

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 100.27 (Non-destructive testing authorities) Instrument 2015

Purpose

The purpose of *Civil Aviation Order 100.27 (Non-destructive testing authorities) Instrument 2015* (the **NDT instrument**) is to authorise certain airworthiness authority (**AA**) holders to carry out non-destructive testing (**NDT AA**).

The NDT instrument replaces *Civil Aviation Order 100.27 Instrument 2007 (CAO 100.27)*. CAO 100.27 set out the requirements for the issue of an NDT AA under regulation 33B of the *Civil Aviation Regulations 1988 (CAR 1988)*.

Legislative background for making the NDT instrument

Under regulation 5 of CAR 1988, if CASA is empowered or required under the Regulations to give a permission, approval or authority, CASA may, unless the contrary intention appears in the regulation conferring the power or function or imposing the obligation or duty, issue the direction, instruction or notification or give the permission, approval or authority in Civil Aviation Orders (the **CAOs**) or otherwise in writing.

Regulation 33B of CAR 1988 provides that CASA may, in writing, and in accordance with the CAOs, issue various kinds of AAs. Paragraph 33B (1) (d) provides for authorities to be issued to conduct non-destructive testing (**NDT**) of aircraft and aircraft components.

Under regulation 42ZC of CAR 1988, maintenance may only be carried out on an Australian aircraft in Australian territory if permitted under the regulation. The regulation sets out the requisite qualifications and circumstances for persons who may carry out maintenance.

Subregulation 42ZC (5) of CAR 1988 provides that “[i]n spite of subregulations (3) and (4)”, a person may carry out maintenance on an aircraft component, or an aircraft material, if the person is working for the holder of a relevant certificate of approval under regulation 30 of CAR 1988 and, for maintenance that is an inspection using an NDT method, the person is authorised by CASA under subregulation 42ZC (6).

Under subregulation 42ZC (6) of CAR 1988, CASA may, in writing, authorise a person for subregulation 42ZC (5).

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.

CAO 100.27 set out various requirements for the issue of NDT AAs. These dealt with standards for visual acuity and practical experience, examinations and practical tests. The authorities had to be issued with such limitations as were appropriate.

The holder of an NDT AA was authorised to carry out NDT of aircraft or aircraft components and, for the purpose of subregulation 42ZC (5) of CAR 1988, was authorised under subregulation 42ZC (6) to carry out on an aircraft component, or aircraft material, maintenance in the form of an inspection using an NDT method.

The NDT instrument deals with the same matters but introduces a new policy. Project MS 14/05 was instituted to replace CAO 100.27 with an instrument consistent with the maintenance rules of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*. Under CASR 1998, within Part 145 approved maintenance organisations, NDT is carried out by individuals authorised as specialist maintainers who have successfully completed training that meets the National Aerospace Non-Destructive Testing Board of Australia (*NANDTB Aust.*) requirements and a relevant Australian, European or United States Non-Destructive Testing Standard (AS 3669, EN 4179 or NAS 410) or another National Standard approved by CASA as equivalent to AS 3669.

The NANDTB Aust. was established to ensure the performance of NDT in accordance with a recognised standard. The NANDTB Aust. is an independent national aerospace organisation representing Australia's aerospace industry. It recognises level 1 "limited", level 1, level 2, and level 3, NDT qualifications. For paragraph 33B (1) (d) of CAR 1988, when issuing NDT AA authorities, the new instrument applies the standards set out in AS 3669 or another recognised National Standard and requires tests and examinations to be in accordance with those requirements.

For the issue of NDT qualifications, the NDT instrument requires compliance with its procedures. Assessment of an applicant's performance must be carried out by a level 3 qualified person. The NDT instrument also contains requirements for who may test for visual acuity, being an optometrist or some other person recognised by CASA as holding a suitable qualification. It also contains advice on dealing with any perceived limitation in colour perception in relation to an applicant's work and the NDT method involved.

The NDT instrument sets out what needs to be presented as evidence of having reached a particular level of qualification, and sets the duration of an NDT authorisation. It also requires that when conducting NDT, compliance with the visual acuity requirements of AS 3669 is necessary. It does not set the practical and examination levels for NDT qualifications, but applies those in AS 3669 and the recognised standards.

Under subregulation 42ZC (6), the holder of a valid AA to conduct NDT is authorised to conduct maintenance in the form of an inspection using an NDT method.

As a transitional arrangement, authorisations issued under CAO 100.27 are preserved until they lapse.

Legislative Instruments Act 2003 (the LIA)

Subsection 5 (1) of the LIA defines a legislative instrument as an instrument in writing that is of a legislative character and that is or was made in exercise of a power delegated by the Parliament.

Subsection 5 (2) states, without limiting the generality of subsection 5 (1), that an instrument is taken to be of a legislative character if:

- “(a) it determines the law or alters the content of the law, rather than applying the law in a particular case; and
- (b) it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right”.

The new NDT instrument is an instrument affecting the maintenance of aircraft and aircraft components and is of general application. It sets out procedures for the issue of NDT qualifications that vary the policy previously implemented by CAO 100.27. One effect of these new procedures has been to require a transitional provision to preserve existing authorisations. It is, therefore, a legislative instrument under section 5 of the LIA, particularly having regard to paragraph 5 (2) (b), and is subject to registration, and tabling and disallowance in the Parliament, under section 5 of the LIA.

Subsections 98 (5A) and (5AA) of the Act, which set out different criteria for determining whether or not an instrument is a legislative instrument, do not apply to the regulations under which the new instrument is made.

Consultation

Consultation under section 17 of the LIA was conducted as follows. A consultation draft of the NDT instrument was posted to the CASA intranet for CASA staff comment and review from 15 September to 29 September 2014. During this time, the consultation draft was also made available to the NANDTB Board for their consideration and review. Further consultation was conducted with publication of the consultation draft on the CASA website from 2 December to 16 December 2014 for public comment.

CASA received a total of 3 responses to the consultation draft from industry with all respondents in favour of the proposed changes to the CAO.

Office of Best Practice Regulation (OBPR)

The OBPR assessed that the proposed amendment will have a minor regulatory impact and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 18379).

Statement of Compatibility with Human Rights

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

Making and commencement

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

The NDT instrument commences on the day of registration.

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Statement of Compatibility with Human Rights

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

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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 replaces the previous *Civil Aviation Order 100.27*.

This Order deals with the same matters as the previous Order but introduces a new policy. It applies the National Aerospace Non-Destructive Testing Board of Australia requirements as well as relevant Australian, European or United States Non-Destructive Testing Standards (being respectively AS 3669, EN 4179 and NAS 410) or another National Standard approved by CASA as equivalent to AS 3669.

The new Order preserves authorisations issued under the previous Order.

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