

## **Explanatory Statement**

### **Civil Aviation Act 1988**

#### **Civil Aviation Order 20.16.1 Amendment Order (No. 1) 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 (7) of the *Civil Aviation Regulations 1988* (**CAR 1988**), for the purpose of ensuring the safety of air navigation, CASA may give directions with respect to the method of loading of persons and goods (including fuel) on aircraft. Under subregulation 235 (7A) 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 (7). Directions were issued in Civil Aviation Order 20.16.1 (**CAO 20.16.1**).

#### **Background**

The directions in CAO 20.16.1 have no direct relevance to balloons for the following reasons.

The recently remade CAO 100.96 deals with the weighing of balloons. Recent amendments to CAO 100.7, which concerns the weight control of aircraft, ensure that CAO 100.7 does not apply to balloons because balloon weighing issues are dealt with in CAO 100.96.

Under subregulation 259 (1), a person must not fly a free balloon (i.e. not fixed to one position) if the person does not have the permission of CASA and then may only fly in accordance with the terms of that permission.

Under subregulation 260 (1), a person must not fly a fixed balloon within 4 000 metres of an aerodrome or above 300 feet if the person does not have the permission of CASA and then may only fly in accordance with the terms of that permission.

Relevant CASA permissions contain conditions to be observed that are similar to matters mentioned in CAO 20.16.1, for example, in relation to passenger lists and other relevant loading matters.

Since, in practice, CAO 20.16.1 has no direct relevance to balloons, CASA has made *Civil Aviation Order 20.16.1 Amendment Order (No. 1) 2007* (the **CAO amendment**). This will avoid any misunderstanding and clarify that CAO 20.16.1 does not apply to balloons.

#### **CAO amendment**

The CAO amendment, therefore, amends CAO 20.16.1 to provide that the CAO applies to all Australian aircraft except balloons.

The CAO amendment also clarifies a Note in CAO 20.16.1 about the application of CAO 100.7 in relation to the weight control of aircraft, to make it clear that CAO 100.7 does not apply to balloons.

### **Legislative Instruments Act**

Under subregulation 5 (1) of CAR 1988, CASA may use CAOs to issue directions mentioned in subregulation 235 (7) 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 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 CAO amendment has been issued by the Director of Aviation Safety in accordance with subsection 84A (2) of the Act.

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

[Civil Aviation Order 20.16.1 Amendment Order (No. 1) 2007]