

EXPLANATORY STATEMENT

Select Legislative Instrument No. , 2016

Issued by the authority of the Minister for Infrastructure and Transport

Civil Aviation Act 1988

Civil Aviation Legislation Amendment (Miscellaneous Measures) Regulation 2016

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. Subsection 98(1) 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.

The Regulation contains two schedules. Schedule 1 makes miscellaneous administrative amendments to various Parts of the *Civil Aviation Regulations 1988* (CAR) and *Civil Aviation Safety Regulations 1998* (CASR) following identification of anomalies in the regulations. These include minor editorial and drafting amendments, including amending or introducing certain definitions, repealing spent transitional arrangements, correcting drafting and cross-referencing errors, correcting style errors and amending out-of-date references. Schedule 1 also:

- repeals various provisions under the CAR that provide for certain directions, exemptions or instructions to be disallowable instruments, noting that the disallowance process will still apply to those directions, exemptions or instructions that are legislative instruments by virtue of subsection 98(5AA) of the *Civil Aviation Act 1988* and associated framework;
- amends the heading and requirement for fitment of Airborne Collision Avoidance Systems (ACAS) (used by pilots to avoid a collision with another aircraft) in regulation 262AE of CAR. This clarifies that certain older aeroplanes imported into Australia would not be required to fit the Traffic Alert and Collision Avoidance Systems (TCAS) II version 7.1 as long as they were first registered overseas before 1 January 2014, even though they may be first registered in Australia on or after 1 January 2014;
- clarifies in Part 1 of CASR those things that a Manual of Standards may not prescribe;
- revises the requirements in Part 67 of CASR to include reference to 'documents', either in addition to or instead of the current requirement for the provision of 'information';

- amends the definitions related to unmanned free balloons and their payloads in Part 101 of CASR to more closely align with the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs); and
- replaces a distance condition applicable to a design activity conducted under a procedure design authorisation in Part 173 with reference to the distance specified in the Manual of Standards.

Schedule 2 contains certain remedial amendments relating to Part 66 of CASR (Part 66). The need for these arises from certain provisions in the *Civil Aviation Legislation Amendment (Part 66) Regulation 2015* (the Part 66 Amendment Regulation) which was registered on 15 December 2015 and commenced on 4 July 2016.

One of the purposes of the Part 66 Amendment Regulation was to provide for a specific small aircraft maintenance licence structure using new ratings (called group ratings) for the existing Part 66 category B1 (mechanical) and category B2 (avionics) aircraft maintenance engineer licence format. These formats cover maintenance of aircraft systems and subsystems specifically on small aircraft.

The Part 66 general licensing system already provided for small aircraft licensing but used exclusions to delineate the privileges for a particular licence. By contrast, the specific small aircraft maintenance licence structure was to use a positive statement of licence privileges, with an initial group rating endorsement, followed by additional group rating endorsements available as the relevant competencies for them were achieved.

The training package to support the small aircraft licence structure was to reflect relevant standards and requirements in the Part 66 Manual of Standards, arising from the proposed *Part 66 Manual of Standards Amendment Instrument 2016 (No. 5)* (the MOS Part 66 Amendment), which was also to commence on 4 July 2016.

CASA consultation with the aviation industry on both the Part 66 Amendment Regulation and the proposed Manual of Standards has been ongoing for a number of years, during which the aviation industry sought assurance that the ‘positive statement of licence privileges’ approach for small aircraft licences would be appropriately entrenched. CASA responded by ensuring that the Part 66 Amendment Regulation relevantly contained provisions that CASA ‘must not’ grant a licence subject to an exclusion, other than an exclusion that related to a type rated aircraft type. Type rated aircraft types are not aircraft within the meaning of small aircraft.

Shortly before the MOS Part 66 Amendment was finalised, key stakeholders, including relevant Maintenance Training Organisations (MTOs), requested that CASA postpone implementation of the specific small aircraft maintenance licence structure using new ratings, because there were still outstanding issues to be resolved and some unintended consequences as a result of the proposed new small aircraft maintenance personnel structure.

