



# Civil Aviation Safety Regulations 1998

Statutory Rules No. 237, 1998

made under the

*Civil Aviation Act 1988*

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Volume 1: regulations 1.001–42.1105

Volume 2: regulations 45.005–92.205

**Volume 3: regulations 99.005–137.300**

Volume 4: regulations 139.005–202.964

Dictionary and Endnotes

Each volume has its own contents

**This compilation includes commenced amendments made by SLI No. 135, 2014**

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Civil Aviation Safety Regulations 1998* that shows the text of the law as amended and in force on 5 March 2015 (the *compilation date*).

This compilation was prepared on 17 March 2015.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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- 99.360 Continuing to perform applicable SSAA after having confirmatory drug test and before result returned
- 99.365 Continuing to perform applicable SSAA before confirmatory alcohol test result returned
- 99.370 Performing applicable SSAA showing positive result for testable drug
- 99.375 Performing applicable SSAA showing positive result for a confirmatory alcohol test

**Subdivision 99.E.2.3—Offences relating to returning to SSAAs after positive test result**

- 99.380 Continuing to perform applicable SSAA after having confirmatory drug test
- 99.385 Continuing to perform applicable SSAA after confirmatory alcohol test

**Division 99.E.3—CASA medical review officers**

- 99.390 CASA medical review officers
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**Subpart 99.F—Provision of information**

**Division 99.F.1—Purposes of Subpart**

99.395 Purposes of Subpart

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99.400 Drug or alcohol test information given or required by CASA

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99.410 Purposes of Subpart

99.415 When CASA may vary, suspend or cancel a civil aviation authorisation

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**Subpart 99.H—Approved testers and authorisations to conduct drug and alcohol tests**

**Division 99.H.1—Purposes of Subpart**

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99.445 CASA may approve persons to take body samples and conduct tests

99.450 Persons authorised to take body samples and conduct tests

**Division 99.H.3—Obligations on approved testers and protection from liability**

99.455 Obligations on approved testers

99.460 Approved testers not liable in certain cases

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99.465 Approved testers’ powers to access premises

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- 99.475 Return of identity card
- 99.480 Display and production of identity cards
- 99.485 Suspension or revocation of authorisation
- 99.490 Notices

**Division 99.H.6—Notices to approved testers**

- 99.495 Notice to approved testers

**99.005 Purposes of Part**

- (1) This Part provides for:
- (a) the development, implementation and enforcement of drug and alcohol management plans covering persons who perform, or are available to perform, an applicable SSAA; and
  - (b) drug and alcohol tests for persons who perform, or are available to perform, an applicable SSAA, including the following:
    - (i) the approval of testers to conduct drug and alcohol tests;
    - (ii) the approval of devices for use in conducting drug and alcohol tests;
    - (iii) identity cards for approved testers;
    - (iv) the conduct of drug and alcohol testing;
    - (v) the variation, suspension and cancelling of civil aviation authorisations and authorisations of approved testers; and
  - (c) offences relating to drug and alcohol management plans and drug and alcohol testing.

Note 1: Under this Part, a SSAA employee may be drug or alcohol tested by his or her DAMP organisation or by CASA under Subpart 99.C.

Note 2: Under Subpart 99.C, CASA may also test persons who are performing or available to perform an applicable SSAA and who are not covered by a DAMP organisation.

- (2) Unless otherwise stated, this Part is made for the purposes of Part IV of the Act, particularly sections 34, 35 and 36.

## Subpart 99.A—General

### 99.010 Definitions for Part 99

(1) In this Part:

***accident*** means an occurrence that arises out of a person performing or being available to perform an applicable SSAA if either or both of the following applies:

- (a) the occurrence results in the death of, or serious harm to, a person;
- (b) the occurrence results in serious damage to an aircraft or property.

