

Civil Aviation Amendment Regulations 1999 (No. 5) 1999 No. 262

EXPLANATORY STATEMENT

Statutory Rules 1999 No. 262

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

Civil Aviation Act 1988

Civil Aviation Amendment Regulations 1999 (No. 5)

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.

These regulations (the amending regulations) amend the Civil Aviation Regulations 1998 (CAR 1998) by adding a new Part 39 relating to Airworthiness Directives (ADs) and a new Part 202 relating to transitional provisions and renumber regulation to regulation 324. They also make consequential amendments to Civil Aviation Regulations 1988.

The Part 39 regulations essentially provide for the issue of ADs when an unsafe condition exists in an aircraft or aeronautical product such as an aircraft engine and it is deemed likely to occur in other aircraft or aeronautical products of the same kind. ADs are issued as Instruments pursuant to Part 39. Most ADs specify a means of compliance to address the unsafe condition. However, the option exists for industry to propose alternative methods of compliance that will address the unsafe condition.

Part 39 amended the previous legislation relating to ADs in material respects. The previous legislation, which was contained in Division 7 of Part IV of the Civil Aviation Regulations 1988 (CAR 1988), gave power to CASA to issue an AD in respect of aircraft or aircraft components, if an unsafe condition existed or was likely to exist in the aircraft or the aircraft components concerned. This was at variance with the International Civil Aviation Organisation (ICAO) model and the legislation of most other countries, which require the actual existence of an unsafe condition in an aircraft or component and at least the likelihood of the existence of that unsafe condition in other aircraft or components of the same kind as prerequisites for the issue of an AD.

Consistent with international practice, the Civil Aviation Safety Authority (CASA) is no longer proactive in issuing ADs. CASA only reacts to situations where an unsafe condition exists and is likely to occur on other aircraft of the same kind.

Part 202 inserts in CAR 1998 some transitional regulations that should have been included in those regulations when they were first made but were then inserted, inappropriately, in CAR 1988.

Part 202 provides that certain certificates (certificates of type approval, certificates of airworthiness and export certificates of airworthiness) issued under CAR 1988 and in force immediately before the commencement of CAR 1998, has effect as if they were issued under the corresponding part of CAR 1998. Similarly, ADs in force immediately before the commencement of these regulations have effect as if they were issued under Part 39.

Part 202 also provides that any application for exemption from an AD that was pending, as well as any exemptions granted, pursuant to CAR 1988 and before the commencement of Part 39, will have effect as if they were made under Part 39.

A dictionary containing definitions of various items contained in Part 39 has been inserted.

Schedule 4 contains transitional provisions directly relevant to the AD legislation. Essentially, they repeal various provisions of CAR 1998 relating to ADs that are contained in Part 39. They also make consequential changes to reflect the introduction of the proposals in Schedule 1.

Additionally, as a consequence of the application of the 1998 regulations and the amended 1988 regulations, the need for minor amendments in both sets of the regulations became apparent to clarify the scope and intent of the regulations and to correct some editorial mistakes and omissions. These incidental amendments were made on 9 August 1999 (Statutory Rules 1999 No. 166) with commencement on gazettal (Schedule 1 and Part 1 of Schedule 2 - 16 August 1999) and 1 December 1999 for Part 2 of Schedule 2.

The incidental amendments to the 1988 regulations (item 3 of Part 2 of Schedule 2) incorrectly referenced and duplicated the transitional regulation 322.

The amendment now proposed in Schedule 2 of the proposed regulations amends the Civil Aviation Amendment Regulations 1999 (No. 1) by omitting Schedule 2, Part 2, Item 3. The amendment now proposed in Schedule 3 inserts new regulation 324 to Civil Aviation Regulations 1988.

Details of the amending regulations are attached.

Regulations 1 to 5 and Schedule 2 commence on gazettal.

Schedule 3 commences on 1 December 1999.

Schedules 1 and 4 commence 1 January 2000.

ATTACHMENT

Civil Aviation Amendment Regulations 1999 (No. 5)

DETAILS OF THE PROPOSED REGULATIONS

REGULATION 1 - Name of regulations

Proposed regulation 1 sets out the name of the regulations.