From 4 July 2016, CASA reverted to issuing small aircraft licences subject to exclusions because this was the most effective way to licence new small aircraft maintenance engineers. However, provisions that CASA ‘must not’ grant a small aircraft licence subject to an exclusion prevent this approach. Despite this, some 14 such licences and ratings (relevant licences) were granted before this was realised.

It is necessary, therefore, to amend Part 66, to undo relevant amendments made by the Part 66 Amendment Regulation and thus permit the grant of small aircraft licences and ratings with exclusions. It is also necessary to validate the 14 licences and ratings that were granted before

this issue came to light. Finally, it is necessary to validate the actions of those licence and rating holders who have acted within the terms of their nominal exclusions. No issue of aviation safety arises because, for practical purposes, the licences and ratings granted subject to exclusions have been granted to people who would otherwise have been entitled to them and entitled to exercise the privileges they would otherwise have conferred.

Consultation

CASA did not consult on the proposed editorial and drafting amendments as the changes rectified administrative anomalies identified by the Office of Parliamentary Counsel, and have no effect on industry. Amendments related to ACAS fitment in CAR 262AE and to definitions for unmanned free balloons and their payloads in Part 101 of CASR reflect exemptions that have been issued by CASA in relation to these matters, thereby limiting the need for ongoing exemptions.

CASA considered that consultation on the remedial amendments relating to Part 66 was not necessary because they are urgently required, entirely beneficial, and designed to facilitate the continued grant of small aircraft licences and ratings to new applicants and, without the amendments, CASA would not otherwise be permitted to grant such licences and ratings. CASA also considered that consultation on the validation amendments was not necessary because they too are urgently required, entirely beneficial, and designed to regularise a small number of licences, ratings and exclusions that are deficient through no fault of their holders. However, it is CASA's policy always to endeavour to consult on proposals as far as is practically possible. In this case, CASA contacted three key organisations representative of the aircraft maintenance industry, informed them of the proposals and sought comments. All three were supportive of the proposals.

Regulation Impact Statement

The Office of Best Practice Regulation assessed the impacts of the proposed changes and determined that a Regulation Impact Statement was not required (OBPR ID: 18640).

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 *Legislation Act 2003*. Details of the Regulation are set out in [Attachment B](#).

The provisions of the *Civil Aviation Legislation Amendment (Miscellaneous Measures) 2016* commence on the day after registration on the Federal Register of Legislation.

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 (Miscellaneous Measures) Regulation 2016

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 Disallowable Legislative Instrument

The Disallowable Legislative Instrument (the **Regulation**) makes miscellaneous administrative amendments to various Parts of the *Civil Aviation Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1998 (CASR)* that have been made under the *Civil Aviation Act 1988 (the Act)*. The editorial and drafting amendments rectify anomalies that were identified in the during legislative drafting and through industry feedback.

The amendments include amending or introducing new definitions, repealing spent transitional arrangements, correcting drafting and cross-referencing errors, correcting style errors and amending out-of-date references. These amendments will not engage human rights.

The amendments also: clarify the things a Manual of Standards (**MOS**) may not prescribe (including the powers of arrest or detention); remove an express legislative defence and change the operation of an offence relating to permissions to fly; and require an applicant for a medical certificate to authorise disclosure of information or documents held by a third party for the purposes of determining whether the applicant meets the relevant medical standard. These amendments will engage human rights.

The Regulation, which amends existing requirements in various parts of the CAR and CASR, will affect operators, crew and other individuals involved in the operation of aircraft. These amendments are consistent with the primary objective of the Act, namely, to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation.

The Regulation commences on the day after the Regulation is registered.

Human rights implications

This regulation engages the following rights:

- the right to protection against arbitrary arrest or detention in Article 9 (1) of the International Covenant on Civil and Political Rights (**ICCPR**);
- the right to the presumption of innocence in Article 14 (2) of the ICCPR;
- the right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the ICCPR.

Right to protection against arbitrary arrest or detention

The right to protection against arbitrary arrest or detention is contained in Article 9 (1) of the ICCPR, which provides that an individual is not to be deprived of liberty except on such grounds and in accordance with such procedures as are established by law.

This right is engaged by Item 29 of the Regulation, which creates a new subregulation 1.008 (3) in the CASR that clarifies that a MOS may not provide powers of arrest or detention. The MOS is a legislative instrument that CASA uses to meet its responsibilities under the Act for promulgating aviation safety standards. The MOS prescribes the detailed technical information (aviation safety standards) that is deemed necessary for the safety of air navigation.

