47 of the *Civil Aviation Safety Regulations 1998* (CASR).

The instrument also makes several amendments to Part 47 of CASR 1998 of a minor or machinery nature.

Human rights implications

This Legislative 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.

Warren Truss, Minister for Infrastructure and Regional Development

Details of the *Civil Aviation Safety Amendment (Cape Town Convention) Regulation 2014*

Section 1 - Name of Regulation

Section 1 names the regulation as the *Civil Aviation Safety Amendment (Cape Town Convention) Regulation 2014*.

Section 2 - Commencement

Section 2 provides that the regulation commences immediately after the commencement of the *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014*.

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 would 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 would have effect according to its terms.

Schedule 1—Amendments

Civil Aviation Safety Regulations 1998

Item [1] At the end of subregulation 11.130 (1)

Item [1] inserts a note at the end of subregulation 11.130 (1) to provide a reference to new regulation 47.131B at item [26] of this schedule of amendments, in relation to the cancellation of the registration of an aircraft.

Item [2] Regulation 47.010

Item [2] inserts definitions for a Certified Designee Confirmation Letter (**CDCL**) and an Irrevocable De-registration and Export Request Authorisation (**IDERA**) to give the same meaning for these terms as in the *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014*.

Item [3] Subregulation 47.060 (2) (note)

Item [3] substitutes a reference to subregulation 47.130 (2) from the “Note” after subregulation 47.060 (2) with a reference to regulation 47.130 as a consequence to the repeal of subregulation 47.130 (1) at item [23], and subsequent renumbering of that regulation at item [24].

Item [4] Subparagraph 47.065 (g) (iii)

Item [4] omits the reference to “country;” and substitutes it with “country.” as a consequence to the repeal of paragraph 47.065 (h) at item [5].

Item [5] Paragraph 47.065 (h)

Item [5] repeals paragraph 47.065 (h) as CASA is seeking to remove the provision that supports registration of aircraft for a specific period because there is no practical purpose in the current provision. If a registration is only required for a specified period then the registration holder can request cancellation at the relevant time under CASR Subpart 11.D – Variation, suspension and cancellation of authorisations at holder’s request.

Item [6] Regulation 47.065 (note)

Item [6] omits “Note 1” and substitutes it with “Note” as “Note 2” is repealed at item [7].

Item [7] Regulation 47.065 (note 2)

Item [7] repeals “Note 2” as the subject of the “Note” relates to paragraph 47.065 (h) which is repealed at item [5].

Item [8] After subregulation 47.080 (1)

Item [8] inserts new subregulations (1A), (1B) and (1C) that outline the instances where CASA must not register a particular aircraft if the aircraft’s previous registration (the *old registration*) was cancelled and was subject to an IDERA and/or CDCL – as described under the terms of the *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014* at the time of cancellation; unless the authorised party under the IDERA, or the certified designee under the CDCL – as the case may be, has requested the cancellation or has consented to CASA registering the aircraft, or if CASA is satisfied after making reasonable enquiries that all interested parties have ceased to exist where the aircraft was subject to an IDERA and/or CDCL.

Item [9] Subregulation 47.080 (2)

Item [9] is consequential to item [8] and makes a minor amendment to clarify that for registration of an aircraft; once the requirements of new subregulations 47.080 (1A), (1B) and (1C) have been taken into consideration, if CASA registers an aircraft, particular information about the aircraft should be entered in the Australian Civil Aircraft Register.

Item [10] Paragraph 47.080 (2) (g)

Item [10] omits the reference to “registered;” and substitutes it with “registered.” as a consequence to the repeal of paragraph 47.080 (2) (h) at item [11].

Item [11] Paragraph 47.080 (2) (h)

Item [11] repeals paragraph 47.080 (2) (h) as CASA is seeking to remove the provision that supports registration of aircraft for a particular period because there is no practical purpose in the current provision. If a registration is only required for a particular period then the registration holder can request cancellation at the relevant time under CASR Subpart 11.D – Variation, suspension and cancellation of authorisations at holder’s request.

Item [12] Subregulation 47.085 (1) (note 2)

Item [12] substitutes a reference to subregulation 47.130 (2) from “Note 2” after subregulation 47.085 (1) with a reference to regulation 47.130 as a consequence to the repeal of subregulation 47.130 (1) at item [23], and subsequent renumbering of that regulation at item [24].

Item [13] Regulation 47.095

Item [13] repeals the current regulation 47.095 and substitutes it with new regulation 47.095 as CASA is seeking to remove the provision that supports registration of aircraft for a particular period because there is no practical purpose in the current provision. If a registration is only required for a particular period then the registration holder can request cancellation at the relevant time under CASR Subpart 11.D – Variation, suspension and cancellation of authorisations at holder’s request.

