

Civil Aviation Amendment Regulations 1999 (No. 1) 1999 No. 166

EXPLANATORY STATEMENT

Statutory Rules 1999 No. 166

(Issued by the authority of the Minister for Transport and Regional Services)

Civil Aviation Act 1988

Civil Aviation Amendment Regulations 1999 (No. 1)

Subsection 98 (1) of the *Civil Aviation Act 1988* (the Act) provides that the Governor-General may make regulations for the purposes of the Act and in relation to the safety of air navigation.

Subsection 9 (1) of the Act specifies that the Civil Aviation Safety Authority (CASA) has the function of conducting safety regulation of civil air operations by means that include developing and promulgating appropriate, clear and concise safety standards and issuing certificates, licences, registrations and permits.

The *Civil Aviation Regulations 1998* (the 1998 regulations) came into effect on 1 October 1998. These regulations address the certification and airworthiness requirements for aircraft and parts, along with administrative regulations to enable those regulations to work. A set of consequential savings and transitional regulations that amended the *Civil Aviation Regulations 1988* (the 1988 regulations) to accompany the 1998 regulations also came into effect at the same time.

As a consequence of the application of the 1998 Regulations and the amended 1988 Regulations, the need for minor amendments in both sets of regulations became apparent.

The amendments now made amend the *Civil Aviation Regulations 1998* (Schedule 1) and the *Civil Aviation Regulations 1988* (Schedule 2). The amendments are essentially administrative in nature and do not substantially alter existing arrangements. The Office of Regulatory Review (ORR) have agreed that the amendments are essentially administrative in nature and do not substantially alter existing arrangements, and therefore no Regulatory Impact Statement (RIS) is required

Details of the amending Regulations are attached.

Part 2 of Schedule 2 of the amending Regulations commence on 1 March 1999, the remainder of the amending Regulations commence on gazettal.

ATTACHMENT

DETAILS OF THE AMENDING REGULATIONS

In the following explanation a reference to CAR 1998 means a reference to the *Civil Aviation Regulations 1998* and a reference to CAR 1988 means a reference to the *Civil Aviation Regulations 1988*.

REGULATION 1

Regulation 1 provides that the regulations are called the *Civil Aviation Amendment Regulations 1998 (No. 1)*

REGULATION 2

Regulation 2 provides that: (1) Part 2 of Schedule 2 commences on 1 December 1999. (2) The remainder of these regulations commence on gazettal.

REGULATION 3

Regulation 3 provides that the Civil Aviation Regulations 1998 (CAR 1998) are amended as set out in Schedule 1.

REGULATION 4

Regulation 4 provides that the Civil Aviation Regulations 1988 (CAR 1988) are amended as set out in Schedule 2.

SCHEDULE 1

ITEM 1

Item 1 amends subregulation 21.2B (2) CAR 1998 by deleting superfluous words relating to the provision of advice to applicants regarding review of decisions - this advice is already covered by the note to the subregulation.

ITEMS 2, 3 and 4

Items 2, 3 and 4 amend, in subregulations 21.3 (1) and (2) of CAR 1998, three incorrect references to subregulations. In subregulation (1) the reference to subregulation (4) is amended to (5), and reference to (3) is amended to (4). In subregulation (2) reference to (3) is amended to (4).

ITEM 5

Item 5 amends regulation 21.12 of CAR 1998 by inserting, after paragraph (a), "Federal Republic of Germany". CASA declared the German National Airworthiness Authority (Luftfahrt-Bundesamt) to be a recognised country for the purpose of the Civil Aviation Regulations 1998, on 7 August 1998, which was after CAR 1998 was made.

ITEM 6

Item 6 amends regulation 21.19 of CAR 1998 by inserting the correct reference to the source document. The source document is 21.19 not 2 1. 1.

ITEM 7

Item 7 amends subparagraph 21.24 (1) (a) (i) of CAR 1998, inserting additional words to clarify the definition of stalling speed.