The Regulation is compatible with human rights to the extent that it sets limits on the matters that may be dealt with in a MOS, in particular, prescribing that a MOS may not provide powers of detention or arrest.

Presumption of innocence

The presumption of innocence is contained in Article 14 (2) of the ICCPR. The presumption of innocence imposes on the prosecution the burden of proving charges, and guarantees that no guilt can be presumed until charges have been proved beyond reasonable doubt. In general, consistency with the presumption of innocence requires the prosecution to prove each element of a criminal offence beyond reasonable doubt.

Strict liability offences will not violate the presumption of innocence if they are reasonable in the circumstances and maintain the rights of the accused. Such a provision may be justified if the nature of the offence makes it very difficult for the prosecution to prove each element, or if it is clearly more practical for the accused to prove a fact than for the prosecution to disprove it.

Subregulation 139 (1) of CAR is an existing strict liability offence that requires the defendant, the pilot in command, to carry certain documents on Australian aircraft. Subject to various exceptions set out in subregulations 139 (2) and (3), documents required to be carried include the flight manual (if any) for the aircraft, the aircraft's certificate of registration and certificate of airworthiness, and licences and medical certificates of the operating crew. Subregulation 139 (5) provides that it is a defence to a prosecution under subregulation 139 (1) if the flight was authorised by a permission to fly under regulation 317 of CAR, or was authorised by a special flight permit issued by CASA under regulation 21.197 of CASR.

Item 18 of the Regulation removes the express legislated defences to subregulation 139 (1) of CAR and changes the operation of the offence so that the offence will no longer apply if the flight is authorised by a special flight permit issued by CASA in accordance with regulation 21.197 of CASR. This change aligns the operation of subregulation 139 (1) with best drafting practice. Regulation 317 of CAR is a transitional provision for permissions to fly that is spent and is separately repealed by the Regulation.

The Regulation engages with the right to the presumption of innocence and enhances the protection of human rights by narrowing the applicability of the strict liability offence to exclude pilots in command who hold a special flight permit, rather than requiring pilots in command to defend any prosecution action by producing a special flight permit. This change ensures that prosecution action is not conducted in the first place.

The use of strict liability offences is consistent with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the **Guide**) published by the Attorney-General's Department. In particular, subpart 2.2.6 of the Guide states that application of strict liability to all physical elements of an offence may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime deterring certain conduct and where it is necessary to ensure the integrity of a regulatory regime.

Accordingly, any potential limitation of Article 14 (2) of the ICCPR is necessary, reasonable and proportionate to ensure the proper administration and enforcement of Australia's aviation safety system, by removing potentially onerous requirements on pilots in command in particular circumstances.

Right to privacy

The right to protections against arbitrary and unlawful interferences with privacy, contained in Article 17 of the ICCPR, provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy.

The right to privacy is engaged by Items 35 and 38 of the Regulation, which respectively substitute in the CASR a new paragraph 67.180 (2) (d) and subparagraph 67.225 (3) (b) (i). The two substituted provisions require an applicant for a medical certificate to authorise disclosure to CASA, a medical examiner or a Designated Aviation Medical Examiner (**DAME**), information or documents that are held by another person, organisation, body or authority for the purposes of determining whether the applicant meets the relevant medical standard. However, the authorisation granted by the medical certificate applicant does not extend to the disclosure of information or documents collected for use as evidence in a legal proceeding that has not been admitted as evidence in a court, or is otherwise protected by client legal privilege or exclusions in the public interest.

The right to privacy is also more broadly engaged by Items 32, 33, 34, 37, 40, 41, and 42 of the Regulation, which expand the requirement to authorise disclosure to CASA of any information or documents that may help CASA decide whether the relevant medical standard has been met.

Notably, Items 36 and 39 of the Regulation enhance the right of privacy by protecting a person, organisation, body or authority from disclosing information or documents that were collected for use as evidence in legal proceedings but which have not been admitted in a court or are not permitted to be admitted in a court under the *Evidence Act 1995*.

