

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.5 Amendment Order (No. 2) 2011

Purpose

The purpose of *Civil Aviation Order 82.5 Amendment Order (No. 2) 2011* (the **CAO amendment**) is, first, to modify the maintenance obligations of the holder of an air operator's certificate (**AOC**) to take account of the enactment of Part 42 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*; and secondly, to require any AOC holder, who is also a continuing airworthiness management organisation (a **CAMO**), to be the registered operator of the relevant aircraft.

Legislative background

Under section 27 of the *Civil Aviation Act 1988* (the **Act**), CASA may issue AOCs with respect to aircraft for the purpose of safety regulation. Under section 28 of the Act, CASA must issue the AOC if satisfied that the applicant can comply with the requirements of Australian civil aviation safety legislation.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or Civil Aviation Orders (the **CAOs**).

Additionally, under subsection 98 (4A) of the Act, CASA may issue CAOs, not inconsistent with the Act, in respect to any matter in relation to which regulations may be made for the purposes of, relevantly, section 28BA of the Act (conditions on AOCs).

Part 82 of the CAOs specifies conditions on AOCs for various kinds of operations. CAO 82.5 contains conditions on AOCs that authorise regular public transport (**RPT**) operations in high capacity aircraft. **High capacity aircraft** is defined in paragraph 2.1 of CAO 82.0 as an aircraft certificated as having a maximum seating capacity exceeding 38 seats or a maximum payload exceeding 4 200 kilograms.

1. Maintenance obligations of the holder of an AOC to take account of Part 42 of CASR 1998

Under paragraph 4.1 of CAO 82.5, each AOC holder must provide a system of maintenance of aeroplanes, and establish a system of maintenance control in accordance with CAR 1988.

However, as a result of amendments made by the *Civil Aviation and Civil Aviation Safety Amendment Regulations 2010 (No. 1)* (registered on 14 December 2010), Part 42 of CASR 1998 establishes new continuing airworthiness requirements for the registered operator of an aircraft. Thus, the CAO amendment provides that paragraph 4.1 of CAO 82.5 only applies if Part 42 of CASR 1998 does not apply to the AOC holder.

Under the transitional provisions in regulation 202.180 of CASR 1998 (as made by the *Civil Aviation and Civil Aviation Safety Amendment Regulations 2010 (No. 1)*), commencing on 27 June 2011 and in force until the end of 26 June 2013, Part 42 of

CASR 1998 applies to a registered aircraft of a particular type and model, authorised to operate under an AOC for a purpose mentioned in paragraph 206 (1) (c) of CAR 1988 (in essence, RPT operations), and whose registered operator is a CAMO for that particular type and model of aircraft.

Under regulation 202.181 of CASR 1998, on and after 27 June 2013, Part 42 of CASR 1998 will apply to each registered aircraft that is authorised to operate under an AOC issued for a purpose mentioned in paragraph 206 (1) (c) of CAR 1988 (RPT operations). At that point, all such AOC holders must be CAMOs.

Two Notes, included at the end of paragraph 4.1, help to explain this. The first Note explains that Part 42 of CASR 1998 applies to all registered aircraft, subject to transitional provisions designed to transition operators over a 2 year period.

The second Note explains that commencing on 27 June 2011, subregulation 42.040 (1), with subregulation 202.180 (1), of CASR 1998, requires (**as a condition on the AOC**) that the operator of a registered aircraft authorised to operate under an AOC issued for a purpose mentioned in paragraph 206 (1) (c) of CAR 1988 (generally speaking, RPT), must be approved by CASA as a continuing airworthiness management organisation (a **CAMO**) for the type and model of the aircraft.

2. AOC holder who is a CAMO to be the registered operator of the relevant aircraft

The CAO amendment inserts a new subsection 4A into CAO 82.5, titled “*Obligation to be registered operator*”. **Registered operator** means registered operator under Part 47 of CASR 1998.

The new subsection applies to each AOC holder approved by CASA to be a CAMO under Subpart 42.G of CASR 1998. Under new paragraph 4A.2 of CAO 82.5, unless CASA approves otherwise, the AOC holder must be the registered operator of each Australian aircraft that is authorised under the holder’s AOC to operate for a purpose mentioned in paragraph 206 (1) (c) of CAR 1988 (RPT operations).

Legislative Instruments Act 2003 (the LIA)

Paragraph 28BA (1) (b) of the Act provides that an AOC has effect subject to any conditions “specified in the regulations or Civil Aviation Orders”.

Subsection 98 (4A) of the Act provides that CASA may issue CAOs with respect to any matter in relation to which regulations may be made for the purposes of section 28BA.

Under subsection 98 (4B) of the Act, a CAO issued under subsection 98 (4A) is stated to be a legislative instrument and is, therefore, subject to registration, tabling, and disallowance in the Parliament under sections 24, 38 and 42 of the LIA.

By providing that an AOC has effect subject to any conditions specified in the regulations or CAOs, paragraph 28BA (1) (b) of the Act is considered to be a separate head of power for the making of relevant CAOs. For section 5 of the LIA, and the definition of a **legislative instrument**, such CAOs would be legislative instruments

subject to registration, tabling and disallowance in the Parliament under sections 24, 38 and 42 of the LIA.

The CAO amendment is made under both paragraph 28BA (1) (b) of the Act and subsection 98 (4A) of the Act and is a legislative instrument.

Consultation

For section 17 of the LIA, extensive industry and public consultations were conducted on the maintenance suite of regulations (Parts 42, 66, 145 and 147 of CASR 1998). Advance notice of the consequential amendments was posted on the Standards Consultative Committee (SCC) discussion forum. No comments were received as a result of the posting.

Office of Best Practice Regulation (OBPR)

The instrument has only a low to nil impact on business. OBPR does not require a regulatory impact statement for the CAO amendment because a preliminary assessment of business compliance costs indicates that the amendment will have only a nil to low impact on business.

Commencement and making

The CAO amendment commences on 27 June 2011.

The CAO amendment has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

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