REGULATION 2 - Commencement

Proposed regulation 2 provides that:

(a) regulations 1 to 5 and Schedule 2 commence on gazettal.

(b) Schedule 3 commences on 1 December 1999.

(c) Schedules land 4 commence on 1 January 2000.

REGULATION 3 - Amendment of Civil Aviation Regulations 1998

Proposed regulation 3 provides that the *Civil Aviation Regulations* 1998 are amended as set out in Schedule 1.

REGULATION 4 - Amendment of Civil Aviation Regulations 1988.

Proposed regulation 4 provides that the Civil Aviation Regulations 1988 are amended as set out in Schedules 3 and 4.

REGULATION 5 - Amendment of Civil Aviation Regulations 1999 (No. 1).

Proposed regulation 5 provides that the Civil Aviation Regulations 1999 (No. 1) are amended as set out in Schedule 2.

SCHEDULE 1

Proposed item 1 amends the *Civil Aviation Regulations* 1998 by inserting a new Part 39 - Airworthiness Directives.

Item 1

This item inserts after Part 35, a new Part 39, dealing with ADs, in the regulations.

New regulation 39.11-CASA may issue airworthiness directives

Subregulation 39(1) empowers CASA to issue an AD for a kind of aircraft or a kind of aeronautical product. This it can do if:

- * there is an unsafe condition in an aircraft or aeronautical product of that kind; and
- * the condition also exists, or is likely to exist or develop, in another aircraft or aeronautical product of that kind.

Subregulation (2) provides for the form and contents of an AD. It must be in writing. It must identify the aircraft or aeronautical products concerned, and it must specify the action necessary to correct the unsafe condition and when and in what circumstances that action is to be taken.

Subregulations (3) and (4) make provision allowing CASA, when issuing an AD, to require a person to comply with an AD issued by an aviation authority of another country, the law of another country, or instructions etc issued by the manufacturer of the aircraft or aeronautical products concerned.

Subregulation (5) provides that an AD is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

New regulation 39.2-Aircraft etc covered by AD

This regulation explains what the expression "aircraft covered by an AD" means. An AD issued for a kind of aircraft or aeronautical product covers all aircraft or aeronautical products of that kind until:

- * the AD is revoked; or
- * all the requirements of the AD have been complied with.

However, an aircraft or aeronautical product is not covered by the AD if the aircraft or product is excluded from the operation of the AD by regulation 39.4 or 39.5.

New regulation 39.3-Australian aircraft covered by AD etc not to be operated

This regulation makes it an offence to operate, or to allow the operation of, an Australian aircraft that is covered by an AD or is fitted with an aeronautical product covered by an AD:

- * in contravention of a requirement of the AD that affects the operating limitations of an aircraft; or
- * while any other requirement of the AD has not been complied with.

New regulation 39.4-Aircraft etc excluded from operation of AD

This regulation empowers CASA, following a written request from a person (the applicant), to issue an instrument excluding an aircraft or aeronautical product from the operation of an AD on condition that the applicant takes certain action:

- * that has been set out in the instrument; and
- * that, CASA and the applicant have agreed, will provide an alternative method for correcting the unsafe condition that the AD seeks to correct.

This regulation further provides (subregulation (3)) that, if CASA issues the instrument, the aircraft or aeronautical product is excluded from the operation of the AD unless the applicant fails to comply with the condition included in the instrument.

New regulation 39.5-Aircraft etc excluded from operation of AD

This regulation empowers CASA to exclude an aircraft or aeronautical product from the operation of an AD if CASA is satisfied that the unsafe condition that the AD seeks to correct does not

exist, and cannot develop, in the aircraft or aeronautical product, because the aircraft or product has been subject to a modification, or to repairs, of a kind mentioned in the regulation.

New regulation 39.6-Request for review of operation of AD

This regulation enables a person to ask CASA to review the operation of an AD on the ground that all or some of the aircraft or aeronautical products covered by the AD need no longer be so covered because:

- * the manufacturer's maintenance specifications have been amended; and
- * if maintenance is carried out on those aircraft or aeronautical products in accordance with the amended specifications, the unsafe condition that the AD seeks to correct will no longer exist or is not likely to exist or develop in those aircraft or aeronautical products.