To the extent that these amendments limit the rights protected under Article 17 of the ICCPR, these limitations are not arbitrary, and are necessary, reasonable and proportionate to ensure the proper administration and enforcement of Australia's aviation safety system.

It is necessary for CASA or a DAME to receive relevant medical information or documents to ensure that only appropriate individuals who meet the relevant medical standard are involved in aviation activities, which have inherent safety risks. These amendments (which broaden the scope of authorising the disclosure of information, to the disclosure of information and documents) are consistent with this objective, in that they will ensure that individuals are medically fit to operate within Australia's aviation environment, thus promoting the safety of aviation.

The protections provided by the *Privacy Act 1988* continue to apply to personal information collected by CASA.

The right to privacy is also engaged by Item 29 of the Regulation, which creates a new subregulation 1.008 (3) in the CASR that clarifies that a MOS may not provide powers of entry, search or seizure. This enhances the protection of privacy.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights. 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.

Details of the *Civil Aviation Legislation Amendment (Miscellaneous Measures) Regulation 2016***Section 1 - Name of regulation**

This section provides that the title of the Regulation is the *Civil Aviation Legislation Amendment (Miscellaneous Measures) Regulation 2016*.

Section 2 - Commencement

This section provides that the regulation commences the day after registration on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the *Civil Aviation Legislation Amendment (Miscellaneous Measures) Regulation 2016* is made under the *Civil Aviation Act 1988*.

Section 4 - Schedule(s)

This section 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*Civil Aviation Regulations 1988***Item [1] Subregulation 2(1) (definition of *group A ultralight*)**

Item [1] omits 'Recreational Aviation Australia Inc.' and substitute 'Recreational Aviation Australia Incorporated'.

Item [2] Subregulation 2(1) (definition of *maintenance schedule*)

Item [2] amends the current definition of 'maintenance schedule' to include a maintenance schedule for primary, intermediate, restricted or limited category aircraft as permitted by regulation 42CA of CAR.

Item [3] Subregulation 2(1) (definition of *power-assisted sailplane*)

Item [3] omits 'the Gliding Federation of Australia' and substitute 'The Gliding Federation of Australia Incorporated'.

Item [4] Subregulation 2(1) (definition of *sport aviation body*)

Item [4] repeals the definition of 'sport aviation body' in existing subregulation 2(1).

Item [5] Subregulation 5(3)

Item [5] omits 'notified in the *Gazette*' and substitute 'registered on the Federal Register of Legislation'.

Item [6] Regulation 5A

Item [6] removes the conditions under which certain prescribed directions and exemptions are considered to be disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*, given that section 46A no longer exists. Despite the repeal of regulation 5A, directions and exemptions that are legislative instruments under subsection 98(5AA) of the *Civil Aviation Act 1988* is still subject to disallowance under the *Legislation Act 2003*.

Item [7] Subregulation 43(7)

Item [7] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [8] Subregulation 43(8)

Item [8] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [9] Subregulation 43(8)

Item [9] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [10] Subregulation 43(13)

Item [10] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [11] Subregulation 47(1)

Item [11] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [12] Subregulation 47(2)

Item [12] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [13] Paragraph 48(5)(b)

Item [13] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [14] Subregulation 5.138(6) (*definition of private pilot certificate (balloons)*)

Item [14] omits 'Australian Ballooning Federation Inc' and substitute 'Australian Ballooning Federation Incorporated'.

Item [15] Subregulation 99AA(6A)

Item [15] repeals the provision establishing that a direction or an instruction under s99AA (5) or (5A) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*, given that section 46A no longer exists. Despite the repeal of the subregulation, directions and exemptions that are legislative instruments under subsection 98(5AA) of the *Civil Aviation Act 1988* is still subject to disallowance under the *Legislation Act 2003*.

Item [16] Subregulation 133(1)

Item [16] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [17] Subregulation 133(2)

Item [17] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [18] Subregulation 139(5)

Item [18] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [19] Subregulation 174A(1C)

Item [19] repeals subregulation 174A(1C), which provides that instructions under subregulation 174A(1), not issued in the form of a Civil Aviation Order, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*, given section 46A no longer exists. Despite the repeal of the subregulation, instructions that are legislative instruments under subsection 98(5AA) of the *Civil Aviation Act 1988* is still subject to disallowance under the *Legislation Act 2003*.

