**Explanatory Statement**

**Civil Aviation Act 1988**

**Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)**

**Purpose**

The purpose of *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* (the ***instrument***) is to implement Australia’s obligations under section 5.3 of *Annex 19 —* *Safety Management* (***Annex*** ***19***) to the Convention on International Civil Aviation (the ***Chicago Convention***). The instrument amends Civil Aviation Order 82.3 (***CAO 82.3***) and Civil Aviation Order 82.5 (***CAO 82.5***) to provide a regulatory framework for the protection of safety information by Air Operator’s Certificate (***AOC***) holders that is consistent with the international Standards and Recommended Practices (***SARPs***) in Annex 19.

**Legislation**

Under section 27 of the *Civil Aviation Act 1988* (the ***Act***), CASA may issue AOCs for its functions. Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or the Civil Aviation Orders (the ***CAOs***).

Section 98 of the Act empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation.

Under subsection 98 (4A) of the Act, the Civil Aviation Safety Authority (***CASA***) may issue CAOs, not inconsistent with the Act or the regulations, and not prescribing any pecuniary penalties, with respect to any matter in relation to which regulations may be made for the purposes of, section 23, 23B or section 28BA of the Act (General conditions on AOCs). CAO 82.3 and CAO 82.5 were issued under paragraph 28BA (1) (b) and subsection 98 (4A) of the Act. Section 98 (4B) provides that an order issued under subsection (4A) is a legislative instrument.

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

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.

**Background**

Annex 19 sets out SARPs to assist Contracting States in managing aviation safety risks. Section 5.3 of Annex 19 deals with the protection of safety data, safety information and their related sources to ensure their continued availability for use for maintaining or improving aviation safety. Section 5.3 adopts Appendix 3 to Annex 19 and includes important changes to the provisions governing the protection of safety data and safety information generated within the safety management systems (***SMSs***) of operators, including flight data analysis programs (***FDAPs***). Amendment 1 to Annex 19 inserted section 5.3 and applies from 7 November 2019.

Annex 19 is not incorporated by reference in the instrument. However, the following information regarding how to access Annex 19 is provided to assist readers to understand the reasons for the instrument. As at commencement of the instrument, the latest edition of Annex 19 is the second edition dated July 2016 and was available for purchase from the ICAO website at: <https://store.icao.int/collections/annexes>. ICAO Annexes may also be inspected at the Library of the Department of Infrastructure, Transport, Regional Development and Communications, Canberra. Copies of the Annex are also available for viewing at any CASA offices on request.

To implement Australia’s obligations under section 5.3 of Annex 19 in relation to operators, it is necessary for CAO 82.3 and CAO 82.5 to be amended. CAO 82.3 and CAO 82.5 operate as a set of conditions on AOCs with which AOC holders (***operators***) must comply. CAO 82.3 applies to AOCs authorising regular public transport operations in other than high capacity aircraft. CAO 82.5 applies to AOCs authorising regular public transport operations in high capacity aircraft.

CASA’s corresponding obligations are currently implemented by CASA Directive 02-0053, *Limitations on the Use of Safety Information*,as it exists from time to time. CASA Directive 02-00523 explains how and when safety information may be used by CASA in the interest of safety and for other related purposes.

CASA Directive 02-0053 is published by CASA and is freely available from the CASA website. At the time of commencement of the instrument, it was available from the following webpage: <https://www.casa.gov.au/publications-and-resources/publication/limitations-use-safety-information-das-instruction-022017>.

Both CAO 82.3 and CAO 82.5 require operators to have an SMS approved by CASA, set out the minimum content of SMSs and impose related obligations on the AOC holder. Both CAOs require an AOC holder who operates an aircraft with a maximum take-off weight exceeding 27 000 kg to have an SMS that includes an FDAP.

CASA plans to repeal CAO 82.3 and CAO 82.5 when the *Civil Aviation Safety Amendment (Part 119) Regulations 2018* commence. CASA anticipates that the commencement date of these regulations will be extended from 25 March 2021 to 2 December 2021. CASA proposes to make amendments corresponding to these amendments to Subpart 119.F of the *Civil Aviation Safety Regulations 1998* (***CASR***) before that time. CASA anticipates that requirements applicable to CASA in relation to the use of safety information will also be included in proposed new Part 5 of CASR.