New regulation 39.7-Action to be taken by CASA on receiving request under regulation 39.6

Subregulation 39.7(1) provides that, on receiving a request for review of an AD under subregulation 39.6, CASA must inform the applicant of the steps that CASA proposes to take to investigate whether there are grounds for reviewing the AD has been established and must give an estimate of the time to be taken by the investigation.

Subregulation (2) sets out what CASA must consider when carrying out the investigation.

Subregulation (3) directs CASA to revoke the AD or amend it as necessary if it finds that the ground on which the request was made has been substantiated.

Subregulation (4) provides that the power of CASA under subregulation (3) to amend or revoke an AD is in addition to any other power that CASA has to revoke or amend ADs.

Items 2 to 5

These items make technical amendments to regulation 201.4.

Item 6

This item amends regulation 201.4 to provide for review by the Administrative Appeals Tribunal of a decision refusing to grant a request made under subregulation 39.4(1) or 39.5(1) or regulation 39.6.

Item 7

This item inserts a new Part 202, dealing with transitional provisions, in the regulations.

New regulation 202.1 -Certificates of type approval

This regulation makes provision for certificates of type approval issued under CAR 1988 and that were in force immediately before 1 October 1998 (the date of commencement of CAR 1998) to have effect on and after that date as if they were:

- * in the case of certificates issued under regulation 22 of CAR 1988-type certificates issued under CAR 1998; or

* in the case of certificates issued under regulation 22A of CAR 1988-type acceptance certificates under CAR 1998.

New regulation 202.2-Certificates of airworthiness

This regulation makes provision to allow certificates of airworthiness that were in force under CAR 1988 immediately before the commencement of CAR 1998 to continue in force after that commencement as if they were certificates of airworthiness issued under the latter regulations.

New regulation 202.3-Export certificate of airworthiness

This regulation makes provision to allow export certificates of airworthiness that were in force under CAR 1988 immediately before the commencement of CAR 1998 to continue in force after that commencement as if they were export certificates of airworthiness issued under the latter regulations.

New regulation 202.4-Airworthiness directives

This regulation makes provision allowing airworthiness directives that were in force under CAR 1988 immediately before the commencement of this regulation to continue to have effect after that commencement as if they were ADs issued under regulation 39.1.

New regulation 202.5-Application for exemption from, all variation of, requirement of airworthiness directive

This provision allows an application for an exemption from, or a variation of, a requirement of an airworthiness directive that had been made under regulation 42ZR of CAR 1988 and was still pending immediately before the commencement of this regulation to be treated as if it were an application, made on the commencement of this regulation, for CASA to exclude under regulation 39.4 the aircraft from the operation of the airworthiness directive.

New regulation 202.6-Exemption from requirement of airworthiness directive

This regulation allows an exemption of an aircraft from a requirement of an airworthiness directive that was granted under CAR 1988 and was still in force immediately before the commencement of this regulation, to have effect as if it were an instrument under regulation 39.4 excluding the aircraft from the operation of the airworthiness directive.

Item 8

This item amends the Dictionary by inserting definitions relevant to Part 39.

SCHEDULE 2

ITEM 1

Proposed item 1 amends the Amendment of Civil Aviation Amendment Regulations 1999 (No. 1) by omitting 'Schedule 2, Part 2, item 3'.

SCHEDULE 3

ITEM 1

Proposed item 1 amends the amendment of *Civil Aviation Regulations 1988* by inserting after regulation 323, regulation 324 with wording and intent as previously proposed.

SCHEDULE 4

Proposed amendments of Civil Aviation Regulations 1988

Item 1

This item substitutes the definition of "airworthiness directive" in subregulation 2(1) with a new definition that includes within its ambit an AD issued under the new Part 39 of CAR 1998.

Item 2

This item repeals the provisions of CAR 1988 dealing with the 'Issue of airworthiness directives.

Items 3 and 4

These provisions make amendments to "the definition of "related document" in subregulation 4ZZQ(2):

* to exclude airworthiness directives from the operation of Division 7 of Part IV of CAR 1988 (which makes provision for exemptions from, or variations of, the requirements of related documents); and

* to refer correctly to directions issued under the repealed provisions of CAR 1988 but continued in force under transitional provisions now included in CAR 1998.

