

# Aviation Ruling

## Carriage of infants and children in excess of aircraft flight manual limitations

**Effective Date:** This ruling is effective from 13 September 2004.

**Catchwords:** CAR 5 (1), 54 (1), 138 (1), and 235 (7) and (7A)  
CAO 20.16.3 paragraph 12.2 (b)  
Flight manual  
Carriage of infants and children

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### Issue

- 1 The purpose of this ruling is to state CASA's view on which provision, relating to the permissible maximum number of passengers that an aircraft may carry, is applicable where there is a conflict between the respective requirements of two provisions.
- 2 Such a conflict has been found to arise in relation to maximum passenger capacity stated in an aircraft's flight manual (as defined in subregulation 54 (1) of the *Civil Aviation Regulations 1988* – "CAR 1988") and paragraph 12.2 (b) of section 20.16.3 of the *Civil Aviation Orders* – "CAOs".
- 3 This ruling applies only to aircraft subject to paragraph 12.2 of CAO 20.16.3 – that is, those aircraft for which an emergency evacuation demonstration is not required by subsection 15 of CAO 20.11. This ruling deals only with conflict between the maximum passenger capacity stated in an aircraft's flight manual and the maximum passenger capacity calculated by reference to subparagraph 12.2 (b) of CAO 20.16.3. Nothing in this ruling affects a pilot's or operator's responsibilities for proper loading and weight and balance control of an aircraft.

### Background

- 4 Subregulation 138 (1) of CAR 1988 states:

“(1) If a flight manual has been issued for an Australian aircraft, the pilot in command of the aircraft must comply with a requirement, instruction, procedure or limitation concerning the operation of the aircraft that is set out in the manual.

Penalty: 50 penalty units.”
  - 5 Subregulation 54 (1) of CAR 1988 defines what an aircraft flight manual is, as follows:

“(1) The ***flight manual***, for an aircraft, is:

    - (a) if a flight manual for the aircraft was given to the aircraft owner under regulation 21.005 of CASR – that flight manual; or
    - (b) in any other case – any manual or document (not being a placard) that must, under the relevant airworthiness standards for the
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aircraft, be provided with the aircraft and contain the following information and instructions about the aircraft:

- (i) the limitations within which, under the relevant airworthiness standards, it is considered airworthy;
- (ii) any other information, and any instructions, necessary for its safe operation.”

6 Subregulations 235 (7) and (7A) of CAR 1988 state:

“(7) CASA may, for the purpose of ensuring the safety of air navigation, give directions with respect to the method of loading of persons and goods (including fuel) on aircraft.

(7A) A person must not contravene a direction under subregulation (7).

Penalty: 50 penalty units.”

7 CASA’s directions for the purposes of subregulation 235 (7) are set out in CAO 20.16.3.

8 Paragraph 12.2 (b) of CAO 20.16.3 states:

“12.2 The number of passengers carried in an aircraft for which an emergency evacuation demonstration is not required may exceed the number of approved passenger seats fitted in the aircraft only if the excess number of passengers:

- (b) does not exceed the number specified in column 2 of the following table opposite the number of passenger seats specified in column 1;

and the excess passengers are infants or children:

TABLE

Column 1 No. of passenger seats	Column 2 No. of excess passengers
2-6	1
7-13	2
14-20	3
21-26	4
27-39	5
40-44	6”

## Ruling

- 9 There is a well-established rule of statutory interpretation which states that where there is a conflict between general and specific provisions in legislation, the specific provision prevails to the extent of the conflict.
- 10 CAR 138 (1) is a general provision dealing with compliance with requirements, instructions, procedures or limitations concerning the operation of an aircraft that are set out in the aircraft's flight manual.
- 11 CAR 235 (7) is a specific provision dealing with directions that CASA may issue concerning methods relating to the loading of persons and goods (including fuel) on an aircraft.
- 12 Subparagraph 12.2 (b) of CAO 20.16.3 is a direction issued by CASA under CAR 235 (7).
- 13 CASA's view is that where there is a conflict between the maximum passenger capacity stated in an aircraft's flight manual and the maximum passenger capacity calculated by reference to subparagraph 12.2 (b) of CAO 20.16.3, the maximum passenger capacity calculated by reference to subparagraph 12.2 (b) of CAO 20.16.3 prevails.

## Definitions

- 14 In this ruling:
- '**CAOs**' means the *Civil Aviation Orders*;
- '**CARs**' means the *Civil Aviation Regulations 1988*.

[signed]

**Bruce Byron**  
Director of Aviation Safety and  
Chief Executive Officer

12 September 2004

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