Item [14] Subregulation 47.100 (3) (note)

Item [14] repeals the current “Note” for subregulation 47.100 (3) as a consequence of the repeal of regulation 47.132 at item [26], substituting with a new “Note” that explains new subregulation 47.131A (1) introduced at item [26], that CASA must suspend an aircraft’s registration *if the registration holder for an aircraft is not an eligible person and no eligible person has been appointed as the registered operator.*

Item [15] After subregulation 47.100 (4)

Item [15] inserts new subregulation (4A) to permit either the registration holder of an aircraft, or the aircraft’s registered operator (RO) the ability to cancel their own appointment of a registered operator. While it is implicit that an RO could do this, CASA considers it useful to have the power stated explicitly in the regulations.

Item [16] Subregulation 47.100 (5)

Item [16] amends subregulation 47.100 (5) to provide clarification of the timeframe that the registration holder of an aircraft must give notification to CASA regarding the appointment and/or cancellation of a person as the aircraft’s registered operator.

Item [17] Subregulation 47.100 (5) (penalty)

Item [17] amends subregulation 47.100 (5) to repeal the penalty of 10 penalty units.

Item [18] Subregulation 47.100 (5A)

Item [18] repeals subregulation 47.100 (5A) and substitutes it with new subregulations (5AA) and (5A) that requires a person who cancels the appointment of the person appointed as an aircraft’s registered operator to give notification to CASA within 14 days after the cancellation, and that a person commits an offence of strict liability if the person fails to comply with a requirement to provide notice to CASA under subregulation (5) or (5A).

The offence of strict liability provision at subregulation (5A) is an existing offence provision that has been extended to include a person’s compliance with the requirements of subregulation (5AA).

Item [19] Subregulation 47.100 (5B)

Item [19] amends subregulation 47.100 (5B) to clarify that a notice given to CASA by the registration holder that the appointment of the registered operator of an aircraft has ceased to have effect, should be given in accordance with the requirements of subregulation (5), and if CASA finds out other than by that notice, CASA must, within 5 business days, inform the aircraft’s registration holder in writing.

Item [20] Subregulation 47.100 (5B)

Item [20] amends subregulation 47.100 (5B) substituting “7 days” for “5 business days” to provide clarification for the time period in which CASA must inform the aircraft’s registration holder that the appointment of the registered operator of an aircraft has ceased to have effect, in line with the definition of a “business day” as defined under s.3 of the *Civil Aviation Act 1988*.

Item [21] Subregulations 47.100 (7) and (7A)

Item [21] repeals subregulations (7) and (7A) substituting them with new subregulation (7) to clarify that the registration holder under subregulation (5) or a person under new subregulation (5AA) are to include in a notice given to CASA of the cancellation of the appointment of a registered operator; the date of the cancellation.

The “Note” after subregulation (7) clarifies that if the registration holder is an eligible person, that person becomes the aircraft’s registered operator if the previous appointment of the registered operator is cancelled and another registered operator is not appointed. However, if the person is not an eligible person, CASA must suspend the aircraft’s registration under the provisions of new regulation 131A introduced at item [26].

Item [22] At the end of regulation 47.110

Item [22] adds new subregulations (8) and (9) with regards to the transfer of ownership of an aircraft to ensure CASA does not take any action under subregulation (7) that would amend the Australian Civil Aircraft Register to show the new owner as the registration holder of an aircraft or give a certificate of registration to the new owner, unless CASA is satisfied via written evidence provided by the former owner of the aircraft that consent has been given for such action to be taken under subregulation (7) by CASA by either the authorised party or certified designee in cases where an aircraft is subject to either an IDERA or a CDCL – as described under the terms of the *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014*.

Item [23] Subregulation 47.130 (1)

Item [23] repeals subregulation 47.130 (1) as CASA is seeking to remove the provision that supports registration of aircraft for a particular period because there is no practical purpose in the current provision. If a registration is only required for a particular period then the registration holder can request cancellation at the relevant time under CASR Subpart 11.D – Variation, suspension and cancellation of authorisations at holder’s request.

Item [24] Subregulation 47.130 (2)

Item [24] omits subregulation “2” as a consequence of the repeal of subregulation 47.130 (1) at item [23].

Item [25] Regulation 47.131 (heading)

Item [25] repeals the heading for regulation 47.131 substituting it with a new heading to clarify that this regulation applies to the suspension and cancellation of registration of an aircraft following a transfer of ownership of an aircraft.