***aerodrome testing area*** means:

- (a) any surface in a certified aerodrome or a registered aerodrome over which an aircraft is able to be moved while in contact with the surface of the aerodrome, including any parking areas; and
- (b) any part of the surface of a certified aerodrome or registered aerodrome:
  - (i) that is not covered by paragraph (a); and
  - (ii) that does not have a building on it; and
  - (iii) from which access to a surface mentioned in paragraph (a) may be had; and
- (c) a building located on a certified aerodrome or registered aerodrome that is used:
  - (i) for maintenance of an aircraft or an aeronautical product; or
  - (ii) for the manufacture of aircraft or aeronautical products; or
  - (iii) by an air traffic service provider to control air traffic; or
  - (iv) by the holder of an AOC for flying training; or
  - (v) by a Part 141 operator conducting flying training in an aircraft; and

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- (d) any part of an aircraft, aerobridge or other moveable structure in a certified aerodrome or a registered aerodrome.

**airport security guard** has the meaning given in section 9 of the *Aviation Transport Security Act 2004*.

**allocated number**, in relation to an approved tester, means the number allocated to the tester under subregulation 99.445(5).

**applicable SSAA** means a safety-sensitive aviation activity to which this Part applies under regulation 99.015.

**appropriately qualified alcohol and other drug professional** means a person who:

- (a) materially works as a provider of clinical drug and alcohol treatment services; and
- (b) holds a bachelor degree, or postgraduate degree, in at least 1 of the following fields:
- (i) health sciences;
  - (ii) medical science;
  - (iii) social sciences;
  - (iv) behavioural sciences.

**approved breathalyser** means a breathalyser approved by CASA under paragraph 99.130(a) for alcohol testing.

**approved drug testing device** means a device approved by CASA under paragraph 99.130(b) for testing for testable drugs.

**approved laboratory** means a person authorised under subregulation 99.450(3) to conduct confirmatory drug tests for Subpart 99.C.

**approved person**, in relation to an approved laboratory, means a person who is authorised under the laboratory's National Association of Testing Authorities accreditation to declare the results of drug tests conducted by that laboratory.

**approved tester** means a person who is authorised to:

- (a) take body samples for drug or alcohol tests under subregulation 99.450(1); and

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- (b) conduct initial drug tests or alcohol tests under subregulation 99.450(2).

**ASIC** has the meaning given in the *Aviation Transport Security Regulations 2005*.

**CASA medical review officer** means a medical practitioner who for drug and alcohol testing under Subpart 99.C, and for Subparts 99.E and 99.H has:

- (a) been appointed by CASA under subregulation 99.390(1) for the purposes of Subpart 99.C; and
- (b) training and competence in the field of interpreting drug and alcohol test results; and
- (c) knowledge of substance use disorders; and
- (d) knowledge of the contents of this Part.

**commencement date** means the date on which this Part commences.

**comprehensive assessment**, in relation to a person's drug or alcohol use, means an examination of the person's physiological and psychosocial indicators carried out:

- (a) by a psychiatrist; or
- (b) by a medical practitioner who is a Fellow of the Australasian Chapter of Addiction Medicine; or
- (c) jointly by:
  - (i) a person entitled to practice as a medical practitioner under a law of a State or Territory; and
  - (ii) an appropriately qualified drug and alcohol professional.

**confirmatory alcohol test** means an alcohol test given in respect of an initial alcohol test to determine the presence and level of alcohol in a body sample.

Note: See paragraph (b) of the definition of drug or alcohol test in subsection 33(1) of the Act.

**confirmatory drug test** means a drug test given in respect of an initial drug test to determine the presence and level of a testable drug in a body sample.



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Note: See paragraph (b) of the definition of drug or alcohol test in subsection 33(1) of the Act.

**DAMP** or **drug and alcohol management plan** means a drug and alcohol management plan that complies, or purports to comply, with the requirements of regulation 99.045.

**DAMP contact officer**, in relation to a DAMP organisation, means a person appointed by the DAMP organisation to liaise with CASA in relation to the organisation's responsibilities under this Part.

**DAMP contractor** means a person, or the employee of a person, who is:

- (a) a party to an ongoing written or ongoing oral contract with a DAMP organisation; or
- (b) a DAMP subcontractor to an ongoing written or ongoing oral contract with a DAMP organisation.