Item [20] Subregulation 174D(3A)

Item [20] repeals subregulation 174D(3A), which provides that instructions under subregulation 174D(1), not issued in the form of a Civil Aviation Order, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*, given section 46A no longer exists. Despite the repeal of the subregulation, instructions that are legislative instruments under subsection 98(5AA) of the *Civil Aviation Act 1988* is still subject to disallowance under the *Legislation Act 2003*.

Item [21] Subregulation 177(1C)

Item [21] repeals subregulation 177(1C) which provides that instructions under subregulation 177(1), not issued in the form of a Civil Aviation Order, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*, given s46A no longer exists. Despite the repeal of the subregulation, instructions that are legislative instruments under subsection 98(5AA) of the *Civil Aviation Act 1988* is still subject to disallowance under the *Legislation Act 2003*.

Item [22] Subregulation 179A(3A)

Item [22] repeals subregulation 179A(3A), which provides that instructions under subregulation 179A(1), not issued in the form of a Civil Aviation Order, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*, given s46A no longer exists. Despite the repeal of the subregulation, instructions that are legislative instruments under subsection 98(5AA) of the *Civil Aviation Act 1988* is still subject to disallowance under the *Legislation Act 2003*.

Item [23] Subparagraph 206(1)(b)(i)

Item [23] makes a consequential amendment as a result of the omission of *Transitional: permissions to fly* by item [27].

Item [24] Paragraph 210B(1)(b)

Item [24] inserts 'of CASR' after reference to Part 61.

Item [25] Regulation 262AE (heading)

Item [25] repeals the existing heading and substitute '262AE ACAS requirements—certain other aeroplanes'.

Item [26] Subparagraph 262AE1(b)

Item [26] amends the existing provision to clarify that the regulation applies to the date of first registration of the aeroplane, whether in Australia or elsewhere.

Item [27] Regulation 317

Item [27] repeals the spent transitional provision.

*Civil Aviation Safety Regulations 1998***Item [28] Regulation 1.008 (heading)**

Item [28] is repealed and replaced with 'Manuals of Standards'.

Item [29] After subregulation 1.008(2) (before the note)

Item [29] inserts a new subparagraph 1.008(3) to provide clarification of those things that a MOS may not do, including to create an offence or civil penalty; to provide powers of arrest, detention, entry, search or seizure; to impose a tax; set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in these Regulations; or to directly amend the text of these Regulations.

Item [30] Regulation 61.010 (paragraphs (a), (b) and (c) of the definition of *recreational aviation administration organisation*)

Item [30] repeals existing paragraphs (a), (b) and (c), and substitute the registered business names of the listed entities.

Item [31] Paragraph 67.030(3)(b)

Item [31] inserts 'or document' after 'information'.

Item [32] Subregulation 67.030(5)

Item [32] inserts 'and documents' after 'information'.

Item [33] Subregulation 67.035(4)

Item [33] inserts 'and documents' after 'information'.

Item [34] Subregulation 67.040(3)

Item [34] inserts 'and documents' after 'information'.

Item [35] Paragraph 67.180(2)(d)

Item [35] is repealed and replaced with revised wording, to improve comprehension, that refers to the applicant authorising the disclosure of any information or documents about the applicant for a medical certificate.

Item [36] Paragraphs 67.180(5)(a) and (b)

Item [36] inserts 'or a document' after 'information'.

Item [37] Paragraph 67.180(6)(e)

Item [37] inserts 'or a document' after 'information'.

Item [38] Subparagraph 67.225(3)(b)(i)

Item [38] inserts 'and documents' after each instance of 'information' and amend reference to a 'person, organisation, body or authority referred to' to 'any of the persons, organisations, bodies or authorities mentioned'

Item [39] Paragraphs 67.225(5)(a) and (b)

Item [39] inserts 'or a document' after 'information'.

Item [40] Paragraph 67.225(6)(e)

Item [40] inserts 'or a document' after 'information'.

Item [41] Paragraph 67.230(1)(e)

Item [41] inserts 'or document' after 'information'.

Item [42] Paragraph 67.230(4)(e)

Item [42] inserts 'or a document' after 'information'.

