**Explanatory Statement**

**Civil Aviation Regulations 1988**

**Civil Aviation Order Repeal Instrument 2015 (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 subsection 98 (4A) of the Act, CASA may issue Civil Aviation Orders (***CAOs***) not inconsistent with the Act or regulations made under the Act.

Under regulation 5 of the *Civil Aviation Regulations 1988* (***CAR 1988***), wherever CASA is empowered or required under the regulations to issue any direction, instruction or notification, CASA may generally do so in CAOs.

Regulation 21A of CAR 1988, before being repealed on 27 June 2011, provided that CASA may, among other things, issue a design standard for an aircraft or an aircraft component for which no appropriate design standard is in force.

Regulation 82 of CAR 1988 empowers CASA to approve radiocommunication systems for Australian aircraft engaged in a regular public transport service or such other Australian aircraft as CASA directs.

Under subregulation 174A (1) of CAR 1988, CASA may issue instructions specifying the radiocommunication systems and radio navigation systems that must be carried on, or installed in, an aircraft before undertaking a visual flight rules flight. Similarly, under subregulation 177 (1) of CAR 1988, CASA may issue instructions specifying the radiocommunication systems and radio navigation systems that must be carried on, or installed in, an aircraft before undertaking an instrument flight rules flight.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**CAO 100.37, CAO 103.21, CAO 103.22, CAO 108.34 and CAO 108.36**

Each of the CAOs being repealed has the following purpose:

* CAO 100.37 sets out the evidence required, and the administrative procedures to be followed, in order to obtain approval of airborne radio systems
* CAO 103.21 describes an equipment classification system and the climatic and mechanical environment test procedures relevant to the approval of radio communication and navigation equipment in Australian aircraft
* CAO 103.22 specifies standards for airborne high frequency radio communications transmitting and receiving equipment operating within the radio frequency range of 1.5 to 30 Megahertz
* CAO 108.34 specifies installation and performance requirements for airborne radio systems
* CAO 108.36 specifies the design standard and installation requirements for Ground Proximity Warning Systems.

Each of the CAOs was remade by legislative instrument in 2007 for the purpose of ensuring compliance and consistency with the *Legislative Instruments Act 2003* (the ***LIA***) and was lodged with the Federal Register of Legislative Instruments (***FRLI***). The corresponding instruments are: CAO 100.37 Instrument 2007, CAO 103.21 Instrument 2007, CAO 103.22 Instrument 2007, CAO 108.34 Instrument 2007 and CAO 108.36 Instrument 2007.

The CAOs and their respective 2007 instruments are no longer required following the repeal of regulation 21A of CAR 1988 in 2011 and the commencement of Subparts 21.K and 21.N of the *Civil Aviation Safety Regulations 1998* (***CASR 1998***) which deal with the approval of aircraft parts and appliances. Additionally, each of the CAOs is considered obsolete since they have not been subject to periodic review in comparison to industry avionics equipment design standards.

**Legislative Instruments Act**

*Civil Aviation Order Repeal Instrument 2015 (No. 1)* repeals a number of legislative instruments. Under subsection 33 (3) of the *Acts Interpretation Act 1901*, the relevant power of making for a repeal instrument must be exercisable in a like manner to the instrument being repealed. This instrument is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

**Consultation**

CASA has determined that these CAOs no longer meet current standards or operational processes and are no longer required. Australian manufacturers are no longer manufacturing, nor do they have any intention to manufacture, equipment in accordance with these CAOs. In these circumstances, it is CASA’s view that it is not necessary or appropriate to undertake any consultation under section 17 of the LIA. CASA will inform industry that the CAOs have been repealed for the reasons stated above.

**Statement of Compatibility with Human Rights**

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

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

A Regulation Impact Statement (***RIS***) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required (OBPR id: 14507).

**Making and commencement**

This instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act and under the relevant parts and provisions of CAR 1988 as mentioned in this Explanatory Statement.

The instrument commences on the day of registration. It expires on the day after it commences, as if it had been repealed by another instrument.

[*Civil Aviation Order Repeal Instrument 2015 (No. 1)*]

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Civil Aviation Order Repeal Instrument 2015 (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**The legislative instrument repeals 5 legislative instruments: Civil Aviation Order (***CAO***) 100.37, CAO 103.21, CAO 103.22, CAO 108.34 and CAO 108.36. The legislative instrument also repeals the 5 corresponding instruments made in 2007 to issue the CAOs mentioned above.

These repealed instruments are no longer required due to changed industry operational processes and amendments to civil aviation legislation.

**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.

**Civil Aviation Safety Authority**