**DAMP medical review officer** means a medical practitioner who for drug or alcohol testing under a DAMP has:

- (a) competence in the field of interpreting drug and alcohol test results; and
- (b) knowledge of substance use disorders; and
- (c) knowledge of the contents of this Part.

**DAMP organisation** means a person that is required to have a DAMP under subregulation 99.030(1).

**DAMP reporting period**, for a DAMP organisation, means the period of 6 months immediately before each:

- (a) 1 March; and
- (b) 1 September.

**DAMP subcontractor**, means a person who is a party to:

- (a) an ongoing written or oral contract with a DAMP contractor within the meaning of paragraph (a) of the definition of **DAMP contractor**; or
- (b) an ongoing written or oral contract with another DAMP subcontractor (under a previous application of this definition).

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**DAMP supervisor**, in relation to a DAMP organisation, means a person who:

- (a) has had relevant training to form an opinion as to whether a person may be adversely affected by a testable drug or under the influence of alcohol; and
- (b) is authorised by the organisation to do so for the purposes of paragraph 99.050(2)(c).

**donor** means a person who is asked to give, or has given, a body sample to an approved tester.

**drug and alcohol education program**, for a DAMP organisation, means a program that includes the following components:

- (a) for SSAA employees—awareness of:
  - (i) the organisation's policy on drug and alcohol use; and
  - (ii) drug and alcohol testing in the workplace; and
  - (iii) support and assistance services for people who engage in problematic use of drugs and alcohol; and
  - (iv) information about the potential risks to aviation safety from problematic use of drugs and alcohol;
- (b) for DAMP supervisors—education and training to manage people who engage in problematic use of drugs or alcohol.

**drug or alcohol intervention program**, in relation to a person who has a drug or alcohol problem, means a program that includes any of the following measures for that problem:

- (a) assessment;
- (b) treatment, including any of the following:
  - (i) education;
  - (ii) counselling;
  - (iii) consultation with health care professionals;
  - (iv) pharmacotherapy;
  - (v) residential or non-residential treatment programs;
- (c) monitoring and follow-up action.

**employee**, in relation to a DAMP organisation, includes a DAMP contractor of the DAMP organisation.

**foreign operator** means:

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- (a) the holder of a foreign aircraft AOC; or
- (b) the operator of an aircraft operating in Australia in accordance with a permission granted by CASA under section 26 of the Act; or
- (c) the operator of an aircraft operating under a permission granted under section 27A of the Act; or
- (d) the holder of a New Zealand AOC with ANZA privileges; or
- (e) the operator of an aircraft that is operating in Australia in accordance with section 14 of the *Air Navigation Act 1920*.

**initial alcohol test** means an alcohol test to determine the presence of alcohol in a body sample.

Note: See paragraph (a) of the definition of drug or alcohol test in subsection 33(1) of the Act.

**initial drug test** means a drug test to determine the presence of a testable drug in a body sample.

Note: See paragraph (a) of the definition of drug or alcohol test in subsection 33(1) of the Act.

**nominated drug or alcohol intervention program**, in relation to a person who has undergone a comprehensive assessment, means a drug or alcohol intervention program considered suitable for the person by:

- (a) if the person is an employee of a DAMP organisation—a DAMP medical review officer; or
- (b) in any other case—a CASA medical review officer.

**passport** means an Australian passport within the meaning of the *Australian Passports Act 2005*, or a passport issued by the Government of a country other than Australia.

**permitted level** means:

- (a) for a testable drug—a level of the drug specified in subregulation (2A) for the purposes of this paragraph; and
- (b) for alcohol—a level of alcohol of less than 0.02 grams of alcohol in 210 litres of breath.

**positive result** means the following:

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- (a) for an initial drug test—a test result within the meaning of paragraph (a) of the definition of positive test result in subsection 33(1) of the Act;
- (b) for a confirmatory drug test—a test result within the meaning of paragraph (b) of the definition of positive test result in subsection 33(1) of the Act;
- (c) for an initial alcohol test—a test result within the meaning of paragraph (a) of the definition of positive test result in subsection 33(1) of the Act;
- (d) for a confirmatory alcohol test—a test result within the meaning of paragraph (b) of the definition of positive test result in subsection 33(1) of the Act.