**Overview of instrument**

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument amends CAO 82.3 and CAO 82.5. The amendments made by the instrument (the ***amendments***) implement the obligations regarding the protection of safety data and safety information, as defined in Annex 19, that are imposed on Contracting States to the Chicago Convention.

***Safety information*** is defined by the amendments to mean any safety data or information, in any form, generated within, or captured, collected or held by and within, an operator’s approved safety management system, including personal information relating to individuals. To reduce complexity, this definition includes “safety data” as defined in Annex 19.

The amendments are designed to protect the reporting and use of safety information by individuals and organisations in the aviation sector. Effective safety reporting systems ensure that people are willing to report their errors and experiences, so that regulators and service providers have access to relevant information to address existing and potential safety deficiencies and hazards. The amendments made by the instrument ensure safety information is used only for the maintenance and improvement of safety, unless one of the principles of exception apply.

The amendments impose conditions on the AOCs of operators to which each CAO applies. Each CAO is amended to impose the same conditions.

The instrument:

* inserts into CAO 82.3 and CAO 82.5 a naming provision and an interpretation provision and renumbers preliminary provisions
* inserts into CAO 82.3 and CAO 82.5 new Appendix 1A relating to the protection of safety information and a new provision requiring operators to protect all safety information of the operator in accordance with Appendix 1A
* amends the SMS requirements in CAO 82.3 and CAO 82.5 to provide for the protection of safety information.

New Appendix 1A states the principles of protection with which an operator must comply, unless a person designated in the SMS of the operator (the “designated person for principles of exception”) determines that a principle of exception specified in the Appendix applies.

In exercising its powers and functions, CASA is guided by the requirement in subsection 9A (1) of the Act that CASA must regard the safety of air navigation as the most important consideration. In deciding to amend CAO 82.3 and CAO 82.5, CASA has considered this requirement and the other matters mentioned in subsection 9A (3) of the Act that CASA must consider in developing and promulgating aviation safety standards under paragraph 9 (1) (c) of the Act. CASA has assessed the impact the instrument will have on aviation safety and considers that the amendments made by the instrument would not adversely affect aviation safety.

***Content of instrument***

Section 1 names the instrument.

Section 2 states that the instrument will commence on 14 December 2020. Commencement on this date will give operators time to prepare for the introduction of the new requirements.

Section 3 states that each CAO mentioned in the title of a Schedule to the instrument is amended in accordance with the Schedule.

Section 4 deals with references in the instrument to CAOs.

In the following item descriptions, a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the CAO being amended by the item.

**Schedule 1 Civil Aviation Order 82.3**

Item 1 of Schedule 1 substitutes subsection 1 of CAO 82.3 with a new subsection 1 that states the name of the instrument. New subsection 1 also provides that a reference in an instrument to section 82.3 of the CAOs is a reference to CAO 82.3.

Item 2 of Schedule 1 substitutes subsection 1A (Application of conditions) with a new subsection 1A. The wording of new subsection 1A is the same as previous subsection 1A, except that references to “this section” have been changed to “this Order”.

Item 2 also inserts a new interpretation provision (subsection 1B). New paragraph 1B.1 contains definitions of terms used in CAO 82.3. The definitions of ***corrective action***, ***remedial action*** and ***preventive action*** are based on the meaning of those terms given by the ICAO Safety Management Manual. The term ***safety data*** is given the same meaning as in Annex 19 and is followed by the same explanatory note as appears under the definition of ***safety data*** in Annex 19.

New paragraph 1B.2 states that a reference in CAO 82.3 to a regulation identified by a number is a reference to the regulation in CAR identified by that number.

Item 3 of Schedule 1 omits subsection 1AA. Subsection 1AA was a transitional provision.

Item 4 of Schedule 1 substitutes the Note at the end of subparagraph 2.1 (a) with a new Note. The new Note is included for information only. The new Note states that CASA will have regard to the guidance contained in the CAAP SMS package and the ICAO Safety Management Manual when deciding whether to approve an SMS. The Note also states that *CAAP SMS package* and *ICAO Safety Management Manual* are defined in paragraph 1B.1. The previous Note stated that CASA would have regard to the guidance contained in the CAAP SMS package and set out the content of the CAAP SMS package in the Note.