Item [43] Subregulation 67.265(2)

Item [43] amends a style error by substituting '*DAME*' for 'DAME'.

Item [44] Subregulation 99.010(2) (definition of *NMI R*)

Item [44] amends the definition of *NMI R* to be a document, rather than a report, with the relevant designation and number. Item [44] also amends the reference to the National Measurement Institute as being established under the *National Measurement Act 1960* to allow removal of an out-of-date Departmental reference.

Item [45] Regulation 101.020 (heading)

Item [45] repeals the heading in regulation 101.020 and substitute with 'Exemption from certain provisions of CAR'.

Item [46] Regulation 101.020

Item [46] omits '1988' in reference to the CAR.

Item [47] Subregulation 101.080(2) (table item 3, column headed 'information to be provided')

Item [47] omits 'a free' and substitute 'an unmanned free' in table item 3 under the column headed 'information to be provided'.

Item [48] Regulation 101.145

Item [48] substitutes definitions for key concepts relating to balloons, including revised definitions for 'area density', 'heavy package', 'small balloon', 'light balloon', 'medium balloon' and 'heavy balloon' to align the regulations more closely with those of Annex 8 to the Convention on International Civil Aviation (the Chicago Convention).

Item [49] Subregulation 101.155(1) (note)

Item [49] repeals the note, to remove the cross-reference to the definition of a 'small balloon'.

Item [50] Subregulation 101.160(1) (note 3)

Item [50] repeals the note, to remove the cross-reference to the definition of 'light balloon'.

Item [51] Subregulation 101.165(1) (note 3)

Item [51] repeals the note, to remove the cross-reference to the definitions of 'heavy balloon' and 'medium balloon'.

Item [52] Subregulations 101.170(1), 101.175(1), 101.180(1), 101.190(1) (notes)

Item [52] repeals the notes, to remove the cross-references to the definitions of 'free balloon', 'light balloon', 'medium balloon' and 'heavy balloon'.

Item [53] Regulation 101.195 (heading)

Item [53] replaces the existing heading with '101.195 Marking—unmanned free balloons generally'.

Item [54] Subregulations 101.195(1) and (2)

Item [54] omits 'a free' and substitute with 'an unmanned free'.

Item [55] Subregulations 101.195(2), 101.195(3), 101.200(1), 101.205(1), 101.210(1), 101.215(1), 101.220(1) and 101.225(1) (notes)

Item [55] repeals the notes, to remove the cross-references to the definitions of 'free balloon', 'light balloon', 'medium balloon' and 'heavy balloon'.

Item [56] Subregulation 101.260(1)

Item [56] omits '1988' in reference to the CAR.

Item [57] Regulation 173.030 (subparagraph (b)(ii) of the definition of *procedure design authorisation*)

Item [57] amends the distance from land of an off-shore installation from 30 nm to be a distance specified in the Part 173 Manual of Standards.

Item [58] Subregulation 173.265(1)

Item [58] is repealed and replaced with a provision that the regulation applies to an authorised designer who is authorised to carry on the activity mentioned in subparagraph 173.030(b)(ii) of CASR, as amended by item [57].

Item [59] Subregulations 202.050(1) and (2)

Item [59] omits '1988' in reference to the CAR.

Item [60] Subregulations 202.051(1) and (3)

Item [60] omits '1988' in reference to all instances of the CAR.

Item [61] Regulation 202.052

Item [61] omits '1988' in reference to the CAR.

Item [62] Subpart 202.CA

Item [62] is repealed to remove spent transitional provisions for Part 60 (Synthetic training devices).

Item [63] Regulation 202.261 (paragraph (b) of the definition of *amendments*)

Item [63] amends the commencement date of various Civil Aviation Orders, amended as a consequence of the making of the *Civil Aviation Legislation Amendment Regulation 2013*

(No. 1), to commence immediately before the commencement of the *Civil Aviation Legislation Amendment Regulation 2013 (No. 1)*.

Item [64] Regulation 202.261 (subparagraph (b)(i) of the definition of *amendments*)

Item [64] substitutes '29.6' for an incorrect reference to '26.6'.