Item [26] Regulation 47.132

Item [26] repeals regulation 47.132 substituting it with new regulation 47.131A to clarify that if the registered operator of an aircraft is not an eligible person, CASA must give written notice to the registration holder of the aircraft of the suspension of the aircraft’s registration, and that the suspension takes effect on the day the notice is given and ends the earlier of when the Australian Civil Aircraft Register is updated with details of the name and address of the new registered operator, or when CASA cancels the registration.

Item [26] also clarifies that if within 3 months after the day the aircraft’s registration was suspended, the registration holder fails to give a notice to appoint an eligible person as the aircraft’s registered operator, CASA must give written notice to the registration holder of the cancellation of the registration, and the cancellation takes effect on the day the notice is given.

Item [26] also provides new regulation 47.131B to clarify that CASA must not cancel an aircraft’s registration if the person who requests the cancellation is not either the authorised person or the certified designee in cases where an aircraft is subject to either an IDERA or a CDCL – as described under the terms of the *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014*.

Item [26] also provides new regulation 47.132 to clarify that CASA must give written notice to the registration holder of an aircraft, that CASA has cancelled the registration of an aircraft on the grounds that the aircraft is registered under the law of another country, or is no longer to be used as an aircraft, or has been stolen or destroyed.

CASA may also give written notice to the registration holder of an aircraft that CASA has cancelled the registration of an aircraft if the registration holder fails to provide CASA with information requested by CASA under subregulation 47.040(1) to confirm details entered in the Australian Civil Aircraft Register for that aircraft.

CASA may also give written notice to the registration holder of an aircraft that CASA has cancelled the registration of an aircraft if CASA is required to de-register the aircraft under the *International Interests in Mobile Equipment (Cape Town Convention) Rules 2014*, and the cancellation takes effect the day the notice is given to the registration holder.

Item [27] Subregulation 47.165 (3)

Item [27] repeals subregulation 47.165 (3) substituting it with a new subregulation to clarify with regards to an application for the change of an aircraft's registration mark that if CASA approves the application, CASA must notify the applicant in writing as soon as practicable and on the specified date in the application, amend the Australian Civil Aircraft Register accordingly to show the new registration mark and give the applicant a certificate of registration showing the new registration mark as soon as practicable. The change of registration mark would take effect the day the Australian Civil Aircraft Register is amended.

Item [28] Subregulation 201.004 (2) (table 201.004, after item 2)

Item [28] inserts new item 2A in the table at subregulation 201.004 (2) to clarify that an application may be made to the Administrative Appeals Tribunal for the review of a decision made by CASA under new regulation 47.131B introduced at item [26] to cancel an aircraft's registration.

Item [29] Subregulation 201.004 (2) (table 201.004, after item 12)

Item [29] inserts new item 12A in the table at subregulation 201.004 (2) to clarify that an application may be made to the Administrative Appeals Tribunal for the review of a decision made by CASA under new subregulation 47.110 (9) introduced at item [22] to amend the Australian Civil Aircraft Register and give a certificate of registration.

Item [30] Before regulation 202.220

Item [30] inserts new Division 202.BF.1 - Transitional provisions relating to the commencement of Part 47, to Part 202 of the Civil Aviation Safety Regulations 1998.

Item [31] Regulation 202.220 (heading)

Item [31] repeals the heading for regulation 202.220 substituting it with a new heading to identify that the definitions listed under regulation 202.220 are applicable to new Division 202.BF.1 introduced at item [31].

Item [32] Regulation 202.220

Item [32] omits "this Subpart" substituting it with "this Division" as a consequence of the change to the heading for regulation 202.220 introduced at item [32].

Item [33] At the end of Subpart 202.BF

Item [33] adds new Division 202.BF.2 – Amendments made by the Civil Aviation Safety Amendment (Cape Town Convention) Regulation 2014, to Part 202 of the Civil Aviation Safety Regulations 1998.

Item [33] also adds new transitional regulation 202.226 that provides the definitions for two terms that are applicable to the *Civil Aviation Safety Amendment (Cape Town Convention) Regulation 2014*.

Item [33] also adds new transitional regulation 202.227 to clarify that regulation 47.131A – Suspension and cancellation of registration if registered operator is not an eligible person, introduced at item [26], applies for instances where CASA becomes aware, before commencement of regulation 202.227, that a registered operator of an aircraft was not an eligible person, but CASA, as at commencement, had not issued a notice that cancelled the aircraft's registration.

Item [33] also adds new transitional regulation 202.228 to clarify that the amendment made to regulation 47.165 – Change of registration mark, at item [28], applies to applications made under that regulation for a change to an aircraft's registration mark that are approved by CASA, whether the application was made before or after commencement of the amended regulation.