Item 5 of Schedule 1 substitutes the Note at the end of subparagraph 2.1 (c) with a new Note similar to the new Note to be substituted at the end of subparagraph 2.1 (a) except that it does not refer to terms being defined in paragraph 1B.1. The new Note is for information only.

Item 6 of Schedule 1 omits paragraph 2.7. The terms defined in paragraph 2.7 have been moved by Item 2 of Schedule 1 to new paragraph 1B.1.

Item 7 of Schedule 1 substitutes subparagraph 2A.2 (e) with new subparagraphs 2A.2 (e) to (h). New subparagraph (e) is the same as old subparagraph (e) except that it refers to an “FDAP” as defined in new paragraph 1B.1.

New subparagraph (f) is necessary to adopt the requirements in Appendix 1A for the protection of safety information. Subparagraph (f) requires an SMS to include a documented process ensuring that safety information is not used, or made available for use, by the operator for purposes other than maintaining or improving safety and protected by the operator, in accordance with Appendix 1A.

New subparagraph (g) requires an SMS to include the designation of an employee of the operator, or a person contracted by the operator, to perform the function of analysing operational flight data in accordance with procedures specified in the SMS.

New subparagraph (h) requires an SMS to include the designation of an employee of the operator, or a person contracted by the operator, to perform the function of determining, in accordance with procedures set out in the SMS, whether or not a principle of exception mentioned in clause 3 of Appendix 1A applies, and who may have access to identity information solely for that purpose.

Item 8 of Schedule 1 is a technical amendment that is required to paragraph 2A.3 because item 2 has inserted a definition of ***FDAP*** into paragraph 1B.1.

Item 9 of Schedule 1 substitutes subparagraph 2A.3 (d). New subparagraph 2A.3 (d) is necessary to adopt the requirements in Appendix 1A for the protection of safety information in relation to FDAPs. New subparagraph 2A.3 (d) states that an FDAP must ensure that, other than in accordance with Appendix 1A:

* no disciplinary, punitive or related action is taken by the operator against a person who reports, or is the source of, the operational flight data
* the identity of a person who reports, or is the source of, the operational flight data, or in relation to whom such data is reported, is protected from disclosure to anyone other than the designated person for principles of exception.

Subparagraph 2A.3 (d) previously provided that a person whose duty required him or her to analyse operational flight data had access to identity information.

New subparagraph 2A.3 (e) also requires an FDAP to enable the operator to use operational flight data recorded due to the operation of the FDAP for the maintenance or improvement of safety, in accordance with Appendix 1A.

Explanatory notes are included under subsection 2A.3 relating to CASA’s ability to be provided with, access and use safety information. The second Note provides the information that CASA is restricted in its use of an operator’s safety information and refers to CASA Directive 02-0053, *Limitations on the Use of Safety Information*.

Item 10 of Schedule 1 inserts a new subsection 2AA after section 2A. The new section states that an operator must protect all safety information of the operator in accordance with Appendix 1A.

Item 11 inserts new Appendix 1A into CAO 82.3. Appendix 1A implements section 5.3 of Annex 19 to the Chicago Convention.

Appendix 1A sets out requirements for the protection of safety information by operators. These requirements are based on the principles of protection and exception set out in Appendix 3 to Annex 19. Clause 1 states that the objective of the Appendix is to ensure the continued availability of safety information by restricting its use for purposes other than maintaining or improving safety.

A Note under Clause 1 states that operators may refer to the *ICAO Safety Management Manual* for guidance regarding the application of the Appendix. This Manual is not incorporated by reference by the instrument. It is available for purchase from the ICAO website or for viewing at CASA offices on request. As at commencement of this instrument the Manual was available from the ICAO website at:

<https://www.icao.int/safety/SafetyManagement/Pages/GuidanceMaterial.aspx>.

Clause 2 states the principles of protection for safety information. The first principle is that the operator must not use safety information, or make safety information available for use, against an employee or operational personnel working under an arrangement with the operator, for disciplinary or punitive purposes. The second principle is that the operator must not disclose or release, publicly or to any person outside the operator’s organisation, safety information from which the identity of the person who reported the information, or any person whose acts or omissions are reflected in the reported information, can be ascertained, unless:

* the safety information is voluntarily provided to CASA; or
* the disclosure or release is required by law; or
* the person who reported the information and any other person named or identified in the safety information involved has given permission for the disclosure or release of the information.

