

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Infrastructure and Transport

Civil Aviation Act 1988

Civil Aviation Amendment (Fuel and Oil Requirements) Regulations 2018

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 safety, and in relation to the safety of air navigation, being regulations with respect to any other matters for 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 *Civil Aviation Amendment (Fuel and Oil Requirements) Regulations 2018* makes amendments to the *Civil Aviation Regulations 1988* replacing regulations that required a court, in determining whether fuel and oil carried on an aircraft was sufficient, to take into account specified matters, including guidelines issued by CASA, with a regulation that provides for CASA to issue a disallowable instrument that sets the fuel and fuel related requirements for an operator and the pilot-in-command. The amendments also provide a regulation requiring the operator and the pilot-in-command to ensure, when the aircraft begins the flight, the aircraft is carrying sufficient oil to complete the flight safely.

A key outcome of the amendment is providing clarity about the regulatory requirements that apply to fuel by having those requirements set out in a legislative instrument. This overcomes difficulties with the previous arrangement, where requirements were set out in guidance material 'called up' by regulation, in that the requirements were often not readily recognised as having the force of law.

The Regulations also make provision for the subordinate instrument which includes requirements for fuel planning, in-flight fuel management practices, and fuel state declaration which align more closely with the ICAO fuel related standards and recommended practices introduced by amendment 36 to Annex 6 Part 1 - Operation of Aircraft - International Commercial Air Transport.

The Regulations include strict liability offences each for both the pilot-in-command and the operator of an aircraft if a requirement made under the CASA instrument in relation to the Regulations are not complied with.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, CASA consulted on the proposed changes:

- with the Operations Standards Subcommittee and Standards Consultative Committee (SCC), which are forums of aviation community and CASA participants, between 12 and 26 August 2015; and
- through public consultation between 20 January 2016 and 16 March 2016.

The SCC and public consultation resulted in sixty-three responses. The consultation responses did not contain any adverse comments in relation to the proposed Regulations.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) assessed that the proposed amendments will have minor impacts and that no further analysis in the form of a Regulation Impact Statement (RIS) was required (OBPR ID: 21074).

Statement of Compatibility with Human Rights

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

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

The provisions of the *Civil Aviation Amendment (Fuel and Oil requirements) Regulations 2018* commence on 8 November 2018.

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 Amendment (Fuel and Oil Requirements) Regulations 2018

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 (the Regulations) makes amendments to the *Civil Aviation Regulations 1988* (CAR) primarily to empower CASA to prescribe requirements relating to fuel for aircraft.

Subregulation 234(1) of CAR will empower CASA to issue a legislative instrument prescribing requirements relating to fuel for aircraft. Subregulation 234(3) will make it an offence of strict liability if a pilot in command does not comply with a requirement under the instrument to which the pilot is subject. Subregulation 234(4) will make it an offence of strict liability if an operator does not comply with a requirement under the instrument to which the operator is subject.

Under new regulation 234A, the operator and pilot in command of an aircraft will each commit a strict liability offence if, when the aircraft begins a flight, the aircraft is not carrying sufficient oil to complete the flight safely.

These regulations will replace existing regulation 234 of CAR, which contains two strict liability offences requiring the operator and pilot in command of an aircraft to take reasonable steps to ensure that the aircraft carries sufficient fuel and oil to enable a proposed flight to be undertaken in safety. The existing regulation requires a court, in determining whether fuel and oil carried on an aircraft is sufficient, to take into account specified matters, including guidelines issued by CASA.

Human rights implications

The Regulations engage the right to the presumption of innocence in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR). The presumption of innocence imposes on the prosecution the burden of proving the charge, and guarantees that no guilt can be presumed until charges have been proved beyond reasonable doubt.

Strict liability offences engage the presumption of innocence through the imposition of liability without the need to prove fault.

The three offence provisions specified in the Regulations are strict liability offences. They will replace existing strict liability offences on the same topics. These offences engage the right to the presumption of innocence by applying strict liability to all elements of the relevant offences. However, the defence of honest and reasonable mistake of fact, as set out in section 9.2 of the Criminal Code, will be available to the defendant.

The strict liability offences are regulatory in nature and are considered reasonable, necessary and proportionate to the objective of ensuring aviation safety, and therefore not impermissibly limiting the presumption of innocence.

The offence provisions are included to minimise safety risk to an acceptable level and ensure that the safety of other airspace users and people on the ground or water is not compromised by aircraft operations. The deterrence effect of the strict liability offence also contributes

significantly to maintaining the integrity of the aviation safety system and preserving the safety of passengers, pilots, cabin crew and people on the ground that could be affected by aviation accidents or incidents.

The strict liability offences are also proportionate in that they fall at the lower end of the scale, not exceeding 50 penalty units.

Conclusion

The legislative instrument is compatible with human rights and to the extent that it may also limit human rights, those limitations are reasonable 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 Amendment (Fuel and Oil Requirements) Regulations 2018*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Civil Aviation Amendment (Fuel and Oil Requirements) Regulations 2018*.

Section 2 - Commencement

This section provides that the Regulations commence on 8 November 2018.

Section 3 - Authority

This section provides that the *Civil Aviation Amendment (Fuel and Oil Requirements) Regulations 2018* are 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 will be amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument will have effect according to its terms.

Schedule 1 - Amendments

Civil Aviation Regulations 1988

Item 1 Regulation 234

Item 1 repealed the regulation 234 and substituted new regulations 234 and 234A of *Civil Aviation Regulations 1988*.

Subregulation 234(1)

Subregulation 234(1) permitted CASA to issue a legislative instrument which prescribes requirements relating to fuel for aircraft.

Subregulation 234(2)

Subregulation 234(2), without limiting the scope of the legislative instrument, outlines the items that may be prescribed in the instrument including: matters that must be considered when determining whether an aircraft has sufficient fuel to complete a flight safely, the amounts of fuel that must be carried for a flight, procedures for monitoring fuel during a flight and procedures to be followed if fuel reaches specified amounts during a flight.

Subregulation 234(3)

Subregulation 234(3) provides that the pilot-in-command of an aircraft for a flight commits an offence of strict liability he or she fails to comply with the applicable provisions of the legislative instrument, issued under the proposed Regulation.

Subregulation 234(4)

Subregulation 234(4) provides that the operator of an aircraft commits an offence of strict liability if the operator fails to comply with the applicable provisions of the legislative instrument, issued under the proposed Regulation.

Regulation 234A

Regulation 234A requires the operator and pilot-in-command of an aircraft to ensure that when an aircraft commences a flight, the aircraft is carrying sufficient oil quantity for the flight.