Items 5 to 11

These items make the necessary adjustments to the transitional provisions included in Part XIX of CAR 1988 following the re-enactment of certain of these provisions in CAR 1998.

CIVIL AVIATION

SAFETY AUTHORITY

AUSTRALIA

Regulation Impact Statement

RIS 9901

Airworthiness Directives

Civil Aviation Safety Regulation

(CASR) Part 39

Issued by CASA's Regulatory Framework Program Office

April 1999

Background

In June 1996, the Regulatory Framework Program (RFP) office of the Civil Aviation Safety Authority (CASA) commenced a review and revision of the Australian aviation safety requirements currently contained in the Civil Aviation Regulations (CARs) and the Civil Aviation

Orders (CAOs). The proposed new legislation will be called the Civil Aviation Safety Regulations (CASRs).

Part of the review addressed the requirements of CAR 37A, specified in Division 6 Airworthiness Directives. As the result of the review it is proposed to introduce CASR Part 39- Airworthiness Directives to replace the existing requirements.

For many years in Australia and overseas, a mechanism to address unsafe airworthiness conditions which occur during in-service operation of aircraft or aeronautical products has been in place. This is recognised internationally as an imperative for the safety of air navigation. This recognition is accommodated in Australia by the issue of Airworthiness Directives (AD's). These directives ensure that the design criteria and manufacturer's instructions for continued airworthiness is maintained by identifying a particular methodology for operating, modifying or repairing the aircraft or aeronautical product.

For example, an AD may; require an inspection of a number of aircraft of the same type after fatigue damage has been discovered during a scheduled inspection of a particular aircraft, call for replacement of defective seals in an aeronautical product with seals of an improved quality, or the replacement of aircraft wiring of an improved specification where failure of the original wiring has resulted in a fire or explosion. Such circumstances require a methodology and procedure to address the problem in an urgent manner.

Most ADs, issued by CASA, are generated by other National Airworthiness Authorities (NAAs) located in the country of manufacture of the aircraft or aeronautical product and apply to aircraft or aeronautical products of the same kind operated in this country.

Valid situations do arise for exclusion from compliance with an AD as the result of

- * an alternative method of compliance being approved; or
- * non-applicability as the result of a pre-modification, repair or inclusion of a Supplemental Type Certificate (STC) on the aircraft; or aeronautical product; or;
- * instructions issued by the manufacturer of aircraft or aeronautical products that when complied with removes the need for the AD;

Where an exclusion from compliance with the AD can be justified, the exclusion may be granted on the basis of the making of an equivalent safety determination (ESD).

Currently, there are 8150 AD's in operation in Australia covering aircraft, engines, equipment and systems. This is augmented on an annual basis, taken over the last ten years, by approximately 477 new AD's.

Airworthiness Directives - CASR Part 39

The revised AD legislation will ensure Australian regulations harmonise with international standards and best practices, eg., recommendations by the International Civil Aviation Organisation (ICAO) or those used by the US Federal Aviation Administration (FAA), Transport Canada (TC), Civil Aviation Authority United Kingdom (CAA UK) or New Zealand Civil Aviation Authority (NZ CAA).

Additionally, information technology (IT) systems have made it possible for AD's issued by recognised National Airworthiness Authorities (NAA) to be readily available to operator/owners, relieving CASA of the need to provide specialist technical assessment, printing and distribution of AD's to operator/owners. This shift in availability and responsibility will enable better use of CASA resources without any reduction of safety issues. Operators and owner will now be able to more

quickly assess the applicability of an AD, as it applies to their aircraft or aeronautical product, and to institute timely action to correct deficiencies raised in the AD,

1. Problem

The aviation industry has, for many years, suggested that the current legislation is "presumptive" in that the legal text enables CASA to issue airworthiness directives (AD) when an unsafe condition may exist. This perception can be explained by the contents of CAR, 1988, 37A which permits CASA to issue an AD when:

- * an unsafe condition exists. or
- * an unsafe condition is likely to exist; or
- * an unsafe condition is likely to develop.

This is at variance with the International Civil Aviation Organisation's (ICAO) model and most other countries' systems which require;

- * an unsafe condition to exist. and
- * that same unsafe condition could exist. or is likely to develop in other aircraft or products of a like design.

