

EXPLANATORY STATEMENT

Select Legislative Instrument No. 245, 2015

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

Civil Aviation Act 1988

*Civil Aviation Legislation Amendment (Airworthiness and Other Matters—2015 Measures No. 1)
Regulation 2015*

The *Civil Aviation Act 1988* (the Act) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Subsection 98(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. That subsection also provides that the Governor-General may make regulations for the purpose of carrying out and giving effect to the provisions of the Convention on International Civil Aviation (Chicago Convention) relating to aviation safety, and in relation to the safety of air navigation, being regulations with respect to any other matters to which the Parliament has power to make laws.

Subsection 9(1) of the Act specifies, in part, that the Civil Aviation Safety Authority (CASA) has the function of conducting the safety regulation of civil air operations in Australian territory by means that include developing and promulgating appropriate, clear and concise aviation safety standards and issuing certificates, licences, registrations and permits.

Schedule 5 of the *Civil Aviation Regulations 1988* (CAR)—CASA maintenance schedule, is a generic maintenance schedule that may be used as the maintenance schedule for certain aeroplanes instead of the maintenance schedule provided by the manufacturer. It contained several items that had become inaccurate or obsolete as amendments to the Schedule have lagged behind technological advances. The Regulation makes several minor amendments to Schedule 5 to ensure the CASA maintenance schedule is up to date and accurate.

The *Civil Aviation Safety Amendment Regulations 2010* (No. 2) transitioned the fire protection requirements for air transport aeroplane seat cushions from airworthiness directive AD/GENERAL/63 to Part 90 of the *Civil Aviation Safety Regulations 1998* (CASR), specifically, regulation 90.255. The first phase of this transition only applied to certain air transport operation aeroplanes, while the second phase, to commence on 1 January 2016, would expand the application of regulation 90.255 to a wider range of air transport operation aeroplanes.

The Regulation avoids the application of regulation 90.255 to a wider range of aeroplanes from commencing on 1 January 2016 and will maintain current requirements while further consideration of the issue occurs as part of the Part 90 post implementation review. This will enable future alignment with the planned changes to the operational regulations.

Part 60 of CASR sets out the qualification requirements for flight simulators and flight training devices. The Regulation updates Part 60 to include the latest European standards, consistent with International Civil Aviation Organization (ICAO) requirements.

Pursuant to the Government's response to the Aviation Safety Regulation Review Report, which endorsed a three tier regulatory structure (i.e. act, regulations and standards), the Regulation provides for the use of a Manual of Standards (MOS) for Part 21 and Part 45 that will contain the detailed standards relevant to each Part. In placing greater emphasis on the use of the MOS for each Part, the Regulation also improves the flexibility of CASR to deal with new aircraft construction technologies and for marking of small unmanned aircraft, removing the need for CASA to continue issuing exemptions against the regulations in these situations.

The Regulation also makes various changes to Part 45 of CASR to address the recommendations of the post implementation review of the Part by harmonising aircraft marking requirements with current International Civil Aviation Organization (ICAO) standards and international practices.

Consultation

A consultation document for Schedule 5 of CAR was provided on 30 July 2015 to the Maintenance Standards Sub-committee of the CASA Standards Consultative Committee (SCC) and then on 13 August 2015 to the rest of industry and the public. Several comments were received, all in support of the proposed changes.

A consultation document for the amendment the Civil Aviation Safety Amendment Regulations 2010 (No. 2) was provided on 28 April 2015 to the Certification and Manufacturing Standards Sub-committee of the SCC and then on 12 June 2015 to the rest of industry and the public. CASA received no comments on the proposed changes.

A consultation document that explained the update to Part 60 of CASR was published in March 2015. CASA received only one comment, which supported the amendments.

Following a joint CASA/industry post implementation review of Part 45 and consultation on a Notice of Proposed Rulemaking in 2010, the proposed amendments were published for consultation in July 2015. CASA received several comments regarding details that are to be covered in the Part 45 Manual of Standards, but no comments that required further adjustment of the regulation amendments.

The amendments to Part 21 of CASR were first considered by the Certification and Manufacturing Standards Sub-committee of the SCC in October 2014 and then the rest of industry and the public in March 2015. The Part 21 proposal is supported by the Sub-committee and by industry.

Regulation Impact Statement

The Office of Best Practice Regulation assessed that the proposed amendments will have minor or machinery impacts and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 17339, 18533, 17437, 19278 and 19456). The Regulation has no adverse impacts on industry. The amendments are of benefit to industry.

Statement of Compatibility with Human Rights

A statement of Compatibility with Human Rights is at [Attachment A](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Details of the Regulation are set out in [Attachment B](#).

The amendments to Part 60 of CASR, Schedule 5 of CAR and the *Civil Aviation Safety Amendment Regulations 2010 (No. 2)* commence on the day after registration.

The amendments to Part 21 of CASR and Part 45 of CASR commence on 1 June 2016 and 4 July 2016 respectively, in order to provide time for the manuals of standards to be consulted and issued.

Authority: Subsection 98(1) of the
Civil Aviation Act 1988

Statement of Compatibility with Human Rights

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

Civil Aviation Legislation Amendment (Airworthiness and Other Matters—2015 Measures No. 1) Regulation 2015

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

Schedule 5 of the *Civil Aviation Regulations 1988* (CAR)—CASA maintenance schedule, is a generic maintenance schedule that may be used as the maintenance schedule for certain aeroplanes instead of the maintenance schedule provided by the manufacturer. It contained several items that had become inaccurate or obsolete. This Regulation makes several minor amendments to keep the CASA maintenance schedule up to date and accurate (see Items 1-4 of Schedule 1). These changes are minor and technical and do not have any human rights implications.

The *Civil Aviation Safety Amendment Regulations 2010* (No. 2) transitioned the fire protection requirements for air transport aeroplane seat cushions from Airworthiness Directive AD/GENERAL/63 to Part 90 of the *Civil Aviation Safety Regulations 1998* (CASR), specifically, regulation 90.255. Part 90 of CASR focusses on airworthiness requirements which are additional to the original type certification requirements that owners or operators are responsible for ensuring compliance with prior to operations. Part 90 replaces the system of general Airworthiness Directives that retroactively make new airworthiness standards applicable to existing aircraft. It is considered to be a more appropriate vehicle than the Directives for promulgating retroactive airworthiness standards.

The Regulation avoids the application of regulation 90.255 of CASR from commencing on 1 January 2016 and maintains the current requirements while further consideration of the issue occurs as part of the Part 90 post implementation review, which will be finalised in 2016. As this is a minor and technical amendment given the new requirements have not come into effect, these amendments (see items 4-7 of Schedule 1), do not have any human rights implications.

Part 60 of CASR sets out the qualification requirements for flight simulators and flight training devices. The Regulation updates Part 60 to include the latest European standards (see Items 8-10 of Schedule 1). These amendments are also minor and technical and do not engage any human rights.

Pursuant to the Government's response to the Aviation Safety Regulation Review Report, which endorsed a three tier regulatory structure (i.e. Act, regulations and standards), the Regulation provides for the use of a Manual of Standards (MOS) for Part 21 and Part 45 that would contain the detailed standards relevant to each Part. In placing greater emphasis on the use of the MOS for each Part, the Regulation also improves the flexibility of CASR to deal with new aircraft construction technologies and for marking of small unmanned aircraft, removing the need for CASA to continue issuing exemptions against the current regulations in those situations.

The Part 21 MOS and the Part 45 MOS will be legislative instruments and are to be drafted and consulted in accordance with Subpart 11.J of CASR.

The Regulation also makes various changes to Part 45 of CASR that address the recommendations of the post implementation review of the Part by harmonising aircraft marking requirements with current International Civil Aviation Organization (ICAO) standards and international practices.

Human rights implications

The Regulation engages the right to presumption of innocence, in particular, Article 14(2) of the *International Covenant on Civil and Political Rights* (ICCPR).

Right to presumption of innocence

Article 14 of the ICCPR provides that in the determination of a criminal charge, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Further, in criminal proceedings, people are entitled to a range of protections including minimum guarantees as set out in Article 14(3) of the ICCPR.

The presumption of innocence in Article 14(2) of the ICCPR imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. The right to be presumed innocent will be engaged where strict liability applies or where an evidential burden is placed on the defendant, to produce evidence establishing some element of the defendant's defence.

There are offence provisions in this legislative instrument which are strict liability offences which, in some cases impose an evidential burden on the defendant and which engage the right to the presumption of innocence. These relate to administrative and safety requirements that must be adhered to by regulated individuals or organisations involved in the aviation industry to ensure the integrity of the aviation safety system. Furthermore, where the regulations impose an evidential burden on a defendant, this is in relation to the existence of particular circumstances which are uniquely within the knowledge of the defendant. It is therefore appropriate that the defendant should bear the burden of demonstrating the existence of those circumstances. The Regulation changes the previous Part 45 offences to align with the new regulations and the introduction of the Part 145 MOS. Strict liability offence provisions include the following:

- (1) regulation 45.030—Registration holder to provide copies of approvals under this Part to registered operator;
- (2) regulation 45.055—Display of aircraft markings;
- (3) regulation 45.060—Designs etc. not to modify, obscure or create confusion about sets of markings;
- (4) regulation 45.070—Approval to operate with different or no markings—aircraft operated for an exhibition;
- (5) regulation 45.095—Display of words;
- (6) regulation 45.100—Approval to operate with different or no words—aircraft operated for an exhibition;
- (7) regulation 45.125—Plate to be attached to aircraft; and
- (8) regulation 45.130—Removal or alteration of plates.

To the extent that the imposition of strict liability offences in the Regulation limit the right to be presumed innocent, this limitation is necessary to ensure that aircraft are operated in accordance with the administrative and safety requirements that apply to the aircraft.

These offences in the legislative instrument are considered justified, and therefore not inconsistent with the presumption of innocence, in that they are regulatory in nature, meaning there is an expectation on individuals who participate in the aviation sector to be deemed to have accepted certain conditions, particularly where the regulated activities carry public safety risks.

A defendant maintains the right to a fair and impartial trial of any charges in the Australian criminal justice system. The deterrence effect of the strict liability offences also contributes significantly to maintaining the integrity of the aviation safety system. These limitations are reasonable considering that an effective aircraft marking system is a necessary and fundamental element of the civil aviation safety regulatory system. These offences are also proportionate in that they do not exceed 50 penalty units, being \$9000.

These amendments are consistent with the right to presumption of innocence as they are aimed at the legitimate objective of ensuring regulated owners and operators of aircraft comply with requirements that support the safety and integrity of the aviation industry. Further, these amendments are reasonable, necessary and proportionate to achieving this objective as set out above.

Conclusion

The Legislative Instrument is compatible with human rights and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate in order to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

ATTACHMENT B**Details of the Civil Aviation Legislation Amendment (Airworthiness and Other Matters—2015 Measures No. 1) Regulation 2015****Section 1 - Name of Regulation**

Section 1 names the Regulation as the *Civil Aviation Legislation Amendment (Airworthiness and Other Matters—2015 Measures No. 1) Regulation 2015*.

Section 2 - Commencement

Section 2 provides that the Regulation commences as follows:

- (9) Sections 1 to 4 and anything in this instrument not elsewhere covered by the table – the day after the instrument is registered;
- (10) Schedule 1 – the day after the instrument is registered;
- (11) Schedule 2 – 1 June 2016; and
- (12) Schedule 3 – 4 July 2016.

Section 3 - Authority

Section 3 provides that the Regulation is made under the *Civil Aviation Act 1988*.

Section 4 - Schedule(s)

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1—Amendments commencing day after registration***Civil Aviation Regulations 1988 (CAR)*****Item [1] Paragraphs (4)(a), (b), (c) and (d) of Section 5 of Schedule 5**

Item [1] amends paragraphs (4)(a), (b), (c) and (d) of Section 5 of Schedule 5 to omit reference to section 108.34 of the Civil Aviation Orders and instead refer to the approved maintenance data for the system. This ensures that aircraft radio navigation systems are maintained in accordance with the applicable approved maintenance data for the particular system, which is more appropriate than relying on section 108.34 of the Civil Aviation Orders.

Item [2] Paragraph (4)(g) of Section 5 of Schedule 5

Item [2] repeals paragraph (4)(g) of Section 5 of Schedule 5. This removes the requirement to inspect the Omega/Very Low Frequency (VLF) system as this is an obsolete radionavigation system that ceased operational use in Australia in 1997.

Item [3] Paragraph (4)(k) of Section 5 of Schedule 5

Item [3] repeals paragraph (4)(k) of Section 5 of Schedule 5. This removes the requirement to check an aircraft's Air Traffic Control transponder system for correct performance using code 0101. This requirement is now covered by airworthiness directive AD/RAD/47 using the current ICAO-compliant code 2100.

Civil Aviation Safety Amendment Regulations 2010 (No. 2)

Item [4] Paragraph 2(b)

Item [4] is consequential to item [5]. It changes the list punctuation as a result of the repeal of paragraph 2(c).

Item [5] Paragraph 2(c)

Item [5] is consequential to item [7]. It repeals the commencement provision for Schedule 3, which is repealed by item [7].

Item [6] Regulation 3

Item [6] is consequential to item [7]. It removes reference to Schedule 3, which is repealed by item [7].

Item [7] Schedule 3

Item [7] repeals Schedule 3. Regulation 90.255 requires certain aeroplane seat cushions to comply with the flammability requirements of paragraph 25.853 (c) of the Federal Aviation Regulations, as in force on 26 November 1984. Schedule 3 expands the application of regulation 90.255 to include a wider range of aeroplanes and is due to commence on 1 January 2016. Item [7] therefore avoids the expanded application of regulation 90.255 and maintains the requirements as they apply before 1 January 2016 as recommended by the post implementation review.

Civil Aviation Safety Regulations 1998

Item [8] Subregulation 60.020(2) (table 60.020-2, items 5 and 6)

Item [8] amends table 60.020-2 to refer to EASA instead of the JAA (EASA commenced operation in 2003 and assumed the functions of the JAA in relation to European flight training device qualification levels).

Item [9] Subregulation 60.020(2) (at the end of table 60.020-2)

Item [9] inserts EASA Level 3 as a new item at the end of table 60.020-2. This provides for flight training devices to be qualified to EASA Level 3.

Item [10] Subregulation 90.255(1) (note)

Item [10] is consequential to item [7]. It repeals the note that explains the expanded application of regulation 90.255 on and after 1 January 2016, but which is repealed by item [7].

Schedule 2—Amendments commencing 1 June 2016

Civil Aviation Regulations 1988

Item [1] Subparagraph 42U(1)(a)(ib)

Item [1] is consequential to item [43]. It amends subparagraph 42U(1)(a)(ib) to reflect that regulation 21.475 of CASR refers to the Part 21 Manual of Standards.

Item [2] Sub-subparagraph 42W(2)(b)(iii)(D)

Item [2] is consequential to item [43]. It amends sub-subparagraph 42W(2)(b)(iii)(D) to reflect that regulation 21.475 of CASR refers to the Part 21 Manual of Standards.

Item [3] Subparagraph 42W(4)(c)(ib)

Item [3] is consequential to item [43]. It amends subparagraph 42W(4)(c)(ib) to reflect that regulation 21.475 of CASR refers to the Part 21 Manual of Standards.

Item [4] Subregulation 42ZQ(2) (subparagraph (c)(ib) of the definition of related document)

Item [4] is consequential to item [43]. It amends subregulation 42ZQ(2) to reflect that regulation 21.475 of CASR refers to the Part 21 Manual of Standards.

Civil Aviation Safety Regulations 1998**Item [5] Regulation 11.080 (paragraph (d) of the note)**

Item [5] is consequential to item [43]. It amends regulation 11.080 to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [6] Paragraph 21.003(2B)(b)

Item [6] is consequential to item [43]. It amends paragraph 21.003(2B)(b) to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [7] Subparagraph 21.006A(1)(b)(iv)

Item [7] is consequential to item [43]. It amends subparagraph 21.006A(1)(b)(iv) to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [8] At the end of Subpart 21.A

Item [8] adds new regulation 21.010D, which provides for the issue of a Manual of Standards for Part 21.

The Part 21 Manual of Standards is the primary source of third tier legislation for Part 21, replacing the Civil Aviation Orders and other kinds of legislative instruments where possible. This simplifies and standardises the structure of the legislation and improves its accessibility, which will improve the awareness and knowledge of the legislation.

The new regulation provides that the Manual of Standards may prescribe matters:

- (1) required or permitted by the regulations to be prescribed by the Part 21 Manual of Standards – these matters are those for which a specific mention of the Part 21 Manual of Standards has been inserted; or
- (2) necessary or convenient to be prescribed for carrying out or giving effect to this Part – this provides for the Manual of Standards to cover matters other than those for which there is specific mention of the Manual of Standards.

In all cases, the Part 21 Manual of Standards must be consistent with the *Civil Aviation Act 1988* and the regulations. Subpart 11.J of CASR applies in relation to consultation for the initial issue and any subsequent amendment of a Manual of Standards.

The other items in this Schedule provide for the Part 21 Manual of Standards to prescribe matters under new paragraph 21.010D(a). These amendments improve the clarity of the legislative structure by ensuring that, where possible, if a matter associated with a Part 21 regulation is to be prescribed in third tier legislation then it will be prescribed in the Part 21 Manual of Standards.

Item [9] Paragraph 21.017(1)(a)

Item [9] amends paragraph 21.017(1)(a) to provide for the Part 21 Manual of Standards to prescribe airworthiness standards for a type certificate for an aircraft mentioned in regulation 21.021 or 21.025, or an aircraft engine or propeller.

The standards in the Manual of Standards could be prescribed for use as additional to, instead of or optional to the standards specified in the regulations. It is intended that this provision will primarily be used to prescribe standards for unmanned aircraft.

Item [10] Subregulation 21.017(2)

Item [10] amends subregulation 21.017(2) to provide for the Part 21 Manual of Standards to prescribe airworthiness standards for special classes of aircraft, including the engines and propellers installed thereon. The standards in the Manual of Standards could be prescribed for use as additional to, instead of or optional to the standards specified in the regulations.

Item [11] Subregulation 21.017(2)

Item [11] is consequential to item [10]. It amends subregulation 21.017(2) to ensure consistency of terminology.

Item [12] Subregulation 21.017(5)

Item [12] is consequential to item [10] and item [11]. It amends subregulation 21.017(5) to provide for applications based on airworthiness standards prescribed in the Part 21 Manual of Standards to be subject to the same conditions as for standards specified in the regulations.

Item [13] Subregulations 21.017(6) and (7)

Item [13] amends subregulations 21.017(6) and (7) to provide for the Part 21 Manual of Standards to prescribe airworthiness standards for primary and intermediate category aircraft. The standards in the Manual of Standards could be prescribed for use as additional to, instead of, or optional to, the standards specified in the regulations.

Item [14] Subregulation 21.027(3)

Item [14] amends subregulation 21.027(3) to provide for the airworthiness standards prescribed in the Part 21 Manual of Standards to be used for engines and propellers for surplus aircraft of the Armed Forces.

Item [15] through item [18] Regulation 21.031

Item [15] through item [18] amend regulation 21.031 to ensure that the meaning of type design covers airworthiness standards prescribed in the Part 21 Manual of Standards. Paragraphs 21.031(1)(c) and (2)(c) are reformatted to ensure clarity.

Item [19] At the end of paragraph 21.035(3)(b)

Item [19] amends paragraph 21.035(3)(b) to ensure that the flight test requirements cover the airworthiness standards prescribed in the Part 21 Manual of Standards.

Item [20] Subregulation 21.050(2)

Item [20] amends subregulation 21.050(2) to ensure that the instructions for continued airworthiness requirements cover the airworthiness standards prescribed in the Part 21 Manual of Standards.

Item [21] through item [23] Regulation 21.101

Item [21] through item [23] are consequential to item [10]. They amend regulation 21.101 to ensure consistency of terminology by substituting the term ‘airworthiness standards’ for ‘regulations’.

Item [24] Regulation 21.132 (subparagraph (b)(iv) of the definition of product design)

Item [24] is consequential to item [43]. It amends regulation 21.132 to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [25] and item [26] Regulation 21.172

Item [25] and item [26] amend regulation 21.172 to provide that the Light Sport Aircraft standards other than the American Society for Testing Materials (ASTM) standards are to be prescribed in the Part 21 Manual of Standards.

Item [27] Subparagraphs 21.184(4)(a)(ii) and 21.184A(2)(a)(ii)

Item [27] amends subparagraphs 21.184(4)(a)(ii) and 21.184A(2)(a)(ii) to reflect that airworthiness certification standards in the Civil Aviation Orders will be consolidated in the Part 21 Manual of Standards.

Item [28] Paragraph 21.247(1)(b)

Item [28] is consequential to item [31]. It amends paragraph 21.247(1)(b) to reflect the changed numbering of regulation 21.263.

Item [29] Subregulation 21.248(1) (paragraph (f) of the example)

Item [29] is consequential to item [43]. It amends regulation 21.248 to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [30] Paragraph 21.258(1)(a)

Item [30] is consequential to item [31]. It amends paragraph 21.258(1)(a) to reflect the changed numbering of regulation 21.263.

Item [31] and item [32] Regulation 21.263

Item [31] and item [32] amend regulation 21.263 to provide for the Part 21 Manual of Standards to prescribe the minimum qualifications, experience and knowledge standards for key personnel of an approved design organisation. This is intended to formalise current policies to ensure consistency and improve clarity for industry and reflects the introduction of the Part 21 Manual of Standards.

Item [33] through item [35] Regulation 21.269

Item [33] through item [35] amend regulation 21.269 to provide for the Part 21 Manual of Standards to prescribe alternative requirements for independent checking of design activities by an approved design organisation.

Item [33] provides for the Part 21 Manual of Standards to prescribe alternative minimum qualifications, experience and knowledge standards for individuals to carry out independent checking. Subparagraph 21.269(5)(b)(i) is the default standard that may be applied generally. Subparagraph 21.269(5)(b)(ii) provides for the Manual of Standards to prescribe alternative minimum qualifications, experience and knowledge standards that an approved design organisation may incorporate into their procedures for the particular activities, circumstances or situations described in the Manual of Standards.

Item [34] is consequential to item [33]. It renumbers regulation 21.269 as a consequence of the changes made by item [33].

Item [35] adds a new subregulation 21.269(7), which provides for the Part 21 Manual of Standards to prescribe kinds of design activity for which independent checking is not required. This is intended to include activities such as a:

- (1) minor modification/repair design approval that has no safety effect; or
- (2) minor modification/repair design approval for which the technical data approved under regulation 21.009 has been independently checked.

In all cases for new subregulation 21.269(7), the Part 21 Manual of Standards may specify the circumstances in which the provisions of the Manual of Standards may be applied and the conditions that apply.

Item [36] Subregulation 21.270(1)(paragraph (f) of the example)

Item [36] is consequential to item [43]. It amends regulation 21.270 to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [37] After paragraph 21.305(d)

Item [37] amends regulation 21.305 to provide for the Part 21 Manual of Standards to prescribe a method for approval of a material, part, process or appliance.

Item [38] Subregulation 21.305A(2)

Item [38] amends regulation 21.305A to provide for the Part 21 Manual of Standards to prescribe requirements for approval of a material, part, process or appliance.

Item [39] Paragraph 21.400(d)

Item [39] is consequential to item [43]. It amends regulation 21.400 to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [40] and item [41] Regulation 21.405

Item [40] and item [41] amend regulation 21.405 to provide for the Part 21 Manual of Standards to prescribe alternative standards for a modification/repair design. This is intended to provide for certain specific cases, such as installation of certain kinds of specialised aeromedical equipment, where full compliance with all of the airworthiness standards that would normally apply cannot be shown, but there are other standards that could be applied to ensure an appropriate level of safety.

Item [42] Paragraph 21.448(b)

Item [42] is consequential to item [43]. It amends regulation 21.448 to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [43] Regulation 21.475

Item [43] amends regulation 21.475 to use the Part 21 Manual of Standards to prescribe any alternative method of approval of modification and repair designs. This ensures that any such methods are provided in a single repository.

Item [44] Paragraph 21.502(1)(b)

Item [44] amends paragraph 21.502(1)(b) to provide for the Part 21 Manual of Standards to prescribe an aeronautical specification that applies for approval of an imported material, part, process or appliance.

Item [45] At the end of subregulation 21.502A(3)

Item [45] amends regulation 21.502A to provide for the Part 21 Manual of Standards to prescribe requirements for approval of an imported material, part, process or appliance.

Item [46] and item [47] Regulation 21.601

Item [46] and item [47] amend regulation 21.601 to provide for Australian Technical Standard Orders (ATSO) to be published in the Part 21 Manual of Standards. This provides for ATSOs to be provided in a single, easily accessible repository.

Item [48] Paragraph 21.607(1)(b)

Item [48] amends regulation 21.607 to provide for the Part 21 Manual of Standards to prescribe requirements for a quality system for an ATSO authorisation.

Item [49] Subregulation 42.015(1) (subparagraphs (a)(v) and (b)(iii) of the definition of *Part 21 approval*)

Item [49] is consequential to item [43]. It amends the definition of *Part 21 approval* to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [50] Subparagraph 42.270(1)(f)(ii)

Item [50] is consequential to item [43]. It amends regulation 42.270 to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Item [51] Part 1 of the Dictionary (definition of *ATSO*)

Item [51] is consequential to item [46]. It amends the definition of *ATSO* to reflect the amended regulation 21.601.

Item [52] Part 1 of the Dictionary

Item [52] is consequential to item [8]. It inserts a definition of *Part 21 Manual of Standards*.

Item [53] Subparagraph 10(2)(b)(ii) of Part 3 of the Dictionary

Item [53] is consequential to item [43]. It amends the meaning of *instructions for continuing airworthiness* to reflect that regulation 21.475 refers to the Part 21 Manual of Standards.

Schedule 3—Amendments relating to Part 45***Civil Aviation Regulations 1988*****Item [1] Part 4D (heading)**

Item [1] is consequential to item [3]. It amends the heading of Part 4D because the requirements associated with removal of aircraft registration identification plates have been incorporated into Part 45 of CASR (see new regulation 45.130).

Item [2] Regulation 61

Item [2] is consequential to item [3]. It repeals regulation 61 because the requirements associated with removal of aircraft registration identification plates have been incorporated into Part 45 of CASR (see new regulation 45.130).

Civil Aviation Safety Regulations 1998**Item [3] Part 45**

Item [3] repeals the existing Part 45 and substitutes a new Part 45—Display of nationality marks, registration marks and aircraft registration identification plates.

The new Part 45 significantly improves on the previous regulations. It:

- (1) improves compliance with ICAO standards;
- (2) reduces the number of regulations;

- (3) provides for a Part 45 Manual of Standards, which improve the clarity and flexibility of the legislation; and
- (4) incorporates several exemptions into the regulations.

The new provisions are explained below.

Part 45—Display of nationality marks, registration marks and aircraft registration identification plates

Subpart 45.A—Preliminary

New regulation 45.005—Application of Part 45

This regulation provides that Part 45 applies in relation to the operation of an Australian aircraft.

This regulation makes Part 45 no longer applicable to foreign registered aircraft. Foreign registered aircraft must comply with the laws of the country of registration. Regulation 135 of CAR—Foreign aircraft of Contracting States, also provides that the pilot in command of an aircraft must not allow the aircraft to fly within, or depart from, Australian territory if the aircraft does not comply with the requirements of the Chicago Convention in respect of its nationality mark and registration mark.

New regulation 45.010—Key definitions for Part 45

This regulation provides the key definitions for Part 45.

The definition of *aircraft registration identification plate* has been simplified, with the detail that was previously included in the definition to be transitioned to the Part 45 Manual of Standards.

The definition of *character* has been amended to include a hyphen, which simplifies the regulations.

New regulation 45.015—Meaning of *markings* and *set of markings*

This regulation provides the meaning of *markings* and *set of markings* for Part 45.

The definition of *markings* has been amended to provide for registered gliders and powered sailplanes operating in Australian territory, thereby incorporating current exemption CASA EX38/13 - Exemption - display of markings, into the regulations.

New regulation 45.020—References to aircraft operating for an exhibition

This regulation provides for certain kinds of operations to be included in the meaning of operating for an exhibition. These provisions have been moved from existing regulation 45.095 to improve clarity.

New regulation 45.025—Issue of Manual of Standards for Part 45

This regulation provides for the issue of a Manual of Standards for Part 45.

The new regulation provides that the Manual of Standards may prescribe matters:

- (1) required or permitted by the regulations to be prescribed by the Part 45 Manual of Standards – these matters are those for which a specific mention of the Part 45 Manual of Standards has been included in the regulations; or

- (2) necessary or convenient to be prescribed for carrying out or giving effect to this Part – this provides for the Manual of Standards to cover matters other than those for which there is specific mention of the Manual of Standards.

The Part 45 Manual of Standards will contain the detailed technical standards for the Part, including:

- (1) the number and location of sets of markings for:
 - (a) fixed wing aircraft
 - (b) rotorcraft
 - (c) airships
 - (d) manned free balloons
 - (e) non-spherical balloons
- (2) the requirements for the sets of markings
- (3) the requirements for characters in the sets of markings
- (4) the minimum height of characters in sets of markings
- (5) display of words in sets of markings
- (6) identification plates (making and marking).

In all cases the Part 45 Manual of Standards must be consistent with the Act and the regulations. Subpart 11.J of CASR applies in relation to consultation for the initial issue and any subsequent amendment of a Manual of Standards.

New regulation 45.030—Registration holder to provide copies of approvals under this Part to registered operator

This regulation applies in cases where the registration holder of an aircraft is not the registered operator of the aircraft. If the registration holder holds an approval under Part 45 for the aircraft then they must provide a copy of the approval to the registered operator of the aircraft if the aircraft is to be operated.

An offence against this regulation is an offence of strict liability with a maximum penalty of 50 penalty units.

Subpart 45.B—Aircraft markings

New regulation 45.050—Requirements for aircraft markings

This regulation provides that the Part 45 Manual of Standards may prescribe requirements relating to the display of markings on aircraft. This includes, but is not limited to:

- (1) when markings must be displayed;
- (2) the number of sets of markings that must be displayed;
- (3) the location of sets of markings on aircraft;
- (4) the characters to be used in each set of markings, including height requirements.

This provides for details that were previously contained in the regulations to be transitioned to the Part 45 Manual of Standards, and thereby simplifies the regulations.

New regulation 45.055—Display of aircraft markings

This regulation requires that aircraft must comply with requirements prescribed by the Part 45 Manual of Standards for regulation 45.050.

The registration holder and the registered operator of an aircraft commit an offence if the aircraft is operated and it does not comply with an applicable requirement in the Part 45 Manual of Standards.

The regulation provides several exceptions, including:

- (1) operating with a dealer's mark in accordance with Subpart 47.H;
- (2) if the registration holder of the aircraft holds an approval under regulation 45.065 to display markings other than in accordance with the prescribed requirement;
- (3) if the registration holder of the aircraft holds an approval under regulation 45.070 to display markings other than in accordance with the prescribed requirement, or to display no markings, for the purposes of an exhibition; and
- (4) if the aircraft is operated in relation to the performance of a function of an authority of the Commonwealth or an authority or agency of a State, in circumstances in which knowledge of the operation may reduce the effectiveness of the performance of the function or expose a person to the danger of physical harm or death arising from the actions of another person.

In all cases, the requirements specified in any associated exception approval must be complied with.

An offence against this regulation is an offence of strict liability with a maximum penalty of 50 penalty units.

New regulation 45.060—Designs etc. not to modify, obscure or create confusion about sets of markings

This regulation requires that markings not be obscured. It simplifies the marking interpretation and compliance requirements by combining several previous provisions into one regulation to describe the legibility requirements of markings and related considerations.

The registration holder and the registered operator of an aircraft commit an offence if the aircraft is operated and a design, mark or symbol on an aircraft modifies, obscures or creates confusion about a set of markings on the aircraft.

The regulation provides several exceptions, including:

- (1) a Defence Force symbol or call-sign on an aircraft operated by the Defence Force; or
- (2) a design, mark or symbol on an aircraft approved in writing by CASA.

CASA must not approve a design mark or symbol if granting the approval would adversely affect the safety of air navigation.

An offence against this regulation is an offence of strict liability with a maximum penalty of 50 penalty units.

New regulation 45.065—Approval to operate with different markings—aircraft of special configuration

This regulation provides for CASA to approve an application by the registration holder of an aircraft to display markings on the aircraft other than in accordance with a requirement prescribed by the Part 45 Manual of Standards under regulation 45.050. The regulation also sets out the requirements for the application. CASA must be satisfied that the requirement specified in the application cannot be met because of the configuration of the aircraft.

New regulation 45.070—Approval to operate with different or no markings—aircraft operated for an exhibition

This regulation provides for CASA to approve an application by the registration holder of an aircraft to display markings on the aircraft other than in accordance with a requirement

prescribed by the Part 45 Manual of Standards for regulation 45.050, or to display no markings, for the purposes of an exhibition.

The new regulation also sets out the requirements for the application.

CASA must be satisfied that:

- (1) the aircraft will be operated for an exhibition; and
- (2) the display of markings in accordance with the prescribed requirement is inconsistent with the operation of the aircraft for the exhibition; and
- (3) if the exhibition is in a foreign country—the display of markings in accordance with an approval, or the display of no markings, would not contravene a law of that country.

New subregulation (5) requires the Australian nationality mark and the registration mark of the aircraft to be displayed inside the cockpit and be visible to the crew.

The registration holder and the registered operator of an aircraft commit an offence if an aircraft is operating under an approval under this regulation and the Australian nationality mark and the registration mark of the aircraft are not displayed inside the cockpit clearly visible to the aircraft's crew.

An offence against subregulation (5) is an offence of strict liability with a maximum penalty of 50 penalty units.

Subpart 45.C—Requirement to display words on certain aircraft

New regulation 45.090—Requirements for display of words

This regulation provides that the Part 45 Manual of Standards may prescribe requirements relating to the display of specified words on the following kinds of aircraft:

- (1) aircraft for which a special airworthiness certificate of the kind mentioned in regulation 21.189 is in force (limited category aircraft);
- (2) aircraft for which a special airworthiness certificate of the kind mentioned in regulation 21.185 is in force (restricted category aircraft);
- (3) provisionally certificated aircraft; and
- (4) experimental aircraft.

The requirements may include, but are not limited to:

- (1) the words that must be displayed;
- (2) the location of the words; and
- (3) the manner in which the words must be displayed, including the colour and height of the letters used.

This provides for details that were previously contained in the regulations to be transitioned to the Part 45 Manual of Standards, and thereby simplifies the regulations.

New regulation 45.095—Display of words

This regulation requires that aircraft must comply with requirements prescribed by the Part 45 Manual of Standards for regulation 45.090.

The registration holder and the registered operator of an aircraft commit an offence if the aircraft is operated and it does not comply with an applicable requirement in the Part 45 Manual of Standards.

The regulation excludes aircraft for which the registration holder of the aircraft holds an approval under regulation 45.100 to display words other than in accordance with the prescribed requirement, or to display no words, for the purposes of an exhibition. In all cases the requirements specified in the approval must be complied with.

An offence against this regulation is an offence of strict liability with a maximum penalty of 50 penalty units.

New regulation 45.100—Approval to operate with different or no words—aircraft operated for an exhibition

This regulation provides for CASA to approve an application by the registration holder of an aircraft to display words on the aircraft other than in accordance with a requirement prescribed by the Part 45 Manual of Standards for regulation 45.090, or to display no words, for the purposes of an exhibition.

The new regulation also sets out the requirements for the application and for the approval.

CASA must be satisfied that:

- (1) the aircraft will be operated for an exhibition; and
- (2) the display of words in accordance with the prescribed requirement is inconsistent with the operation of the aircraft for the exhibition; and
- (3) if the exhibition is in a foreign country—the display of words in accordance with an approval, or the display of no words, would not contravene a law of that country.

New subregulation (5) requires the words prescribed by the Part 45 Manual of Standards for regulation 45.090 to be displayed inside the cockpit and be visible to the crew.

The registration holder and the registered operator of an aircraft commit an offence if an aircraft is operating under an approval under this regulation and the words prescribed by the Part 45 Manual of Standards for regulation 45.090 are not displayed in the cockpit clearly visible to the aircraft's crew.

An offence against subregulation (5) is an offence of strict liability with a maximum penalty of 50 penalty units.

Subpart 45.D—Aircraft registration identification plate

New regulation 45.120—Application of Subpart 45.D

This regulation provides that Subpart 45.D applies to an aircraft if:

- (1) the aircraft has a maximum take-off weight of more than 5 700 kg; or
- (2) the aircraft is operating outside Australian territory; or
- (3) the aircraft does not have a manufacturer's data plate attached in accordance with regulation 21.820 (regulation 21.820 only applies to aircraft manufactured on or after 1 October 2000).

New regulation 45.125—Plate to be attached to aircraft

This regulation sets out the requirements for an aircraft registration identification plate, including:

- (1) the aircraft's markings must be displayed on the aircraft registration identification plate for the aircraft; and
- (2) the plate must be attached to the aircraft in a way that ensures that the plate is not likely to be defaced or to become detached from the aircraft;

It also provides for the Part 45 Manual of Standards to prescribe:

- (1) the method of displaying the aircraft's markings on the plate;
- (2) the location of the plate on the aircraft; and
- (3) the material of which the plate must be constructed.

The registration holder and the registered operator of the aircraft each commit an offence if the aircraft is operated and an applicable requirement is not met.

Subregulation (3) provides an exception against the requirements for the method of displaying an aircraft's markings on the aircraft registration identification plate if the registration holder of the aircraft holds an approval under regulation 45.135 to display the aircraft's markings using a different method.

Subregulation (4) provides an exception against the requirements for the location of the aircraft registration identification plate if the registration holder of the aircraft holds an approval under regulation 45.140 to operate the aircraft with the plate attached in a different place.

An offence against this regulation is an offence of strict liability with a maximum penalty of 50 penalty units.

New regulation 45.130—Removal or alteration of plates

This regulation provides that an aircraft registration identification plate must not be removed from an aircraft, other than for the purposes of carrying out maintenance or for ensuring compliance with Part 45.

This regulation also provides that an aircraft registration identification plate must not be altered, other than for the purposes of ensuring compliance with Part 45.

An offence against this regulation is an offence of strict liability with a maximum penalty of 50 penalty units.

New regulation 45.135—Approval of method of displaying markings

This regulation provides for CASA to approve an application from the registration holder of an aircraft for a method of displaying the aircraft's markings on the aircraft registration identification plate for the aircraft that is different from the methods prescribed by the Part 45 Manual of Standards.

CASA must be satisfied that the method of displaying the aircraft's markings is similar to marking by etching, stamping or engraving.

New regulation 45.140—Approval for attachment of plate—aircraft of special configuration

This regulation provides for CASA to approve an application from the registration holder of an aircraft, other than a balloon, to attach the aircraft registration identification plate for the aircraft to the aircraft other than in accordance with the requirements prescribed by the Part 45 Manual of Standards.

CASA must be satisfied that the requirements prescribed by the Part 45 Manual of Standards cannot be met because of the configuration of the aircraft.

Item [4] through item [8] Subregulation 201.004(2) (table 201.004)

Item [4] through item [8] are consequential to item [3]. They amend the table of reviewable decisions at regulation 201.004 of CASR to include decisions made under the new Part 45 regulations. All decisions under the new Part 45 are reviewable.

Item [9] Before regulation 202.200

Item [9] creates a new Division 202.BD.1—Amendments made by the Civil Aviation Amendment Regulation 2000 (No. 3).

Item [10] At the end of Subpart 202.BD

Item [10] inserts a new Division 202.BD.2—Amendments made by Schedule 3 to the Civil Aviation Legislation Amendment (Airworthiness and Other Matters—2015 Measures No. 1) Regulation 2015, which provides the transitional provisions for this Amendment Regulation. The new provisions are explained below.

New regulation 202.205—Approvals—markings on aircraft

This regulation provides that an approval under regulation 45.090 continues according to its terms on and after 4 July 2016, as if it were an approval of a design, mark or symbol granted under regulation 45.060.

New regulation 202.210—Exemptions—antique, experimental and ex-military aircraft

This regulation provides that current regulation 45.100 (i.e. as in force immediately before 4 July 2016) continues to apply to an aircraft covered by paragraphs 45.100(1)(a) and (b) until the aircraft is repainted as if a reference in that regulation to regulations 45.045, 45.050, 45.055, 45.060, 45.065, 45.070, 45.075, 45.080 and 45.085 were a reference to the requirements prescribed by the Part 45 Manual of Standards under regulation 45.050.

However, when the aircraft is repainted, it must comply with the requirements of the new Part 45.

This ensures all aircraft will comply with the ICAO compliant requirements of the new Part 45, but with minimal impact on industry.

New regulation 202.215—Directions—aircraft with special configuration

This regulation provides that a direction under regulation 45.105 continues according to its terms on and after 4 July 2016, as if it were an approval to display different markings granted under regulation 45.065.

New regulation 202.220—Directions—identification plates

This regulation provides that a direction under regulation 45.150 continues according to its terms on and after 4 July 2016, as if it were an approval to attach the aircraft registration identification plate for the aircraft granted under regulation 45.140.

Item [11] Part 1 of the Dictionary (definition of aircraft registration identification plate)

Item [11] repeals the definition of *aircraft registration identification plate* and substitutes a new definition which is specified in new regulation 45.010.

Item [12] Part 1 of the Dictionary (definition of Australian nationality mark)

Item [12] repeals the definition of *Australian nationality mark* and substitutes a new definition which is specified in new regulation 45.010.

Item [13] Part 1 of the Dictionary

Item [13] inserts a new definition of *exhibition*, which is specified in regulation 45.010.

Item [14] Part 1 of the Dictionary (definition of *markings*)

Item [14] repeals the definition of *markings* and substitutes a new definition which is specified in new regulation 45.015.

Item [15] Part 1 of the Dictionary

Item [15] inserts a new definition to provide that the *Part 45 Manual of Standards* means the Manual of Standards issued by CASA under regulation 45.025.

Item [16] Part 1 of the Dictionary (definition of *registration mark*)

Item [16] repeals the definition of *registration mark*, and substitutes a new definition providing that the registration mark of an aircraft, means the registration mark assigned to the aircraft under Subpart 47.G. This is an administrative change only with no effect on industry.

Item [17] Part 1 of the Dictionary (definition of *set of markings*)

Item [17] repeals the definition of *set of markings*. The definition is now provided in new regulation 45.015.