

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 258**

Issued under the authority of the Minister for Transport and Regional Services

*Civil Aviation Act 1988*

*Civil Aviation Safety Amendment Regulations 2005 (No. 1)*

Subsection 98(1) of the *Civil Aviation Act 1988* (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 in relation to the safety of air navigation, being regulations with respect to any other matters with respect 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 Regulations permit CASA, if necessary for the safety of air navigation, to disclose specified personal information (within the meaning given by the *Privacy Act 1988*), which is in CASA's possession or under its control to air traffic control service providers (such as Airservices Australia) and persons carrying out search and rescue operations in Australian territory (such as the National Search and Rescue (SAR) Authority, currently AusSAR).

From time to time, search and rescue operations are conducted in Australia using civilian aircraft which are not covered by a pre-arranged contract. In these instances it is often the National SAR Authority that coordinates and manages personnel and resources to perform a search. The National SAR Authority needs to establish who is available to assist in the search and rescue operation, and often needs to do this in advance of such an operation so it has a ready database of information to use when the need arises. Further, information about a pilot of an accident aircraft is useful for the management of the search and rescue operation.

In the interest of the safety of air navigation, Airservices Australia (the principal Australian air traffic service provider) may need to establish quickly and efficiently that a pilot in command of an aircraft is appropriately licensed for the type of flight they are conducting.

CASA issues licences to individuals to pilot and maintain aircraft, and to perform air traffic control functions, and consequently obtains and holds a large quantity of personal information on people undertaking aviation activities. CASA has released certain information about pilots to assist the National SAR Authority to conduct its important search and rescue function. However, some doubt has existed as to the legitimacy of CASA releasing such personal information without first making the person aware that such information was being released and for what purpose.

As a result of this uncertainty, CASA subsequently developed a proposal to create a legislative permission under which certain personal information could be released quickly and efficiently by CASA to certain persons, as required, in the interests of the safety of air navigation. For consultation purposes, CASA published a Notice of Proposed Rule Making – NPRM 0403OS – Disclosure of Personal Information on 14 November 2004. The period for public comment on the proposals contained in NPRM 0403OS closed on 14 January 2004.

The purpose of NPRM 0403OS was to initiate formal public consultation on a proposal to amend the Civil Aviation Safety Regulations 1998 (CASR) to provide CASA with statutory authority to release certain personal information it holds about individuals to specified organisations if necessary for the safety of air navigation. It was proposed that such information would only be released to a person providing an air traffic service (within the meaning given in CASR Part 172) in Australian territory; or a person carrying out search and rescue operations in Australian territory or the National Airworthiness Authority (NAA) of a foreign country. The purpose of the proposed new regulation was to put in place a system where appropriate authorities could access relevant information quickly, if necessary, to perform their safety-related functions.

CASA received 16 responses to the NPRM including a number of substantive and comprehensive submissions. All comments received have been evaluated and as a consequence, some minor deficiencies in the proposed legislation and supporting material were identified. Of the 16 responses received, 3 respondents found the key change proposals not acceptable under any circumstances, with one respondent not providing any justification or comment supporting the unacceptability, one suggesting the release of personal information would generally be open to abuse by the authorities, and the third claiming the right to privacy must be protected to overcome the potential for unfair, discriminatory or insensitive decision making.

There was a consistent objection (6 responses) to the proposal to release personal information to foreign NAA's. Therefore, as a direct result of the consultation process CASA has subsequently removed the proposed provision for releasing personal information to foreign NAA's because Australia or CASA cannot warrant the legitimate use of that information and has no control over the subsequent dissemination of the information once it leaves Australia.

The Office of the Federal Privacy Commissioner provided comment in response to NPRM 0403OS, which recommended that CASA inform people more widely of its practices in relation to disclosure of personal information, and the adoption of protocols with other government agencies relating to the exchange of personal information. CASA has noted the recommendations of the OFPC, which do not impact on the regulations themselves, and is examining mechanisms to give effect to the recommendations of the OFPC.

CASA considers there is no negative impact on safety through the introduction of regulation 201.016 which simply authorises the disclosure of information in CASA's possession to specified organisations for safety related purposes. There are a number of positive outcomes associated with the introduction of the regulation 201.016, including:

- Appropriately licensed and rated pilots for search and rescue aircraft can be found more quickly and easily by the National SAR Authority;
- In the event that an aircraft is missing, information about the pilot can be sought by the National SAR Authority;
- Airservices Australia would be able to ascertain a pilot's licence status in real time for the purpose of the safety of air navigation.

The Office of Regulation Review (ORR) has assessed that the Regulations have only a minor impact on business, are considered minor and machinery in nature and do not substantially alter existing arrangements and that the preparation of a Regulation Impact Statement (RIS) is not mandatory.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Details of the Regulations are [attached](#).

**Details of the *Civil Aviation Safety Amendment Regulations 2005 (No. 1)*****Regulation 1 - Name of Regulations**

Regulation 1 names the Regulations as the *Civil Aviation Safety Amendment Regulations 2005 (No. 1)*.

**Regulation 2 - Commencement**

Regulation 2 provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 - Amendment of *Civil Aviation Safety Regulations 1998***

Regulation 3 provides that Schedule 1 amends the *Civil Aviation Safety Regulations 1998*.

**Schedule 1 – Amendment**

(regulation 3)

**Item [1] – New regulation 201.016 – Disclosure of personal information**

Item [1] permits CASA, if necessary for the safety of air navigation, to disclose specified personal information (within the meaning given by the *Privacy Act 1988*), which is in CASA's possession or under its control.

Such personal information is limited to the person's name, the CASA unique identifier (Aviation Reference Number), the person's address, the person's telephone number and details of each civil aviation authorisation and any medical certificate held by the person.

CASA will only be able to release the personal information to a provider of air traffic services in Australian territory (such as Airservices Australia) and a person carrying out search and rescue operations in Australian territory (such as the National SAR Authority, currently AusSAR, a functional unit of the Australian Maritime Safety Authority).