Subclause 2.1 requires an operator to comply with the principles of protection specified in subclause 2.2 unless the designated person for principles of exception determines under clause 3, in accordance with procedures set out in the SMS of the operator, that at least 1 of the principles of exception stated in clause 3 applies in relation to the principle of protection.

Subclause 2.3 states that clause 2 does not prevent an operator from using safety information for the purposes of taking preventive, corrective or remedial action that is necessary to maintain or improve safety.

Corrective actionis generally aimed at specifically identified (particular) shortcomings and deficiencies in the skill, ability, attitude or conduct of an individual or an organisation. Remedial actionis taken to address underlying and more systemic issues and is more likely to be taken on an organisational level, whereas corrective action will tend to focus on individuals.

For example, if 3 out of 10 pilots of an operator have made the same kind of error on different occasions, the operator may choose to put all of its pilots through a training course to *remedy* a problem seen to exist at a systemic level, rather than putting only the 3 identified pilots through that training to *correct* a problem they each may have.

For further guidance regarding the use of safety information for these purposes, see paragraphs 7.4.2 and 7.2.9 of the ICAO Safety Management Manual.

Clause 3 states the principles of exception to be considered by operators. They are that:

* there are facts and circumstances that reasonably indicate that the occurrence or event concerning which the safety information has been generated, captured, collected or held is likely to have been caused by an act or omission constituting gross negligence, recklessness, or wilful and deliberate misconduct
* there are facts and circumstances that reasonably indicate that the occurrence or event reflected in safety information is part of a pattern of repetitive conduct, concerning acts or omissions involving the same or substantially similar conduct by the same person over a relevant period of time.

The third principle of exception in Clause 3 of Appendix 3 to Annex 19 to the Chicago Convention is applicable to CASA. It is anticipated that this principle of exception will be addressed in the amendments to Part 5 of CASR.

Clause 4 states the kind of action taken to maintain or improve aviation safety that is not to be regarded or characterised as being for disciplinary or punitive purposes for the purposes of clause 2.

**Schedule 2 Civil Aviation Order 82.5**

Item 1 of Schedule 2 substitutes subsection 1A of CAO 82.5 with a new subsection 1 that states the name of the instrument. New subsection 1 also provides that a reference in an instrument to section 82.5 of the CAOs is a reference to CAO 82.5.

Item 2 of Schedule 2 substitutes subsection 1 (Application of conditions) with a new subsection 1A. The wording of new subsection 1A is the same as previous subsection 1, except that references to “this section” have been changed to “this Order”.

Item 2 of Schedule 2 also inserts an interpretation provision (subsection 1B). New paragraph 1B.1 contains definitions of terms used in CAO 82.5. The definitions of ***corrective action*, *remedial action*** and ***preventive action*** are based on the meaning of those terms given by the ICAO Safety Management Manual. The term ***safety data*** is given the same meaning as in Annex 19 and is followed by the same explanatory note as appears under the definition of ***safety data*** in Annex 19.

New paragraph 1B.2 states that a reference in CAO 82.5 to a regulation identified by a number is a reference to the regulation in CAR identified by that number.

Item 3 of Schedule 2 substitutes the Note at the end of subparagraph 2.1 (a) with a new Note. The new Note is included for information only. The new Note states that CASA will have regard to the guidance contained in the CAAP SMS package and the ICAO Safety Management Manual when deciding whether to approve an SMS. The Note also states that *CAAP SMS package* and *ICAO Safety Management Manual* are defined in paragraph 1B.1. The previous Note only stated that CASA would have regard to the guidance contained in the CAAP SMS package but set out the content of the CAAP SMS package in the Note.

Item 4 of Schedule 2 substitutes the Note at the end of subparagraph 2.1 (c) with a new Note similar to the new Note to be substituted at the end of subparagraph 2.1 (a) except that it does not refer to terms being defined in paragraph 1B.1. The new Note is for information only.