The significance of this is that the present system does not require an actual unsafe condition to exist. This means an AD can be raised where an unsafe condition is only likely to exist or likely to develop. While pro-active action is in many cases a positive attribute, from the point of view of determining whether the issue of an AD is necessary, it becomes highly subjective, represents a drain on technical and administrative resources and can lead to unnecessary duplication. This has the effect of channelling limited and valuable resources to the incorrect area of endeavour.

The current philosophy therefore is perceived to be at variance with that of other National Airworthiness Authorities and in particular that of the Federal Aviation Administration (FAA) with whom we seek harmonisation of regulatory best practice. This has been the source of industry disquiet, as raised during discussion with the CASA/Industry based regulatory review Technical Committee.

Additionally, since the introduction in 1992 of automatic acceptance of aircraft type certificates from recognised countries, CASA no longer receives design data for those aircraft that are automatically accepted.

The initial design responsibility for the safe operation of a type certificated aircraft or product rests with those recognised countries together with current legislation that provides CASA with a means of addressing safety.

The problem in the past has been that any conditions perceived as necessary to address design deficiencies, were treated in an AD. With the introduction of CAR Part 21, 1998, in particular regulations 21.16 and 21.29B, it is now permissible to specify such conditions on the Type Certificates (TCs) and Type Acceptance Certificates (TACs) to address design deficiencies in the interest of safety. This legislation will continue to enable CASA to make presumptive decisions in the interest of aviation safety.

2. Objective

In response to the above problems, a CASA and industry based technical committee was asked to identify the underlying problems which needed to be addressed. These were to:

- * remove those aspects of the existing regulations which contain presumptive considerations.,
- * revise the practices for evaluation and validation of foreign airworthiness directives by CASA.
- * revise the procedures for issue and compliance with ADs;
- * ensure legislation is in place with respect to ADs already in force under CARs;
- * ensure provisions for exemption from ADs, based on equivalent safety determinations, were treated on an equitable basis;
- * harmonise the Australian legislative requirements with the intent specified by other NAAs; and
- * satisfy Australia's international obligations under ICAO Annex 8.

To achieve these objectives it was considered that the philosophies and legislation should:

- * focus on safety, adopting a "systems" approach;
- * be clear, concise and unambiguous;
- * be harmonised with international standards, unless unique Australian circumstances require otherwise;
- * be outcome-based, to the greatest extent practicable;
- * be cost effective; and
- * be enforceable.

3. Options

The following options were considered:

1. No change to current requirements where identified unsafe conditions exist or are likely to exist or develop in aircraft or products can be corrected by AD action.

2. Adoption of an airworthiness directive system complying with the appropriate ICAO standards under Annex 8 (Airworthiness of Aircraft) to the ICAO Convention and the ICAO Manual of Procedures for Airworthiness Organisations.

3. Adoption of an airworthiness directive system similar to that of the USA Federal Aviation Administration Regulations (FARs). The FARs follow the ICAO model as described above in option 2, with the addition of providing a method of exclusion from AD's.

4. Adoption of an airworthiness directive system similar to that of the New Zealand Civil Aviation Authority regulations. The NZ regulations adopt the ICAO model but automatically adopts country of design/manufacture ADs.

5. Adoption of an airworthiness directive system similar to that of the Canadian Department of Transport Chapter 593 regulations. The Canadian system adopts the ICAO model but uses a different method of issuing ADs than that currently used in Australia.

No other options were considered.

4. Impact Analysis of Options

Persons affected

The persons or organisations which are, or could be, affected by the proposed changes are those involved with the maintenance of aircraft and aeronautical products. This includes:

- * Registered operators *, (referred to in the current CARs [1988] as Certificate of Registration holders);
- * CAR (1988) 30 approved maintenance organisations;
- * appropriate CASA officers;
- * those persons/organisations who seek ADs under a subscription service. and
- * person(s) seeking exemption from compliance with ADs.

*Note: Under the terms of the new CASRs relating to aircraft maintenance, including the CASR Part 47 dealing with aircraft registration, it is proposed to use the term "registered operator" to replace the term Certificate of Registration holder.

