

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 20.16.3 Amendment Order (No. 1) 2009

Legislation

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

Under subregulation 5 (1) of the *Civil Aviation Regulations 1988* (*CAR 1988*), where CASA is empowered to issue certain instruments such as approvals or directions, it may do so in a Civil Aviation Order (*CAO*).

For subregulation 208 (1) of CAR 1988, CASA made CAO 20.16.3 setting out the approval and directions for carriage of persons on board an aircraft, including the allocation of emergency exit row seating. For safety reasons, it is imperative that passengers seated in emergency exit rows are physically competent. CAO 20.16.3 appears to be inconsistent with the operation of the *Disability Discrimination Act 1992* (*DDA*) in that it appears to mandate direct disability discrimination. The purpose of the amendment is to remove outdated language such as references to “handicapped persons” and clarify exiting instructions to airline operators. The Aviation Access Working Group (*AAWG*) has advised the Attorney-General to prescribe CAO 20.16.3 under subsection 47 (2) of the DDA. The Attorney-General has agreed to the prescription.

Legislative Instruments Act (LIA)

Under subregulation 5 (1) of CAR 1988, if CAR 1988 empowers CASA to issue instruments such as approvals or directions, CASA may do so in the form of CAOs. Under subsection 98 (5) of the Act, where regulations provide for an instrument to be issued in the form of a CAO, the CAO so made is a legislative instrument. The CAO amendment is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

Consultation under section 17 has been undertaken through the AAWG. The AAWG’s recommendation has been endorsed by both the Attorney-General and the Minister for Infrastructure, Transport, Regional Development and Local Government.

Office of Best Practice Regulation (OBPR)

The OBPR does not require a Regulation Impact Statement because the amendment is of a minor or machinery nature.

The CAO amendment takes effect on the day after it is registered. It has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 84A (2) of the Act.