ITEM 8

Item 8 amends subparagraph 21.25 (1) (b) (i) of CAR 1998, and clarifies the intent by listing relevant categories to which the regulations refers, rather than by cross reference.

ITEM 9

Item 9 amends subparagraph 21.26 (1) (a) (i) of CAR 1998, by inserting additional words to clarify the definition of stalling speed.

ITEM 10

Item 10 amends paragraph 21.29A (a) of CAR 1998, and removes an inconsistency between subparagraphs (a) and (b) (i) by inserting reference to an equivalent document in (a).

ITEM 11

Item 11 amends subregulation 21.33 (3) of CAR 1998 by inserting additional words to clarify the definition of stalling speed.

ITEM 12

Item 12 amends subregulation 21.41 of CAR 1998 by substituting an expanded and more precise definition of the term "type certificate".

ITEMS 13 through 16

Items 13 through 16 amend paragraphs 21.81 (1) (b), 21.83 (1) (b) and 21.83 (2) (b), and subregulation 21.85 (5) of CAR 1998, and omit incorrect references to regulation 262AE and substitute correct reference to regulation 262A0.

ITEM 17

Item 17 amends subregulation 21.101 (4) CAR 1998 by cross referencing the subregulation specifically to subparagraph 21.101 (3) rather than to the whole of regulation 21.101.

ITEM 18

Item 18 amends paragraph 21.117 (2) (a) of CAR 1998, and clarifies that the scope of the paragraph includes both 'type certificate' and the 'type acceptance certificate'.

ITEM 19

Item 19 amends the heading of Part 21 Subpart H of CAR 1998 by substituting a more descriptively accurate heading for the Subpart, and which excludes Provisional Certificates of Airworthiness.

ITEM 20

Item 20 amends regulation 21.171 of CAR 1998 and clarifies the applicability of the Subpart by stating that the Subpart does not prescribe requirements for Provisional Certificates of Airworthiness (which are covered by Subpart 1).

ITEM 21

Item 21 amends subregulation 21.173 (2) of CAR 1998 to clarify that a person is not eligible for a provisional certificate of airworthiness under Subpart H.

ITEM 22

Item 22 amends the heading of regulation 21.176 CAR 1998 as a consequence of the amendments to subregulations 21.176 (1) and (2), and clarifies that the regulation does not apply to all certificates of airworthiness.

ITEMS 23, and 24

Items 23 and 24 amend subregulations 21.176 (1) and (2) of CAR 1998 by deleting reference to experimental certificates. The reference was superfluous as a consequence of the addition of subregulation 21.176 (5) at item 26.

ITEM 25

Item 25 amends subregulation 21.176 (5) of CAR 1998 by deleting reference to subregulation (5) from the penalty clause. The reference was superfluous as a consequence of the addition of new subregulation 21.176 (6).

ITEM 26

Item 26 amends subregulation 21.176 (5) of CAR 1998, and clarifies the applicability of the Subpart by reflecting that the Subpart does not prescribe requirements for Provisional Certificates of Airworthiness (which are covered by Subpart 1).

ITEM 27

Item 27 amends the heading of regulation 21.181 of CAR 1998 by substituting a heading that is more accurate and consistent with regulation 21.176 of CAR 1998.

ITEM 28 and ITEMS 30 through 43

Items 28, 30 and 31, and items 30 through 43 inclusive amend regulations 21.183, 21.184, 21.184A, 21.185 and 21.190 of CAR 1998, and have the common effect of requiring any person issuing a certificate of airworthiness to also be satisfied that if the aircraft has been modified or repaired, then those modifications or repairs have been carried out in accordance with approved maintenance data". This is a continuance of current practice that was incorrectly assumed to be provided by the wording of the subject regulations.

Additionally, item 32 also amends subregulation 21.183(4) (a) of CAR 1998, to provide that some older aircraft that have never been issued with a type certificate will be eligible for the issue of a certificate of airworthiness, provided that the model has previously been issued with a certificate of airworthiness. Also, item 41 inserts new subregulations 3A and 3B to correct an unintended omission from the legislation, and permit aircraft that are type certificated in the normal utility acrobatic commuter or transport category to be issued with a restricted category certificate of airworthiness.

ITEM 29

Item 29 amends subregulation 21.183 (2) of CAR 1998, and deletes the words "or authorised person" which were incorrectly included in the subregulation.

ITEM 44

Item 44 amends subregulation 21.195A (2) of CAR 1998, and clarifies that no discretion exists for **CASA** or an authorised person regarding the issuing of conditions to which the certificate of airworthiness is subject.

ITEM 45

Item 45 amends subregulation 21.197 (1) of CAR 1998 and deletes the **words "CASA or and authorised person"**. These words were redundant because regulation 21.200, which is the head of power to issue special flight permits, already specifies that **CASA** or an authorised person may issue a special flight permit.

ITEM 46

Item 46 amends subregulation 21.197 (3) of CAR 1998 and has the effect of requiring aircraft flying internationally on a special flight permit to be registered for the purpose of subsection 20AA of the Act. This is consistent with ICAO requirements.

ITEMS 47 through 52 inclusive

Items 47 through 52 inclusive amend regulations 21.221, 21.223, 21.225 of CAR 1998 and omit incorrect references to regulation 262AE of CAR 1988 and substitute correct reference to regulation 262AO of CAR 1988.

ITEMS 53, 54 and 55

Items 53, 54 and 55 amend paragraphs 21.327 (4) (d) and 21.327 (6) (b) of CAR 1998 and omit the requirement for a weight and balance report if the importing country agrees.

ITEMS 56, 57 and 58

Items 56, 57 and 58 amend subregulations 21.329 (6), 21.331 (1), and 21.333 (1) of CAR 1998 to include "authorised person". This amendment is required to maintain consistency with the provisions of 21.324 which provides that CASA or an authorised person may issue export airworthiness approvals.

ITEMS 59 and 60

Items 59 and 60 amend paragraphs 21.500 (2) (a) and (b), and 21.502 (1) (a) and (b) of CAR 1998 to harmonise with the US Federal Aviation Regulations by allowing approved replacement parts to be manufactured under an approval issued by a recognised country.

ITEM 61

Item 61 amends subregulation 21.502A (3) of CAR 1998 to include "authorised person" which was inadvertently omitted from the legislation.

ITEM 62

Item 62 amends paragraph 21.605 (2) (c) of CAR 1998, and clarifies the intent of the paragraph by inserting reference to regulation 21.144.

ITEM 63

Item 63 amends subregulations 21.609 (3) of CAR 1998 and corrects a drafting error by deleting reference to "subregulations" and substituting "regulation".

ITEM 64

Item 64 amends subregulation 21.617 (3) of CAR 1998 and corrects an incorrect cross reference by deleting "subregulation 21.607 (d)" and substituting "paragraph 21.607 (c)".

ITEMS 65 and 66

Items 65 and 66 amend the heading of Part 27 of CAR 1998 and regulation 27.1 of CAR 1998 by substituting the term "rotorcraft" for "helicopters".

ITEM 67

Item 67 amends paragraph 200.13 (1) (f) of CAR 1998, and extends the exemption provided by subregulation 200.13 (2) to include aircraft being flown in a test program to show compliance. These aircraft were previously exempt from the regulations before the commencement of these regulations, but the provision was inadvertently omitted from regulation 200.13 (1) (f).

ITEMS 68 and 69

Items 68 and 69 amend paragraphs 201.4 (b) of CAR 1998, and have the effect of extending reviewable decisions under regulation 201.4 to include any decision under regulation 21.43 not to consider an application.

ITEM 70

Item 70 amends the Dictionary to CAR 1998 by including a definition of "approved maintenance data".

ITEM 71

Item 71 amends the Dictionary to CAR 1998 by amending the definition of "certificate of airworthiness".

SCHEDULE 2

PART 1

ITEM 1

Item 1 amends subregulation 2 (1) of CAR 1988 by inserting a new definition of design standard to further clarify the intention of regulations 21 and 21A that was incorrectly omitted by a previous amendment.

ITEM 2

Item 2 inserts new regulations 21 and 21A of CAR 1988 and provide a head of power to issue a design standard for an aircraft under regulation 35, and for aircraft components under

regulations 35 and 36. This continues the head of power previously provided by CAR 21.1 of the Civil Aviation Regulations which was incorrectly omitted for the CARs 1998.

ITEM 3

Item 3 amends paragraph 30 (2) (c) of CAR 1988 by inserting new subparagraphs (i) (ii) and (iii) which were inadvertently omitted.

ITEM 4

Item 4 amends paragraph 36 (2) (b) and deletes incorrect reference to regulation 21 and substituting the correct reference to regulation 21A.

ITEM 5

Item 5 amends subparagraph 42U (a) (ii) of CAR 1988 by omitting reference to regulation 25. Regulation 25 has been deleted from CAR 1988.

ITEM 6

Item 6 amends paragraph 43 (7) (b) of CAR 1988 by omitting reference to special flight permits. Inclusion of the reference to special flight permits in this paragraph was an automatic carry over from the previous system of permissions for certain flight given under regulation 134. However, under the new system, aircraft with special flight permits are not required to have a maintenance release.

ITEMS 7 and 8

Items 7 and 8 amend regulation 135 of CAR 1988 by inserting a new regulation 135A that permits foreign aircraft that do not have a certificate of airworthiness meeting ICAO requirements (as required by the current regulation 135), to operate in Australian territory. Such operation was previously permitted under regulation 134 of CAR 1988, and was overlooked in transitioning to CAR 1998.

ITEM 9

Item 9 amends subparagraph 206 (1) (b) (i) of CAR 1988, and omits an incorrect cross reference to regulation 21.197 and substitutes a correct reference to operations mentioned in subregulation 262AM (7).

ITEM 10

Item 10 amends paragraph 262 AL (1) (a) of CAR 1988 as a consequence of amending regulation 21.185 (which reflect that a restricted category aircraft does not have to be type certificated), and clarifies that a restricted category aircraft may be operated for a special purpose shown on the certificate of airworthiness.

ITEM 11

Item 11 amends subregulation 297A (1) of CAR 1988 by including in the list of reviewable decisions, a new item dealing with decisions under subregulation 262AN (1) not to approve an organisation to administer the operation of a limited category aircraft. This decision was inadvertently omitted when the list of reviewable decisions was amended.

ITEM 12

Item 12 amends CAR 1988 by inserting a new transitional regulation 317A which addresses an oversight in the transitional provisions, and provides that a design standard that was in force before CAR 1988 commenced remains in force as if it was issued under regulation 21A of CAR 1988.

ITEM 13

Item 13 amends subregulation 318 (1) of CAR 1988 to clarify that the original intent of the regulation was to provide, amongst other things, that Certificates of Approval to manufacture aircraft that were in force before the commencement of the CARs 1998, have the same effect as a Production Certificate in the CAR 1988, production certificate being the replacement authorisation for certificate of approval to manufacture.

PART 2

ITEMS 1 and 2

Items 1 and 2 amend subregulations 262AM (6) and 262 AP (9) of CAR 1988, and vary the wording required on the cockpit warning placard to provide a stronger warning of the risk involved in flying in limited category aircraft and experimental aircraft.

ITEM 3

Item 3 amends the CAR 1988 as a consequence of the amendments to subregulations 262AM (6) and 262 AP (9) which require stronger (different) wording on the cockpit warning placard, by inserting a new regulation 322 that provides that placards installed before the commencement of the amendments to subregulations 262AM (6) and 262 AP (9) are taken to comply with the new requirements.