

Explanatory Statement

Civil Aviation Regulations 1988

CASA 33/19 – Number of Cabin Attendants (Capiteq Pty Limited – Airnorth) Direction 2019

Purpose

The direction enables Capiteq Pty Limited, registered to the business name of Airnorth, (*Capiteq*) to continue operating relevant aircraft with 1 cabin attendant for every 50 passenger seats or part of that number, subject to required risk reduction measures.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and for the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Regulations 1988* (*CAR*).

Under regulation 208 of CAR, the Civil Aviation Safety Authority (*CASA*) may give directions relating to the operating crew required to be carried on an aircraft, having regard to the safety of air navigation.

Subparagraph 6.1 (b) of Civil Aviation Order (*CAO*) 20.16.3 was made under regulation 208 of CAR and provides that aircraft carrying more than 36 but not more than 216 passengers shall carry a cabin attendant for each unit of 36 passengers or part of that number.

Background

The standard in subparagraph 6.1 (b) of CAO 20.16.3 is a unique Australian requirement that is more onerous than the cabin attendant ratio required elsewhere in the world. The ratio permitted in Europe, the USA and most other countries is for an airline to provide 1 cabin attendant for every 50 seats on the aircraft or part of that number. CASA permits operators to use the internationally accepted ratio in certain circumstances, assessed on a case-by-case basis.

Instrument

By directing that Capiteq can operate relevant aircraft with a cabin attendant to passenger seat ratio of 1:50, the instrument allows Capiteq to continue operating Embraer 170-100 series aircraft with 2 cabin attendants.

The Embraer 170-100 series aircraft operated by Capiteq are configured to have 78 passenger seats. However, the relevant type certificate data sheet (*TCDS*) issued by the Federal Aviation Administration of the United States of America (*FAA*) provides for a maximum seating capacity of 78 passengers for the Embraer 170-100 series aircraft while the relevant TCDS issued by the European Aviation Safety Agency (*EASA*) provides for a maximum seating capacity of 80 passengers. Therefore, section 3 mentions the maximum seating capacity provided for by the FAA TCDS.

The relevant FAA TCDS is freely available online by using the search term “Embraer 170-100” in the search window located at https://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/MainFrame?OpenFrameSet. The relevant EASA TCDS is freely available online by using the search term “Embraer ERJ 170” in the search window located at <https://www.easa.europa.eu/document-library/type-certificates>.

The instrument also directs Capiteq to give written notice to CASA at least 14 days before revising any part of its operations manual relating to emergency procedures for relevant aircraft. That direction ensures that CASA maintains visibility of appropriate risk reduction measures in Capiteq's operations manual, enforceable under CAR.

Legislation Act 2003 (the LA)

The instrument is being registered as a legislative instrument and is, therefore, a legislative instrument in accordance with subsection 8 (3) of the LA, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Initial consultation under section 17 of the LA was undertaken following the issue of the CASA report that recommended the recognition of the US Federal Aviation Administration and EASA certification standards in relation to setting the ratio of cabin attendants to passenger seats.

The instrument has been issued at the request of Capiteq to continue existing arrangements, and is similar to instruments issued to other operators that appear to be accepted by industry. In those circumstances, CASA is satisfied that, for section 17 of the LA, no further consultation is appropriate or reasonably practicable for the instrument.

Office of Best Practice Regulation (OBPR)

A Regulatory Impact Statement (*RIS*) is not required in this case as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for directions (OBPR id: 14507).

Senate Standing Committee on Regulations and Ordinances concerns

The instrument provides for Capiteq to meet a standard for cabin attendant numbers that differs from the standard currently set down in CAO 20.16.3, but is considered to be a standard consistent with international safety standards and practice.

New suitable standards with appropriate conditions relating to cabin attendant numbers that are applicable to all air transport operators are contained in the *Civil Aviation Safety Amendment (Part 121) Regulations 2018*, expressed to commence on 25 March 2021.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights as it does not raise any human rights issues.

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of the *Civil Aviation Safety Regulations 1998*.

The instrument commences on 1 June 2019 and will be repealed at the end of 31 May 2021.

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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 allows Capiteq Pty Limited, registered to the business name of Airnorth, to operate designated aircraft with 1 cabin attendant for every 50 passenger seats or part of that number.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority