

## **Explanatory Statement**

### **Civil Aviation Act 1988**

### **Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 1)**

#### **Purpose**

The purpose of *Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 1)* (the **CAO amendment**) is to amend the conditions in Civil Aviation Order 104.0 (**CAO 104.0**) which apply to maintenance organisations approved under regulation 30 of the *Civil Aviation Regulations 1988 (CAR 1988)*.

#### **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 30 (1) of CAR 1988, a person engaged, or intending to be engaged in, distribution or maintenance of aircraft, aircraft components or aircraft materials, may apply to CASA for a certificate of approval (**COA**) in respect of those activities.

Under subregulation 30 (3) of CAR 1988, CASA may, for the purpose of ensuring the safety of air navigation, include in a certificate of approval granted under the regulation “an endorsement that the certificate is granted subject to a condition set out in . . . a specified Part or Section of the Civil Aviation Orders”.

The conditions in CAO 104.0 regulate the way in which the holders of certificates of approval under regulation 30 of CAR 1988 may train and authorise their employees to perform maintenance services, including the certification of maintenance, for particular aircraft or aircraft systems.

The CAO amendment simplifies these conditions and recognises changes to maintenance standards, including the introduction of Manuals of Standards under the *Civil Aviation Safety Regulations 1998 (CASR 1998)*. They also provide a new method of training persons to maintain wood and fabric aircraft.

#### **Background**

Under subsection 5 of CAO 104.0, a COA holder may issue a certification authorisation to an excluded system employee, as defined in the CAO, for carrying out maintenance on an excluded system (being a system on which the employee would otherwise not be able to carry out that maintenance). An authorisation is only in force for a period of 6 months. Issue of a notice of completion of training and assessment at the end of the 6 months allows CASA to consider updating the employee’s licence by removing the exclusion or adding a relevant rating.

#### **CAO amendment**

The CAO amendment allows the process of issuing a notice of completion of training and assessment to be streamlined. This is done by allowing the issue of a provisional notice of completion of training and assessment after 5 months, with a final notice of completion being issuable not more than 3 days before the end of the 6 month period. This allows CASA to arrange for removal of any limitation without undue delay.

Introduction of the new policy requires the amendment of subsections 5, 6 and 7. It is also recognised in the new subsection 10.

The CAO amendment also amends CAO 104.0 so that the requirement to hold a qualification to perform maintenance on an unlisted aircraft, being a warbird or a historic or replica aircraft (**WHR aircraft**) that is not mentioned in Appendix 3, applies only if it is a turbine-powered WHR aircraft. This reduces the scope of that requirement in its application to piston-engine aircraft.

The CAO amendment also introduces a new subsection 10 to allow COA holders to introduce a training and authorisation system for employees who carry out maintenance on wood and fabric aircraft. Similarly, the commencement of subsection 8AA (which deals with the introduction of new conditions for WHR training and assessment in subsection 8) has been extended to allow existing COA holders extra time to comply with the new provisions in that subsection. They may, however, elect to comply with subsection 8AA earlier on a voluntary basis.

Other amendments are also included. Appendix 2 and all references to it have been removed because its equivalent is contained in Table 2 of Appendix IX of the Part 66 Manual of Standards. References to a maintenance training organisation as one approved under regulation 147.030 have been included. These changes reflect the growing application of CASR 1998 and instruments, such as Manuals of Standards that are issued under it, being introduced in place of previous requirements in CAR 1988.

#### ***Legislative Instruments Act 2003 (LIA 2003)***

Under subsections 98 (5) and (5AAA) of the Act, where the regulations provide for certain instruments to be issued in the form of CAOs, such CAOs are legislative instruments. The CAO amendment is, therefore, a legislative instrument and it is subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA 2003.

#### **Consultation**

A proposal to amend CAO 104.0 in line with the CAO amendment was notified on the CASA website as Project MS 13/23 on 23 July 2013. The proposals were well received and constructive feedback was provided. As well as notifying industry via the standard consultation method, CASA interacted directly with the affected WHR aircraft operators and maintainers in finalising the amendment proposals.

#### **Office of Best Practice Regulation (OBPR)**

OBPR assessed that the proposed amendment is minor in nature and that no further analysis, in the form of a Regulation Impact Statement, was required (OBPR ID: 17498).

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

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

#### **Making and commencement**

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.

The CAO amendment commences on the day after registration.

*[Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 1)]*

## Statement of Compatibility with Human Rights

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

### Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 1)

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 modifies the requirements of Civil Aviation Order 104.0.

The primary purpose of *Civil Aviation Order 104.0 Amendment Instrument 2015 (No. 1)* is to streamline existing procedures and to make other amendments to bring the Order into line with the requirements of the *Civil Aviation Safety Regulations 1998* and new instruments issued under those Regulations. They also contain new procedures for authorising persons to maintain wood and fabric aircraft.

#### 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**