

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.0 Instrument 2014

Legislation

Subsection 28BA (1) (b) of the *Civil Aviation Act 1988* (the *Act*) provides that an air operator's certificate (*AOC*) has effect subject to any conditions specified in the regulations or Civil Aviation Orders (the *CAOs*). Subsection 98 (4A) of the Act empowers CASA to issue CAOs not inconsistent with the Act or the regulations.

Subregulation 209 (1) of the *Civil Aviation Regulations 1988* (*CAR 1988*) provides that the operator and the pilot in command of an aircraft engaged in private operations shall comply with the provisions of the regulations and such additional conditions as CASA directs from time to time in the interest of safety. Regulation 5 of CAR 1988 provides, among other things, that if CASA is empowered to issue a direction, instruction or notification, or to give a permission, approval or authority, CASA may do so by way of issuing CAOs.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

For subsection 28BA (1) (b) of the Act, Civil Aviation Order 82.0 was made on 12 December 2004 as the *Civil Aviation Amendment Order (No. R52) 2004* (**2004 CAO**), also known as F2005B00880 as registered with the Federal Register of Legislative Instruments. Schedule 1 of the 2004 CAO contained the entire section 82.0 of the CAOs (also referred to as CAO 82.0). Subsequent amendments to the 2004 CAO, up to and including the *Civil Aviation Order (Flight Crew Licensing) Repeal and Amendment Instrument 2014 (No. 1)*, were made under the abovementioned provisions of the Act and CAR 1988.

Recent discussions with the Office of Parliamentary Counsel (*OPC*) identified that the existence of CAO 82.0 in a schedule to the 2004 CAO could create legislative ambiguity and was not best practice drafting methodology. To rectify this issue, CASA has decided to repeal the 2004 CAO and remake CAO 82.0 in its entirety by way of issuing the *Civil Aviation Order 82.0 Instrument 2014* (**2014 CAO**). The 2014 CAO does not alter the substantive content or the purpose of the 2004 CAO, as amended, in any way. Rather, the 2014 CAO merely remakes each provision contained in Schedule 1 of the 2004 CAO, as amended, as an equivalent provision in the body of the 2014 instrument in accordance with current legislative drafting standards for numbering and referencing. The 2014 CAO also incorporates the latest legislative amendments made in Schedule 16 of the *Civil Aviation Order (Flight Crew Licensing) Repeal and Amendment Instrument 2014 (No. 1)*.

Should subsequent legislative amendments be made to CAO 82.0, those changes would be made to the 2014 instrument of CAO 82.0 itself, rather than a schedule contained in the 2004 CAO.

Legislative Instruments Act 2003 (the 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 declared to be a legislative instrument under subsection 98 (5AAA). The 2014 CAO is, therefore, a legislative instrument. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

CASA has decided to remake CAO 82.0 as contained in the 2014 CAO after discussions with OPC. The 2014 CAO does not alter the substantive content or purpose of the 2004 CAO, as amended, in any way. The remake updates CAO 82.0 with current best practice drafting methodology. It is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LIA.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment 1.

Regulation Impact Statement

The 2014 CAO does not substantially alter existing arrangements and is of a minor or machinery nature. The underlying provisions of CAO 82.0 have not changed. A Regulation Impact Statement (**RIS**) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required (OBPR id: 14507).

Making and commencement

The 2014 CAO has been made by the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The 2014 CAO commences on the day of registration.

[Civil Aviation Order 82.0 Instrument 2014]

Statement of Compatibility with Human Rights

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

Civil Aviation Order 82.0 Instrument 2014

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

CASA has decided to reissue Civil Aviation Order (CAO) 82.0 by repealing the *Civil Aviation Amendment Order (No. R52) 2004*, as amended and making the *Civil Aviation Order 82.0 Instrument 2014*. CAO 82.0 has not been changed in terms of its substantive content or purpose. The remake ensures that any ambiguity in the interpretation of CAO 82.0 with the advancement of drafting practice since 2004 will be avoided.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority