

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Infrastructure and Regional Development**

*International Interests in Mobile Equipment (Cape Town Convention) Rules 2014*

### **Background**

The *International Interests in Mobile Equipment (Cape Town Convention) Act 2013* received Royal Assent in June 2013. The Act sets the legislative framework for Australia's accession to the *Convention on International Interests in Mobile Equipment* and the Protocol thereto on matters specific to aircraft equipment (collectively, the 'Cape Town Convention'). The Act provides for instruments to be made under the legislation to give the Cape Town Convention effect in Australia.

### **Purpose**

The purpose of the legislative rules (the Rules) is to confer powers upon the Civil Aviation Safety Authority (CASA) in relation to an Irrevocable Deregistration and Export Request Authorisation (IDERA). IDERAs are a voluntary measure that provides greater security to creditors by preventing a debtor from flying the asset to a jurisdiction where the Cape Town Convention does not apply.

To facilitate this remedy, the registration holder will be able to submit an IDERA to CASA indicating that the 'authorised party' is the only party that has the right to deregister and export a specified aircraft object.

The Rules also provide for an authorised party to issue a certified designee confirmation letter (CDCL). By signing a CDCL an authorised party will transfer its rights to the certified designee. The CDCL cannot be withdrawn unless it has the consent of the certified designee.

The Rules provide for CASA to charge a processing fee to cover the administrative costs associated with the recording, removal and exercise of an IDERA.

Further detail on the administrative processes for the registration, cancellation and removal of an IDERA or CDCL will be provided in future CASA advisory circulars.

### **Consultation**

A public consultation process on the draft Rules was conducted for a period of four weeks in August 2014. The Department of Infrastructure and Regional Development (the Department) posted a draft copy of the Rules and an explanation of the purpose and intent of the Rules on the Department's website and publicised the process through industry organisations.

Copies of the documentation were also provided to airlines, lawyers and financiers who have engaged with the Department in developing the implementation legislation.

Submissions made to the Department were supportive of the draft Rules and stakeholders noted that the processing fee charged by CASA is reasonable given the potential savings airlines will be eligible for following the Cape Town Convention's entry into force.

The 2014 public consultation process followed formal stakeholder consultations regarding the merits of Australia's accession to the Cape Town Convention conducted by the Attorney General's Department in 2003 and the Department in 2008. Limited feedback was received but, of those that responded, there was broad support for accession.

The Department also released the Cape Town Convention Consultation Paper on 22 November 2010, inviting stakeholders to comment on a number of Convention issues that had yet to be explored with industry. This consultation round generated greater industry interest and, again, there was broad support amongst the respondents to accede to the Convention.

Australia's accession to the Cape Town Convention was also considered by the Joint Standing Committee on Treaties on 4 February 2013. The Committee recommended that binding treaty action be taken.

### **Statement of Compatibility**

These Rules do not engage any of the applicable rights or freedoms and are 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*.

**Authority:** Section 10 of the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*.

## Notes on Rules

### **Part 1**            **PRELIMINARY**

#### **Rule 1**            **Name of Rules**

This clause is a formal provision specifying the title of the Rules.

#### **Rule 2**            **Commencement**

This Rule sets out the commencement date of the Rules. The Rules will commence on the day sections 3 to 10 of the *International Interests in Mobile Equipment (Cape Town Convention) Act 2014* are Proclaimed. It is intended that the Rules will commence on the same day as the Cape Town Convention and Protocol come into force in Australia.

#### **Rule 3**            **Definitions**

This Rule defines specific terms and clarifies meanings of terms used in the Rules and their relation to terms used in the Cape Town Convention and Part 47 of the *Civil Aviation Safety Regulations 1998*.

### **Part 2**            **RECORDATION OF AUTHORISATIONS ON THE AUSTRALIAN CIVIL AIRCRAFT REGISTER**

#### **Rule 4**            **Submission and Recording of an IDERA**

This Rule outlines the process by which IDERAs are submitted to CASA. Provided the request is made in accordance with the terms this Rule, CASA will record the IDERA on the Australian Civil Aircraft Register and return a countersigned original copy to the requesting registration holder within five working days. Only one IDERA can be recorded against a specific aircraft at any given time.

#### **Rule 5**            **Submission and recording of CDCL**

This Rule provides for CDCLs to be recorded against an IDERA which has already been registered on the Australian Civil Aircraft Register. Provided the request is made in accordance with the terms of this Rule, CASA will record the CDCL on the Australian Civil Aircraft Register and return a countersigned original copy to the requesting registration holder within five working days. Only one CDCL can be recorded against a specific aircraft at any given time.

#### **Rule 6**            **Removal of an IDERA**

This Rule provides for the removal of an IDERA from the Australian Civil Aircraft Register. Provided the request is made in accordance with the terms of this Rule, CASA will remove the IDERA from the Australian Civil Aircraft Register as soon as practicable.

#### **Rule 7**            **Removal of CDCL**

This Rule provides for the removal of a CDCL from the Australian Civil Aircraft Register. Provided the request is made in the approved form, CASA will remove the CDCL from the Australian Civil Aircraft Register as soon as practicable.

## **Rule 8            De-registration requests**

This Rule prescribes the process of exercising a deregistration request under an IDERA or a CDCL. An authorised party or, if a CDCL has been recorded against the IDERA, a certified designee are the only parties who request de-registration of an aircraft.

In making the request, the authorised party (or certified designee) must certify that the aircraft is not subject to an interest that ranks in priority to it and, if so, that the higher ranking interest has consented to its de-registration.

Provided the request is made in accordance with this Rule, CASA will facilitate the de-registration within five days and, to the extent consistent with its functions, cooperate and assist with the export of the aircraft.

## **Part 3            ADMINISTRATIVE PROCEDURES**

### **Rule 9            Forms and Administrative Procedures**

This Rule requires CASA to approve forms associated with the registration, cancellation and removal of an IDERA or CDCL. It also gives CASA the authority to use and disclose the personal information contained in an IDERA or CDCL on the Australian Civil Aircraft Register.

### **Rule 10          Fees**

This Rule specifies fees payable to CASA for the registration, cancellation and removal of an IDERA or CDCL (outlined in the fee schedule at Schedule 3). It also requires CASA to not act on a request unless payment for that request has been tendered.

### **Schedule 1    IDERA**

Schedule 1 prescribes the form of the Irrevocable De-Registration and Export Request Authorisation.

### **Schedule 2    CERTIFIED DESIGNEE CONFIRMATION LETTER**

Schedule 2 prescribes the form of the Certified Designee Confirmation Letter template.

### **Schedule 3    FEE SCHEDULE**

Schedule 3 prescribes the applicable fees for the IDERA process.