Item [65] Regulation 202.261 (subparagraph (b)(iv) of the definition of *amendments*)

Item [65] removes reference to amendment of Civil Aviation Order 82.6, as a consequence of the change in commencement date amended by item [63].

Item [66] Regulation 202.261 (at the end of the definition of *amendments*)

Item [66] adds a new paragraph 202.261(c) at the end of the definition of 'amendments' in regulation 202.261 to include reference to amendments of Civil Aviation Order 82.6 commencing on 1 September 2014, as a consequence of its removal from subparagraph 202.261(b)(iv) by item [65].

Item [67] Regulation 202.261 (paragraph (b) of the definition of *relevant CAO*)

Item [67] substitutes '29.6' for an incorrect reference to '26.6'.

Item [68] Part 1 of the Dictionary (definition of *free balloon*, twice occurring)

Item [68] repeals the existing definition and substitute a new definition—in relation to Part 101 as a balloon that is not tethered, and otherwise as a balloon that is intended for flight without being permanently tethered.

Item [69] Part 1 of the Dictionary (definition of *heavy balloon*)

Item [69] repeals the existing definition and substitute a new cross-reference to the definition of 'heavy balloon' in regulation 101.145.

Item [70] Part 1 of the Dictionary

Item [70] inserts a new definition of 'heavy package' by cross-reference to regulation 101.145.

Item [71] Part 1 of the Dictionary (definition of *light balloon*)

Item [71] repeals the existing definition and substitute a cross-reference to the definition of 'light balloon' in regulation 101.145.

Item [72] Part 1 of the Dictionary (definition of *medium balloon*)

Item [72] repeals the existing definition and replace it with a cross-reference to the definition of 'medium balloon' in regulation 101.145.

Item [73] Part 1 of the Dictionary (definition of *small balloon*)

Item [73] repeals the existing definition and replace it with a cross-reference to the definition of 'small balloon' in regulation 101.145.

Item [74] Part 1 of the Dictionary

Item [74] inserts a new definition of a 'sport aviation body'.

Item [75] Part 1 of the Dictionary (definition of *standard certificate of airworthiness*)

Item [75] makes a minor style amendment to the definition, substituting ': see' for 'see'.

Schedule 2 – Amendments relating to Part 66*Civil Aviation Safety Regulations 1998***Item [1] Subregulations 66.026(1) and (2)**

Item [1] omits the words 'subregulation (3) and' from subregulations 66.026(1) and (2). It is consequential on the repeal of subregulation 66.026(3) under item [2] of this schedule.

Item [2] Subregulation 66.026(3)

Item [2] repeals subregulation 66.026(3) which would otherwise prevent CASA from granting a licence subject to an exclusion unless the exclusion related to a type rated aircraft type.

Item [3] Subregulation 66.095(1), (2) and (4)

Item [3] omits the words 'subregulation (5) and' from subregulations 66.095(1), (2) and (4). It is consequential on the repeal of subregulation 66.095(5) under item [4] of this schedule.

Item [4] Subregulation 66.095(5)

Item [4] repeals subregulation 66.095(5) which would otherwise prevent CASA from granting a rating subject to an exclusion unless the exclusion related to a type rated aircraft type.

Item [5] At the end of Subpart 202.CG

Item [5] adds a new regulation 202.355 for validation of the small aircraft licences and ratings granted subject to exclusions.

Under subregulation 202.355(1), the regulation applies to a licence granted, or purportedly granted, under regulation 66.026, or to a rating granted, or purportedly granted, under regulation 66.095, if the licence or rating was granted, or purportedly granted during the relevant period, and subject to an exclusion that did not relate to a type rated aircraft type.

Under subregulation 202.355(2), the licence or rating is valid and effective, and is taken always to have been as valid and effective as it would have been if the amendments made by the Regulation (that is, the *Civil Aviation Legislation Amendment (Miscellaneous Measures) Regulation 2016*) had been in force during the relevant period.

Under subregulation 202.355(3), any act or thing done under the licence or rating is valid and effective, and is taken always to have been as valid and effective as it would have been if the amendments made by the Regulation had been in force during the relevant period.

These validations only apply during the *relevant period* which is defined under subregulation 202.355(4) as the period beginning at the start of 4 July 2016, and ending at the commencement of the Regulation.