Consideration of options

The CASA/Industry based technical committee which was formed to consider the proposed AD requirements, arrived at the conclusion following the review of the various NAA regulations and practices that the preferred option should be the development of legislation which:

- * met the ICAO standards and recommendations;
- * harmonised closely with the philosophies of other NAA's with respect to Airworthiness Directives (particularly the FAA);
- * permitted the smooth transition through the use of the existing CASA database; and
- * would be based on the processes, numbering system and language style (where appropriate) common to Part 39 of the (FARs) and Part 39 of the New Zealand Civil Aviation Rules.

The technical committee concluded that the introduction of the proposed CASR Part 39 would allow CASA to issue ADS, either Australian generated or based on an AD issued by an overseas National Airworthiness Authority (NAA).

Consideration Outcomes

Option 1 This option was not considered appropriate since it did not address the stated problem or achieve the desired objectives, which was to institute changes to the Australian legislation to align Australian requirements with that of other NAAs. Also, as expressed previously, the recently

introduced CAR 1998, made provisions for CASA to place conditions on type certificated aircraft, (whether a type certificate or type acceptance certificate), to address unsafe conditions.

The changes adopted in the CARS, 1998 are in fact a copy of the FAA system. This means that the existing CAR, 1988, 37A would need to be amended to reflect the provisions provided in the new CARS 21.16 & 29B.

Option 2 Australia as a signatory to the ICAO Convention is obligated to follow the recommended practices set out by ICAO or alternatively specify "differences", which are advised in ICAO documentation. In this respect this option, utilising the standards, recommended practices and methodology of ICAO Annex 8 (as a starting point for legislation and process development), is endorsed subject to such variation as is necessary to enable alignment with other NAAs.

Option 3 This option was identified as the preferred option as it met the stated objectives at section 2 with the added advantage of harmonising Australia's requirements with a country from where the majority of Australian aircraft and aeronautical products are obtained. Also, that legislation consistent with the FAR 39 and supported by a system of Advisory Circulars would further satisfy the stated objectives.

The consultative process employed by CASA in arriving at the detail contained in draft Part 39 found favour in the ICAO and FAA approach to first establish that an unsafe condition actually existed before an AD was raised. Also acceptable was the FAA use of equivalent safety determinations (ESD) as justification for exclusion from an AD.

A further advantage is that the technical language and a numbering system contained in FAA legislation is consistent with that introduced for CARS 1998 Parts 21-35, Certification and Airworthiness Standards for aircraft and products. This has proved to be a workable system.

Similarly, the proposed Australian legislation to regulate airworthiness directive requirements is consistent with the relevant FAR's in that.

* ADs can only be raised where an unsafe condition exists in an aircraft or aeronautical product and the condition exists or could develop in other aircraft or aeronautical products of the same kind.

- This ensures that ADs will not be raised unless they are fully supported by documented facts and analysis. This therefore removes the potential for CASA to raise AD's that are only likely to exist without full justification.

* alternative methods of complying with ADs may be approved by CASA where they achieve an equivalent level of safety for the aircraft or aeronautical product.

- This provides for regulatory flexibility in that it gives the owner/operator a clear incentive to find the cheapest and most effective way to address the safety problem without compromising the level of safety being sought.

* a person may request CASA to review an AD (under certain conditions) within 28 days.

- This is a new requirement that provides for persons to be able to notify CASA that instructions issued by manufacturers have been amended and when complied with will remove the unsafe condition that the AD sought to correct.

This speeds the process where justifiable conditions exist for CASA to amend or revoke an AD. This is because industry are regularly in receipt of amendments to manufacturers instruction long before CASA is made aware of them.

Option 4 This option was considered a valid option which essentially met the stated objectives. It was however foreseen that the system as depicted could result in excessive requests for exemptions against AD requirements, a situation to be avoided on safety grounds. NZ automatically accepts ADs from the country of design/manufacture including the stipulated compliance periods. This is seen as an impost on the Australian aviation industry as compliance periods issued by the FAA are, in the main, based on the supply of parts or materials to correct the unsafe condition to the American industry only. On this basis, adoption of these requirements was discounted. The New Zealand CAA promulgated AD requirements based on FAR 39 on the 10 of March 1997.

Option 5 This option was considered a valid option which essentially met the stated objectives. It was however foreseen that the system as depicted would not enable the maintenance of the current Australian AD data-base classification system. On this basis, adoption of the Canadian Chapter 593 requirements was discounted.

