

## Explanatory Statement

### Civil Aviation Act 1988

### Civil Aviation Order 20.18 (Aircraft equipment — basic operational requirements) Instrument 2014

#### Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under subregulation 207 (2) of the *Civil Aviation Regulations 1988* (**CAR 1988**), a person must not use an Australian aircraft in a class of operation if the aircraft is not fitted with the instruments and equipment approved and directed by CASA. In approving or directing, CASA may have regard only to the safety of air navigation.

Under subregulation 5 (1) of 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 207 (2) of CAR 1988, CASA made CAO 20.18 setting out the approval and directions for aircraft instruments and equipment to meet basic operational requirements. 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.

#### Details of the instrument

This instrument repeals and replaces CAO 20.18.

#### Background

Civil Aviation Order 20.18 was made on 8 December 2004 as the *Civil Aviation Amendment Order (No. R19) 2004*, referred to below as the **2004 CAO**. It was registered with the Federal Register of Legislative Instruments as F2005B00800. Schedule 1 of the 2004 CAO contained the entire section 20.18 of the CAOs (also referred to as CAO 20.18). Subsequent amendments to the 2004 CAO, up to and including the *Civil Aviation Order (Flight Crew Licensing) Repeal and Amendment Instrument 2014 (No. 1)*, which came into effect on 1 September 2014, 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 20.18 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 20.18 in its entirety by issuing the *Civil Aviation Order 20.18 (Aircraft equipment — basic operational requirements) Instrument 2014* (the **2014 instrument**). As required by OPC, this is being done as soon as practicable.

The remaking will include in the 2014 instrument some amendments of the CAO 20.18 provisions. These amendments are required as a consequence of the making of *Civil Aviation Order 20.91 (Instructions and directions for performance-based navigation) Instrument 2014* (the **new Civil Aviation Order 20.91**). There are no changes to the existing contents of

CAO 20.18 apart from those consequential amendments, except for some minor changes of a drafting nature.

### **Details of the amendments consequential on the new Civil Aviation Order 20.91**

Subsection 9A (Directions relating to the use of navigation computer systems) will be omitted. The new CAO 20.91 contains updated directions that have replaced subsection 9A. Subsection 9A would conflict with the new directions. Subsections 9B, 9C and 9D are unaltered and retain their numbers.

Paragraphs 9D.3 (e), 9D.5 (e) and 9D.8 (e) have been amended to update the terminology to be consistent with the requirements of the new Civil Aviation Order 20.91.

In addition, following consultation as mentioned below, references to European Technical Standards, Federal Aviation Administration (*FAA*) Technical Standards and Technical Standards common to both authorities have been defined and updated for consistency with the new CAO 20.91.

### **Consultation**

CASA decided to remake CAO 20.18 as the 2014 instrument in accordance with the request by OPC. As mentioned, the 2014 instrument does not alter the substantive content or purpose of the repealed CAO 20.18 in any way, apart from the amendments referred to above in relation to the new CAO 20.91.

In relation to the amendments of CAO 20.18, that are related to the new Civil Aviation Order 20.91, detailed consultation has been undertaken. The Australian Strategic Air Traffic Management Group (ASTRA) provided consultation in the development of the new Orders. ASTRA consisted of representatives of the aviation industry and CASA officers. Notice of Proposed Rule Making (NPRM) 1320AS was published on 2 July 2014 with drafts of the new Civil Aviation Order 20.91 and the CAO 20.18 amendments attached. Comments on the NPRM Response Form were invited to be submitted by 22 August 2014.

There were 6 respondents to the proposed legislative changes. All respondents supported the rationale for the proposed changes, however, in some instances the respondents proposed changes to the wording or intent of the new CAO 20.91. In many cases, CASA made changes on the lines requested. Where the change could not be made, CASA provided its reasons.

In relation to the CAO 20.18 changes, the references to European Technical Standard Orders (ETSO), FAA Technical Standard Orders (TSO) and common TSO ((E)TSO) have been defined and updated for consistency with the new CAO 20.91.

It is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LIA in relation to the 2014 instrument.

### **Statement of Compatibility with Human Rights**

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

### **Regulation Impact Statement**

The Office of Best Practice Regulation (*OBPR*) assessed the impact of the CAO 20.18 amendments contained in the 2014 instrument on business and competition as minor and indicated that a RIS was not required (OBPR id: 17008).

**Making and commencement**

The 2014 instrument 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 instrument commences on the day of registration.

[Civil Aviation Order 20.18 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 20.18 (Aircraft equipment — basic operational requirements) 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**

The legislative instrument repeals and replaces the Civil Aviation Order 20.18 (Aircraft equipment — basic operational requirements) (*CAO 20.18*).

The primary purpose of making the legislative instrument is to remove problems identified by the Office of Parliamentary Counsel with the existence of CAO 20.18 in a schedule to another Civil Aviation Order (*CAO*). CASA decided to repeal the 2004 CAO and remake CAO 20.18 in its entirety.

The remaking will include in the 2014 instrument some amendments of the CAO 20.18 provisions. These amendments are required as a consequence of the making of *Civil Aviation Order 20.91 (Instructions and directions for performance-based navigation) Instrument 2014* (the *new Civil Aviation Order 20.91*). There are no changes to the existing contents of CAO 20.18 apart from those consequential amendments and minor changes of a drafting nature.

The legislative instrument takes account of CASA's response to the ICAO harmonisation process for use of PBN.

The 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*. The instrument does not engage any of the applicable rights or freedoms and is compatible with human rights, as it does not raise any human rights issues.

#### **Conclusion**

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

**Civil Aviation Safety Authority**