

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.5 Amendment Instrument 2014 (No. 2)

Purpose

The purpose of *Civil Aviation Order 82.5 Amendment Instrument 2014 (No. 2)* (the **CAO amendment**) is to enable air operator certificate (**AOC**) holders for high capacity regular public transport (**RPT**) operations (the **operators**) to unilaterally amend their CASA-approved safety management systems (**SMS**) and human factors and non-technical skills programs (**HF&NTS program**) to maintain or increase aviation safety for the operations. The CAO amendment mirrors similar amendments made to Civil Aviation Order (**CAO**) 82.3 for AOC holders engaged in low capacity RPT operations.

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 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.

Under subparagraph 2.1 (a) of CAO 82.5, each operator must establish and maintain an appropriate organisation, with a sound and effective management structure that uses an SMS approved by CASA.

Under subparagraph 2.1 (c) of CAO 82.5, each operator must have a program, approved by CASA, to train and assess personnel in human factors and non-technical skills with the aim of minimising human error.

Under subsection 2A of CAO 82.5, an SMS is defined as a systematic approach to managing safety and includes the organisational structures, accountabilities, policies and procedures necessary to manage safety in a systematic way. It must also include a statement of the operator's safety policy and objectives, including details of the safety accountabilities of managers; the appointment of key safety personnel; the SMS implementation plan; the relevant third party relationships and interactions; the coordination of the emergency response plan; a safety risk management plan, including hazards, risks and mitigations; a safety assurance system, including safety performance monitoring and measurement, management of change, and continuous

improvement of the SMS; and a safety promotion system, including training, education and safety communication.

Following assessment, relevant operators are issued with CASA SMS approvals and HF&NTS program approvals.

Policy background

Currently, an operator may not change its approved SMS or HF&NTS program, or amend any of the associated documentation, without CASA's approval.

CASA wishes to promote the dynamic and safety-enhancing quality of an effective SMS and HF&NTS program by enabling operators to, in effect, self-manage certain safety-preserving or safety-enhancing changes without the need for CASA's approval. However, operators may only exercise these change self-management discretions in a tightly restricted safety environment in which a series of strict safety conditions must be complied with. Breach of a safety condition can jeopardise an operator's continued status as an AOC holder.

CAO amendment — SMS

Thus, to be eligible for SMS change self-management, an operator must have an SMS amendment process approved by CASA. That process must have the capacity to identify and record reliable information from which a reasoned and persuasive safety case may be developed to demonstrate whether or not a proposed amendment to the SMS is likely to maintain at least the same level of safety as before, or increase the level of safety above that which existed before.

If possessed of such an SMS amendment process, an operator may, without CASA's approval, make a proposed amendment to the operator's SMS, if the proposed amendment is:

- merely editorial; or
- such that no reasonable person could doubt that it increases the level of safety above that which existed before; or
- such that a specific safety case developed in the SMS amendment process (that is based on identified, recorded, reliable and persuasive information) demonstrates that the proposed amendment is likely to maintain at least the same level of safety as before, or increase the level of safety above that which existed before.

If an operator makes an SMS amendment, the amendment must not take effect until it is documented by being incorporated into every copy of the subsection 2A reference documents mentioned above that are used by the operator and to which the SMS amendment is relevant.

The amendment must be notified in writing to CASA in accordance with a procedure and timetable that must be set out in the approved SMS amendment process. (It is CASA's expectation that, in most cases, it will be notified before the SMS amendment is put into effect.)

A critical feature of the scheme under the CAO amendment is that an approved SMS *amendment process* may not itself be altered or amended without the specific written approval of CASA. CASA's written approval may only be given on application and in the form of an approval for a new SMS containing the new SMS amendment process.

In addition, an amendment to part of the SMS on which the approved SMS amendment process itself *directly depends* for its critical capacity is deemed to be an alteration of the SMS amendment process which requires the CASA approval mentioned above.

The critical capacity is the capacity to identify and record reliable information from which a reasoned and persuasive safety case may be developed to demonstrate the effects of a proposed SMS amendment.

Although ostensibly part of the SMS, which is otherwise changeable in accordance with the CASA approved SMS amendment process, change to such critical capacity which helps to determine the safety or otherwise of other changes is deemed by CASA to be a change to the SMS amendment process itself, requiring CASA's approval. This is an important limitation to the operator's SMS amendment process and is essential in the interests of aviation safety.

CAO amendment — HF&NTS program

Everything stated above, in relation to the SMS amendment process, applies in exactly the same way for an HF&NTS program amendment process.

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, and tabling and disallowance in the Parliament, under sections 24, and 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 a separate head of power for the making of relevant CAOs. For section 5 of the LIA, such CAOs would be legislative instruments subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA.

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

Consultation

Consultation under section 17 of the LIA has been carried out as follows.

Since the development and implementation of the SMS concept, CASA had been seeking and receiving feedback from relevant operators on how SMS requirements could be improved. Arising from this, a specific change self-management element within the proposed Part 119 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)* was developed to confer certain change self-management discretions on AOC holders engaged in air transport operations.

The proposed change discretions would, in effect, be exercisable only for certain aspects of an operator's operations and only if the outcome was to maintain or enhance existing levels of aviation safety. Within the limits of the relevant provisions, the ability to make such changes without CASA's approval would enable a more flexible operator response to changing safety circumstances and information.

As Part 119 of CASR 1998 was developed (and itself subject to public consultation), CASA decided to accelerate implementation of this change self-management concept for RPT operators' SMS and HF&NTS programs. This could be done through amendments to the Part 82 series of CAOs dealing with AOC holders.

Thus, in February 2014, CASA published proposed SMS and HF&NTS program change self-management amendments to CAO 82.5 (and also CAO 82.3 for low capacity aircraft), along with related draft guidance material. Industry and the public were invited to comment. The joint CASA/industry Standards Consultative Committee was also briefed on the draft CAO amendments.

Formal responses were received from 2 operators engaged in RPT operations in high capacity aircraft, 1 operator engaged in RPT operations in low capacity aircraft, and 1 private individual. The comments made predominately related to capturing the intent of proposed Part 119 of CASR 1998. Some comments also addressed the need for consistency in the assessment of operators' proposed SMS or HF&NTS program amendment processes.

As a result of comments received, CASA revised the CAO amendments to better reflect the intent of the policy proposed for Part 119 of CASR 1998. The guidance material was also revised to provide clearer guidance to operators on the development of an SMS or HF&NTS program amendment process. Instructions to CASA officers assessing applications for SMS and HF&NTS program amendment processes have also been prepared to guide these officers in assessing applications with a view to achieving consistency of treatment as far as possible.

Office of Best Practice Regulation (OBPR)

OBPR assessed that the proposed amendments are minor in nature and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 15121).

Statement of Compatibility with Human Rights

The Statement in Attachment 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. It indicates that the legislative instrument does not engage any of the applicable rights or freedoms, does not raise any human rights issues, and is, therefore, compatible with the rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

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

[Civil Aviation Order 82.5 Amendment Instrument 2014 (No. 2)]

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

Civil Aviation Safety Regulations 1998

Civil Aviation Order 82.5 Amendment Instrument 2014 (No. 2)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The purpose of *Civil Aviation Order 82.5 Amendment Instrument 2014 (No. 2)* (the **CAO amendment**) is to enable air operator certificate (**AOC**) holders for high capacity regular public transport (**RPT**) operations (the **operators**) to unilaterally amend their CASA-approved safety management systems (**SMS**) and human factors and non-technical skills programs (**HF&NTS program**) to maintain or increase aviation safety for the operations. The CAO amendment mirrors similar amendments made to Civil Aviation Order 82.3 for AOC holders engaged in low capacity RPT operations.

Currently, an operator may not change its approved SMS or HF&NTS program, or amend any of the associated documentation, without CASA's approval. CASA wishes to promote the dynamic and safety-enhancing quality of an effective SMS and HF&NTS program by enabling operators to, in effect, self-manage certain safety-preserving or safety-enhancing changes without the need for CASA approval.

To be eligible for SMS or HF&NTS program change self-management, an operator must have an SMS or HF&NTS program amendment process approved by CASA. If possessed of such an amendment process, an operator may, without CASA's approval, make a proposed amendment to the operator's SMS or HF&NTS program, if the proposed amendment is:

- merely editorial; or
- such that no reasonable person could doubt that it increases the level of safety above that which existed before; or
- such that a specific safety case developed in the amendment process, and based on identified, recorded, reliable and persuasive information, demonstrates that the proposed amendment is likely to maintain at least the same level of safety as before, or increase the level of safety above that which existed before.

Under the CAO amendment, an approved SMS *amendment process* may not itself be altered or amended without the specific written approval of CASA. In addition, an amendment to part of the SMS on which the approved SMS amendment process itself *directly depends* for its critical capacity is deemed to be an alteration of the SMS amendment process which requires the CASA approval mentioned above.

Conclusion

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Civil Aviation Safety Authority