The Canadian model meets the ICAO model but they have structured their aviation legislative system differently from the two-tiered legislative system (ie., the Act and Regulations) that Australia is adopting.

Costs

There is no anticipated added cost to the public/aviation industry purse in that ADs will continue to be distributed to the persons affected, as per the status quo, with the exception that CASA will provide an index of ADs on the CASA website/home-page and investigate the possibility of providing a broadcast facsimile system to enable industry to obtain a copy of an AD directly from CASA. This provision will increase the flexibility of the system and give business a clear incentive to determine the cheapest and most effective way to access AD information.

Effect on existing regulation

A number of consequential amendments to the existing CARs 1988 will be necessary as the result of enactment of CASR (CAR 1998) Part 39. These will include the:

- * repeal of various existing CARs.,
- * continuation of various existing ADs issued under the repealed legislation;
- * amendment of various existing CARs to deal with the new CASR Part;
- * provision for exemption on the basis of an equivalent level of safety;
- * provision for an alternative method of complying with an AD; and
- * provision for petition for review of ADs.

Consideration of the effectiveness and application of CAR Part 39 is also an element of the major review of aviation legislation being undertaken by CASA. This review will eventually see a reduction in the number of ADs when a future proposed CASR Part 90 Airworthiness Operational Standards, is introduced. Currently, CASA issues ADs to implement Airworthiness Operational Standards. These Airworthiness Operational Standards are included in the regulations of other countries to which Australia is currently seeking to harmonise our regulatory practices. A review team has been established and is currently addressing the CASR Part 90 concept.

5. Consultation

A Notice of Proposed Rule Making - NPRM 9802RP "Airworthiness directives - Civil Aviation Safety Regulation (CASR) - Part 39", was published in May 1998 with the closing date for comment, the 5th of June 1998. The proposal sought to introduce the proposed CASR Part 39 Airworthiness Directives to replace the requirements of the existing Division 6 - Airworthiness Directives CAR 37A.

The availability of the NPRM was widely advertised in the national and capital city press, the CASA amendment service provided to all CASA issued licence and authorisation holders, CASA District Offices and on the CASA internet web site.

Two hundred and twenty six (226) hard copies were distributed to the aviation community. Three hundred and forty two (342) to CASA, and an unknown number distributed (downloaded) via the CASA internet web site and fax-on-request service.

A total of forty seven (47) responses were received from individuals/organisations and CASA technical specialists.

The responses to the NPRM were analysed by a selected group of CASA technical specialists and aviation industry practitioners. It was clear from the responses received, that while there was strong industry support for the proposal, a certain amount of redrafting of the proposed legislation was necessary. This was duly undertaken where appropriate.

A consolidated summary of responses to the NPRM, CASA's evaluation comments, the subsequent disposition of the responses/comments together with the final draft legislation was published and distributed to all respondents and made publicly available in December 1998.

6. Conclusion and recommended option

CASA's decision is to introduce a new CASR Part 39 - Airworthiness Directives, based on the FAA FAR Part 39 requirements and in compliance with ICAO Standards and Recommended Practices. Such a system will enable harmonisation with the legislation of other NAA.'s, as part of CASA's overall review of the Civil Aviation Regulation framework/structure.

7. Implementation and review

The proposed implementation date for the new rule will be 1 July 1999. The proposed CASR Part 39 will replace the existing CAR 1988, 37A.

Review of ADs, operational procedures and the associated regulations is an ongoing function normally undertaken by CASA.

CASA will continue to administer and implement the AD system under its existing budget. Consumer safety will still be accorded high priority under the existing system.

Copies Of This Summary Of *Responses To*

Revised Proposal to NPRM 9804PL Can Be

Obtained By One Of The Following Means:

Post (no stamp required)

Reply Paid 744, NPRM Administration,

Regulatory Framework Program, GPO Box 2005, CANBERRA ACT 2601

E-mail:

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Inquiries can also be sent to the address above, or by telephoning Graeme Smith on (02) 6217 1241 (international +612 6217 1241) or 131757, or Robert Loretan on (02) 6217 1646 (international +612 6217 1646), or 131757 during Australian east coast business hours.