Item 5 of Schedule 2 omits paragraph 2.4. The terms defined in paragraph 2.4 have been moved by Item 2 of Schedule 1 to new paragraph 1B.1.

Item 6 of Schedule 2 substitutes subparagraph 2A.2 (e) with new subparagraphs 2A.2 (e) to (h). New subparagraph (e) is the same as old subparagraph (e) except that it refers to an “FDAP” as defined in new paragraph 1B.1.

New subparagraph (f) is necessary to adopt the requirements in Appendix 1A for the protection of safety information. Subparagraph (f) requires an SMS to include a documented process ensuring that safety information is not used, or made available for use, by the operator for purposes other than maintaining or improving safety and protected by the operator, in accordance with Appendix 1A.

New subparagraph (g) requires an SMS to include the designation of an employee of the operator, or a person contracted by the operator, to perform the function of analysing operational flight data in accordance with procedures specified in the SMS.

New subparagraph (h) requires an SMS to include the designation of an employee of the operator, or a person contracted by the operator, to perform the function of determining, in accordance with procedures set out in the SMS, whether or not a principle of exception mentioned in clause 3 of Appendix 1A applies, and who may have access to identity information solely for that purpose.

Item 7 of Schedule 2 is a technical amendment to paragraph 2A.3 that is required because item 2 has inserted a definition of ***FDAP*** into new paragraph 1B.1.

Item 8 of Schedule 2 substitutes subparagraph 2A.3 (d). New subparagraph 2A.3 (d) is necessary to adopt the requirements in Appendix 1A for the protection of safety information in relation to FDAPs. New subparagraph 2A.3 (d) states that an FDAP must ensure that, other than in accordance with Appendix 1A:

* no disciplinary, punitive or related action is taken by the operator against a person who reports, or is the source of, the operational flight data
* the identity of a person who reports, or is the source of, the operational flight data, or in relation to whom such data is reported, is protected from disclosure to anyone other than the designated person for principles of exception.

Subparagraph 2A.3 (d) previously provided that a person whose duty required him or her to analyse operational flight data had access to identity information.

New subparagraph 2A.3 (e) also requires an FDAP to enable the operator to use operational flight data recorded due to the operation of the FDAP for the maintenance or improvement of safety, in accordance with Appendix 1A.

Explanatory notes are included under subsection 2A.3 relating to CASA’s ability to be provided with, access and use safety information. The second Note explains that CASA is restricted in its use of an operator’s safety information and refers to CASA Directive 02‑0053, *Limitations on the Use of Safety Information*.

Item 9 of Schedule 2 inserts a new subsection 2AA after section 2A. The new section states that an operator must protect all safety information of the operator in accordance with Appendix 1A.

Item 10 of Schedule 2 inserts new Appendix 1A into CAO 82.5. For a description of the content of new Appendix 1A of CAO 82.5, see Item 11 of Schedule 1. The content of Appendix 1A in each CAO is the same.

***Legislation Act 2003* (the *LA*)**

Paragraph 98 (4A) (a) of the Act provides that CASA may issue CAOs, not inconsistent with this Act or the regulations, and not prescribe any pecuniary penalty, with respect to any matter in relation to which regulations may be made for the purposes of section 23, 23B or 28BA.

Paragraph 98 (4B) of the Act provides that an order issued under subsection (4A) is a legislative instrument. This instrument is issued under subsection 98 (4A) of the Act and paragraph 28BA (1) (b) of the Act and is, therefore, a legislative instrument.

In addition, paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument.This instrument amends CAO 82.3 and CAO 82.5 which were issued under subsection 98 (4A) of the Act and registered as legislative instruments and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

**Consultation**

In September to October 2019, CASA conducted a public consultation process asking for feedback on proposed changes to CAOs 82.3 and 82.5 to enhance the protection of safety data, safety information and their sources. Seven responses were received, mostly from pilots and organisations that have a direct relationship with regular public transport and one from an AOC holder. These comments were considered when preparing the final draft.

A draft of the instrument was also considered by the CASR Part 119 Technical Working Group (***TWG***) comprising industry representatives that discussed the proposed amendments, and its comments also considered when preparing the final draft. A further draft was provided to the TWG in July 2020 for information.

