

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 2)

Purpose

The purpose of *Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 2)* (the **CAO amendment**) is to amend the conditions in Civil Aviation Order 104.0 (**CAO 104.0**) which apply to maintenance organisations approved under regulation 30 of the *Civil Aviation Regulations 1988* (**CAR 1988**).

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 subregulation 30 (1) of CAR 1988, a person engaged, or intending to be engaged, in distribution or maintenance of aircraft, aircraft components or aircraft materials, may apply to CASA for a certificate of approval (**COA**) in respect of those activities.

Under subregulation 30 (3) of CAR 1988, CASA may, for the purpose of ensuring the safety of air navigation, include in a certificate of approval granted under the regulation “an endorsement that the certificate is granted subject to a condition set out in . . . a specified Part or Section of the Civil Aviation Orders”.

The conditions in CAO 104.0 regulate the way in which the holders of certificates of approval under regulation 30 of CAR 1988 may train and authorise their employees to perform maintenance services, including the certification of maintenance, for particular aircraft or aircraft systems.

The *Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 1)* simplified these conditions and recognised changes to maintenance standards, including the introduction of Manuals of Standards under the *Civil Aviation Safety Regulations 1998* (**CASR 1998**). They also provided a new method of training persons to maintain wood and fabric aircraft. However, following the making of that instrument, it is considered necessary to make certain minor corrections.

Background

Under subsection 5 of CAO 104.0, a COA holder may issue a certification authorisation to an excluded system employee, as defined in the CAO, for carrying out maintenance on an excluded system (being a system on which the employee would otherwise not be able to carry out that maintenance). An authorisation is only in force for a period of 6 months. Issue of a notice of completion of training and assessment at the end of the 6 months allows CASA to consider updating the employee’s licence by removing the exclusion or adding a relevant rating.

The new amendment amends the heading to subsection 5 by adding the words (removal of exclusion from a type rating). This clarifies the purpose of subsection 5.

Paragraph 5.1 is also amended to make it clear that issuing an authorisation to carry out maintenance on an excluded system applies only to an aircraft for which the employee

authorised holds a type rating. Paragraph 5.3 is also amended to include a reference to the relevant aircraft type.

A new note is added at the end of subsection 5 to make it clear that while subsection 5 allows an application for removal of an exclusion from a type rating, it does not authorise removal of an excluded system from an employee's licence other than by CASA.

The Note at the head of subsection 8 is amended to update the CASA instrument that it refers to.

Subsection 8, which applies exclusively to Warbirds, Historic and Replica aircraft (**WHR aircraft**) is amended so that, under paragraph 8.6, the holder of a COA approval may issue a certification authorisation to carry out maintenance on a WHR aircraft to a trained WHR employee who does not, as is presently the case, have to be an employed authority or type rating holder. This will facilitate the carrying out of that maintenance.

The heading to subsection 10 is amended to make it clear that it relates to the removal of an exclusion from licences held by employees who carry out maintenance on wood and fabric aircraft.

Legislative Instruments Act 2003 (LIA 2003)

Under subsections 98 (5) and (5AAA) of the Act, where the regulations provide for certain instruments to be issued in the form of CAOs, such CAOs are legislative instruments. The CAO amendment is, therefore, a legislative instrument and it is subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA 2003.

Consultation

A proposal to amend CAO 104.0 in line with the *Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 1)* was notified on the CASA website as Project MS 13/23 on 23 July 2013. The proposals were well received and constructive feedback was provided. As well as notifying industry via the standard consultation method, CASA interacted directly with the affected WHR aircraft operators and maintainers in finalising the amendment proposals.

Following the making of that instrument, representations were received from industry concerning the matters dealt with in this instrument. Following those representations, the amendments referred to have been made. The most significant amendment is the change to paragraph 8.6. It is considered by industry that failure to make that amendment would place an unnecessary burden on an employer to only employ, for maintenance on WHR aircraft, persons who hold an appropriate type rating or maintenance authority. CASA agrees that the amendment is necessary and will not endanger aviation safety.

It does not consider that further consultation is required.

Office of Best Practice Regulation (OBPR)

OBPR assessed that the original amendments were minor in nature and that no further analysis, in the form of a Regulation Impact Statement, was required (OBPR ID: 17498). These amendments are corrections that do not substantially alter the effect of the original amendments.

Statement of Compatibility with Human Rights

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

Making and commencement

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

The CAO amendment commences on the day after registration.

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Statement of Compatibility with Human Rights

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

Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 2)

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 makes amendments of a minor nature to Civil Aviation Order 104.0. It facilitates the carrying out of maintenance on Warbirds and Historic and Replica aircraft. CASA received representations to make the changes and believes that the changes are appropriate.

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