

## Explanatory Statement

### Civil Aviation Regulations 1988

### Civil Aviation Order 100.16 (Administration and procedure — distribution and rejection of aircraft components and aircraft materials) Instrument 2015

#### Purpose

The purpose of the *Civil Aviation Order 100.16 (Administration and procedure — distribution and rejection of aircraft components and aircraft materials) Instrument 2015* (the **2015 CAO**) is to remake, in accordance with best drafting practice, *Civil Aviation Order 100.16 (CAO 100.16)* under subregulation 30 (3) of the *Civil Aviation Regulations 1988 (CAR 1988)*. The 2015 CAO includes other corrections and revisions to clarify aspects of the CAO, including the identification of persons responsible for the reporting of rejected components and the guidance for such reporting under the requirements of Part 4B of CAR 1988. The 2015 CAO does not significantly alter the existing policy of CAO 100.16.

#### 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”.

Regulation 38 of CAR 1988 empowers CASA to give directions in relation to the maintenance of Australian aircraft for the purpose of ensuring the safety of air navigation.

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.

The conditions in CAO 100.16 regulate the way in which the holders of COAs issued under regulation 30 of CAR 1988 may distribute and reject aircraft components and aircraft materials.

#### Background

For subregulation 30 (3) and regulation 38 of CAR 1988, CAO 100.16 was promulgated on 26 September 2006 as *Civil Aviation Order 100.16 Instrument 2006* (the **2006 Instrument**), also known as F2006L03250 registered on the Federal Register of Legislative Instruments. Schedule 1 of the 2006 Instrument contained the entire section 100.16 of the CAOs (also referred to as CAO 100.16). Subsequent amendments to the 2006 Instrument, up to and including *Civil Aviation Order 100.16 Amendment Order (No. 1) 2010* made in February 2010, were made under the abovementioned provisions of CAR 1988.

In late 2014, discussions between CASA and the Office of Parliamentary Counsel (**OPC**) revealed that the existence of CAOs in schedules to instruments could create legislative ambiguity and was not best practice drafting methodology. To rectify this issue, CASA has decided to repeal the 2006 Instrument and remake CAO 100.16 in its entirety by way of issuing the 2015 CAO.

The 2015 CAO also incorporates the below changes to clarify aspects of CAO 100.16.

## **Changes to CAO 100.16**

### *Subsection 1 — Application*

A person permitted under regulation 42ZC of CAR 1988 to maintain Australian aircraft must ensure, before fitting a component to such an aircraft, that the component meets the requirements of regulation 42W of CAR 1988; and a person permitted under regulation 42ZC of CAR 1988 to maintain Australian aircraft must ensure that before using a material for the maintenance of such an aircraft, that the material meets the requirements of regulation 42X of CAR 1988. The 2015 CAO, therefore, expands the application of CAO 100.16 to include any person permitted to carry out maintenance under regulation 42ZC of CAR 1988.

### *Subsection 2 — Definitions*

In line with good drafting practice, the 2015 CAO also inserts a definition for CAR 1988.

### *Subsection 4 — Rejection of aircraft components and aircraft materials*

Subsection 4 is divided into 2 paragraphs; one each for the topics of rejection of components; and the reporting of the rejection. The reporting outcomes from original paragraph 4.1 are included in the new paragraph 4.2. The 2015 CAO replaces the previous CAO 100.16 rejection reporting requirements with the substantive CAR 1988 Part 4B defect reporting provisions and references persons responsible for the rejection and reporting of components and materials to those provisions. Specific reporting requirements in relation to the rejection of components and materials have been retained.

Note 1 has been removed to avoid inconsistency with the requirement for reporting of non-acceptance of goods to be made in accordance with CAR 1988 Part 4B defect reporting provisions. Note 2 has been relocated to the end of inserted paragraph 4.2, to which the note relates.

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

Under paragraph 98 (5A) (a) of the Act, regulations may empower CASA to issue instruments in relation to the maintenance of aircraft. Under subsection 98 (5AA) of the Act, such an instrument is a legislative instrument for the LIA if it is expressed to apply to classes of persons, aircraft or aeronautical products rather than to individual persons, or individual aircraft or products. The 2015 CAO is expressed to have general application and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA.

### **Consultation**

For consultation under section 17 of the LIA, on 29 January 2015 CASA published on its website documents in relation to the proposal to make amendments to the abovementioned subsections of CAO 100.16 for public comment on or before 20 February 2015, including:

- a Summary of Proposed Change;
- a draft CAO amendment instrument.

A total of 3 responses were received, with key concerns being the lack of clarity with respect to the CAO's applicability. The proposed draft instrument was amended to clarify the intent and applicability.

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

A Regulation Impact Statement (*RIS*) is not required because the instrument, which is minor or machinery in nature and does not significantly alter existing policy, is covered by a standing agreement between CASA and OBPR under which a RIS is not required (OBPR id: 14507).

**Statement of Compatibility with Human Rights**

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

**Making and commencement**

The 2015 CAO has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The 2015 CAO commences on the day after registration.

*[Civil Aviation Order 100.16 (Administration and procedure — distribution and rejection of aircraft components and aircraft materials) Instrument 2015]*

## Statement of Compatibility with Human Rights

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

### **Civil Aviation Order 100.16 (Administration and procedure — distribution and rejection of aircraft components and aircraft materials) Instrument 2015**

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 the *Civil Aviation Order 100.16 (Administration and procedure — distribution and rejection of aircraft components and aircraft materials) Instrument 2015* (the **2015 CAO**) is to remake *Civil Aviation Order 100.16 (CAO 100.16)* in accordance with current best drafting practice. The 2015 CAO repeals CAO 100.16 (as promulgated by *Civil Aviation Order 100.16 Instrument 2006*) in its entirety, including all amendments made to CAO 100.16. The new 2015 CAO remakes all substantive provisions of CAO 100.16 and, for the purpose of continuity, may be referred to as CAO 100.16.

The 2015 CAO also corrects, revises and clarifies certain aspects of the CAO, including the identification of persons responsible for the reporting of rejected components and the guidance for such reporting under the requirements of Part 4B of the *Civil Aviation Regulations 1988*. The 2015 CAO does not significantly alter existing policy or safety requirements concerning aircraft material and components.

#### **Human rights implications**

To the extent that certain conditions have been imposed on the holder of a certificate of approval, it might be said that the rights to work, equality and non-discrimination under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are engaged since, if the conditions specified in the 2015 CAO are not met, the holder cannot issue a release note in respect of an aircraft component or material. However, such conditions arise from the requirements of aviation safety for the aircraft components and aircraft material involved.

#### **Conclusion**

The 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*. To the extent that it may also limit human rights, those limitations are reasonable and proportionate in the interests of aviation safety.

**Civil Aviation Safety Authority**