

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 100.7 Amendment Order (No. 2) 2007

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

Legislation

Under subregulation 235 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may give directions about the method of estimating the weight and centre of gravity of an aircraft. Under subregulation 235 (2A) of CAR 1988, it is an offence to contravene a direction.

Under subregulation 5 (1) of CAR 1988, CASA may use Civil Aviation Orders (the **CAOs**) to issue directions mentioned in subregulation 235 (1). Directions were issued in *Civil Aviation Order 100.7* (**CAO 100.7**).

Background

CAO 100.7 sets out the requirements for the periodic weighing of aircraft to establish their weight and centre of gravity. However, the weighing requirements for a balloon vary significantly from other types of aircraft. In July 2007, CAO 100.7 was amended by *Civil Aviation Order 100.7 Amendment Order (No. 1) 2007* (the **CAO 100.7 amendment**) so that CAO 100.7 no longer applied to hot air balloons. At the same time, Civil Aviation Order 100.96 was made specifically for the weighing of hot air balloons.

CASA made the CAO 100.7 amendment and CAO 100.96, firstly, to remove hot air balloons from the operation of CAO 100.7 and, secondly, to make a separate CAO for weighing hot air balloons.

Corrections to avoid doubt and correct references

For the avoidance of doubt, CASA has now taken the opportunity to correct certain errors that had been made in the CAO 100.7 amendment.

Firstly, the CAO 100.7 amendment was expressed as having been made under regulation 157 of CAR 1988 rather than regulation 235 of CAR 1988.

Regulation 157 is about low flying and, as such, would not empower the making of CAO 100.7. However, the mention of regulation 157 was clearly a citation error for regulation 235, under which the related CAO 100.96 was correctly made at exactly the same time as the CAO 100.7 amendment. The Explanatory Statement accompanying the CAO 100.7 amendment made it clear that the CAO 100.7 amendment was intended to be made under regulation 235 and no mention was made of regulation 157.

Nevertheless, to avoid doubt, CASA has made *Civil Aviation Order 100.7 Amendment Order (No. 2) 2007* (the **new CAO 100.7 amendment**) to provide again that that CAO 100.7 no longer applies, not only to hot air balloons, but to any balloon. The amendment states, "In this Order, aircraft does not include a balloon."

The provision is also more appropriately located in a new, separate subsection of CAO 100.7.

Previously the provision stated, “In this section, aircraft does not include a hot air balloon.”.

In the new provision, the reference to “section” is replaced by “Order”. (“Section” was the former style for describing the “Order” that is CAO 100.7.)

Legislative Instruments Act

Under subregulation 5 (1) of CAR 1988, CASA may use CAOs to issue directions mentioned in subregulation 235 (1) of CAR 1988. Under subsection 98 (5) of the Act, where regulations provide for directions to be issued in the form of a CAO, the CAO is stated to be a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the *LIA*). The new CAO amendment is a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

There was consultation with the Professional Ballooning Association of Australia (the *PBAA*), specifically through the CASA/PBAA Joint Technical Committee. The PBAA represents approximately 95% of aerial work, and charter balloon, operators.

Office of Best Practice Regulation (OBPR)

The OBPR does not require a Regulation Impact Statement because a preliminary assessment of the business compliance costs indicates that the amendment will have only a low impact on business.

Making and commencement

The new CAO 100.7 amendment has been issued by the Director of Aviation Safety in accordance with subsection 84A (2) of the Act.

The new CAO 100.7 amendment commences on the day after it is registered.

[Civil Aviation Order 100.7 Amendment Order (No. 2) 2007]