Having considered the consultation already undertaken, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

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

A Regulation Impact Statement is not required in this case, as the OBPR considers that there will be no regulatory impacts from this proposal (OBPR id: 26401).

**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*.

**Making and commencement**

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

The instrument commences on 14 December 2020 and is to be automatically repealed in accordance with section 48A of the LA.

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (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 purpose of the legislative instrument (the ***instrument***) is to implement Australia’s obligations under section 5.3 of *Annex 19 —* *Safety Management* (***Annex*** ***19***) to the Convention on International Civil Aviation (the ***Chicago Convention***). The instrument amends Civil Aviation Order 82.3 (***CAO 82.3***) and Civil Aviation Order 82.5 (***CAO 82.5***) to provide a regulatory framework for the protection of safety information by Air Operator’s Certificate (***AOC***) holders that is consistent with the international Standards and Recommended Practices in Annex 19.

***Safety information*** is defined by the amendments to mean any safety data or information, in any form, generated within, or captured, collected or held by and within, an operator’s approved safety management system, including personal information relating to individuals. This definition of “safety information” includes “safety data” as defined in Annex 19.

Safety information generated within the safety management systems of operators may include reporting of accidents or incidents, including organisational and personal errors and mistakes, that in some circumstances may be identified by flight data analysis programs.

CAO 82.3 and CAO 82.5 operate as a set of conditions on AOCs with which AOC holders must comply. CAO 82.3 applies to AOCs authorising regular public transport operations in other than high capacity aircraft. CAO 82.5 applies to AOCs authorising regular public transport operations in high capacity aircraft.

The instrument:

* inserts into CAO 82.3 and CAO 82.5 a naming provision and an interpretation provision and renumbers preliminary provisions
* amends the SMS requirements in CAO 82.3 and CAO 82.5 to provide for the protection of safety information
* inserts into CAO 82.3 and CAO 82.5 new Appendix 1A relating to the protection of safety information and a new provision requiring operators to protect all safety information of the operator in accordance with Appendix 1A.

New Appendix 1A in each Civil Aviation Order states the principles of protection with which an operator must comply, unless a person designated in the SMS of the operator (the “designated person for principles of exception”) determines that a principle of exception specified in the Appendix applies. Appendix 1A is based upon Appendix 3 to Annex 19 to the Chicago Convention.

**Human rights implications**

The instrument engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* because it deals with the potential collection, use, disclosure or release of an individual’s personal information that is safety information collected or generated by an operator in compliance with an SMS.

Limitations on this right are permissible in order to pursue a legitimate objective and if they are a reasonable, necessary and proportionate means of achieving that objective. In this instance, the legitimate objective is the implementation of an international obligation under the Chicago Convention for States to ensure the continued availability of safety information by restricting its use for purposes other than maintaining or improving aviation safety. The means of achieving this objective that are set out in the amendments is considered to be reasonable, necessary and proportionate because it is based on the arrangements for the protection of safety data and safety information set out in Annex 19 to the Chicago Convention.

Operators to which the amendments apply are subject to the *Privacy Act 1988* as regular public transport operators are not small business operators within the meaning of that Act.

Under the amendments made by the instrument, personal information may be used, or made available for use, by the operator for the maintenance or improvement of aviation safety and may only be disclosed or released outside the operator’s organisation if it is to CASA, is required by law or the person consents to its disclosure or release. Outside these circumstances, it is only where a specified principle of exception is determined to apply, in accordance with procedures set out in an operator’s SMS, that an operator may:

* use, or make available for use, safety information against an employee or other personnel for disciplinary or punitive purposes; or
* disclose or release the information outside the operator’s organisation.

An example of a principle of exception is if the relevant act or omission involving the person constituted gross negligence or wilful or deliberate misconduct.

CASA Directive 02-00523, *Limitations on the Use of Safety Information*, explains how and when safety information may be used by CASA in the interest of safety and for other related purposes. Personal information received by CASA as part of safety information provided by operators to CASA is stored on CASA’s information system which is subject to both external IT security protections and internal security access protocols. The latter limits access to only those CASA officers involved in advising on, or taking, decisions to which the information has relevance. The restrictions imposed by the *Privacy Act 1988* also apply to CASA.

**Conclusion**

This legislative instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Civil Aviation Safety Authority**