

Aviation Ruling

Application of CAR 206 to operations conducted for the benefit of a charitable entity

Effective Date: This ruling is effective from 1 March 2003.

Catchwords: Civil Aviation Act 1988 section 27(9)
CAR 206 'commercial purposes'
charitable operation
charitable entity

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Issue

1 The purpose of this ruling is to state CASA's position on whether a person conducting a **charitable operation** is required, by section 27 of **the Act**, to hold an **AOC**.

Background

2 Section 27 of **the Act** relevantly provides:

(2) Except as authorised by an AOC, or by a permission under section 27A:

- (a) an aircraft shall not fly into or out of Australian territory; and
- (b) an aircraft shall not operate in Australian territory; and
- (c) an Australian aircraft shall not operate outside Australian territory.

...

(9) Subsection (2) applies only to the flying or operation of an aircraft for such purposes as are prescribed.

3 **CAR 206** prescribes 'commercial purposes' for the purpose of subsection 27(9) of **the Act**. Subject to **CAR 206**, a person is prohibited from **flying an aircraft** for any of the commercial purposes prescribed in **CAR 206** unless the person holds an **AOC**.

4 **CAR 206(1)(b)** and **206(1)(c)** deal with commercial purposes connected with the carriage of passengers or cargo for hire or reward.

5 **CAR 206** relevantly provides:

(1) For the purposes of subsection 27(9) of the Act, the following commercial purposes are prescribed:

...

(b) charter purposes, being purposes of the following kinds:

- (i) the carriage of passengers or cargo for hire or reward to or from any place, other than carriage in accordance with fixed schedules to and from fixed terminals or carriage for an operation mentioned in subregulation 262AM(7) or under a permission to fly in force under subregulation 317(1);
- (ii) the carriage, in accordance with fixed schedules to and from fixed terminals, of passengers or cargo or passengers and cargo in circumstances in which the accommodation in the aircraft is not available for use by persons generally;

(c) the purpose of transporting persons generally, or transporting cargo for persons generally, for hire or reward in accordance with fixed schedules to and from fixed terminals over specific routes with or without intermediate stopping places between terminals.

Ruling

- 6 Subject to this ruling a person may conduct a **charitable operation** without holding an **AOC**.
- 7 A person wishing to rely on this ruling should make their own enquiries to ensure that an entity is currently endorsed as a 'deductible gift recipient' for the purposes of the definition of **charitable entity** (see definition in paragraph 13 below).
- 8 A **charitable operation** can make a profit where those profits are donated to the **charitable entity**. It is acceptable for the operator to recoup the operator's genuine costs and to donate only the profits of the **charitable operation**.
- 9 Subject to this ruling, CASA is not concerned with the form of benefit conferred on the **charitable entity** as a result of the **charitable operation**.
- 10 If a **charitable operation** is also conducted partly for a commercial purpose prescribed by **CAR 206** (ie the **operation** has more than 1 purpose), it must be conducted under the authority of an **AOC**. This conclusion applies even if the **operation** is conducted primarily as a **charitable operation** and the **CAR 206** commercial purpose is only a subsidiary purpose.
- 11 Situations in which a **charitable operation** may also be for a commercial purpose include, but are not limited to:
- 11.1 the operator donates some of the profits of the **operation** to a **charitable entity** and keeps the rest;
- 11.2 the **charitable operation** is conducted partially for the purpose of generating publicity for a person engaged in commerce (whether the operator or some other person).
- 12 There may be circumstances when a **charitable operation** generating publicity for a person engaged in commerce will not be for a 'commercial purpose'. CASA will examine submissions that a particular proposed **charitable operation** does not need to be conducted under an **AOC** even though it will generate publicity for a person engaged in commerce.

Definitions

- 13 In this ruling:
- references to '**flying an aircraft**' or '**an operation**' refer to the flying of aircraft in Australian territory or the flying of Australian aircraft outside Australian territory;
- '**AOC**' means an Air Operator's Certificate issued under section 28 of **the Act**;
- '**CARs**' means the *Civil Aviation Regulations 1988*;
- '**charitable entity**' means an entity endorsed as a 'deductible gift recipient' for the purpose of subsection 30-227(2) of the *Income Tax Assessment Act 1997* (Cth) as in force from time to time;

'charitable operation' means an **operation** carrying passengers or cargo for hire or reward for the purpose of benefiting a **charitable entity**;

'the Act' means the *Civil Aviation Act 1988*.

[signed by Mick Toller]

Mick Toller
Director of Aviation Safety
26 February 2003