**regular SSAA employee** means a SSAA employee who is reasonably likely to perform an applicable SSAA at least 2 or more times every 90 days.

**relevant Standard** means:

- (a) AS 3547, *Breath alcohol testing devices for personal use*; and
- (b) NMI R 126, *Pattern Approval Specifications for Evidential Breath Analysers*; and
- (c) AS 4760, *Procedures for specimen collection and the detection and quantitation of drugs in oral fluid*; and
- (d) AS/NZS 4308, *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*.

**sample identifier** means a number allocated to a body sample using the method specified in a legislative instrument made by CASA under regulation 99.150.

**screening officer** has the meaning given in the *Aviation Transport Security Act 2004*.

**serious incident** means an occurrence that arises out of a person performing or being available to perform an applicable SSAA if either or both of the following applies:

- (a) the occurrence gives rise to a danger of death or serious harm to a person;

(b) the occurrence gives rise to a danger of serious damage to an aircraft or property.

**SSAA** means a safety-sensitive aviation activity.

**SSAA employee**, in relation to a DAMP organisation, means an employee of the DAMP organisation who performs or is available to perform an applicable SSAA.

**substantial compliance**, in relation to a drug or alcohol test, has the meaning given in subregulation 99.020(2).

**suitable test conditions** has the meaning given by subregulation (3).

Note 1: A number of other expressions used in this Part have the meanings given in the Act. For example:

- aeronautical product
- AOC
- body sample
- civil aviation authorisation
- drug or alcohol test
- foreign aircraft AOC
- New Zealand AOC with ANZA privileges
- positive test result
- safety-sensitive aviation activities
- testable drug.

Note 2: **Testable drugs** are specified in a legislative instrument made by the Minister under subsection 33(2) of the Act.

#### *References to Standards and reports*

(2) In this Part:

**AS** followed by a number is a reference to the Australian Standard so numbered or identified, as in force or existing from time to time, published by Standards Australia.

**AS/NZS** followed by a number is a reference to the Australian/New Zealand Standard so numbered or identified, as in force or existing from time to time, published jointly by Standards Australia and Standards New Zealand.

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**NMI R** followed by a number is a reference to the report so numbered or identified, as in force or existing from time to time, published in that year by the National Measurement Institute, Department of Innovation, Industry, Science and Research.

*Permitted level*

- (2A) For paragraph (a) of the definition of **permitted level**, the permitted level for each testable drug is specified in the following table.

Testable Drug	Concentration - ng/mL
$\Delta$ 9-tetrahydrocannabinol	10
6-Acetyl morphine	10
Amphetamine	25
Benzoyllecgonine	25
Cocaine	25
Codeine	25
Ecgonine methyl ester	25
Methylamphetamine	25
Methylenedioxyamphetamine	25
Methylenedioxymethylamphetamine	25
Morphine	25

*Suitable test conditions*

- (3) **Suitable test conditions** means conditions that exist after an accident or serious incident if:
- (a) testing can be conducted within:
    - (i) for drug testing—32 hours after the accident or incident occurred; and
    - (ii) for alcohol testing—8 hours after the accident or incident occurred; and
  - (b) it is practicable to conduct a test.

**99.015 SSAAs to which this Part applies**

- (1) This Part applies to the SSAAs specified in this regulation.
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- (2) The specified SSAAs are:
- (a) any activity undertaken by a person, other than as a passenger, in an aerodrome testing area; and
  - (b) calculation of the position of freight, baggage, passengers and fuel on aircraft; and
  - (c) the manufacture or maintenance of any of the following:
    - (i) aircraft;
    - (ii) aeronautical products;
    - (iii) aviation radionavigation products;
    - (iv) aviation telecommunication products; and
  - (d) the certification of maintenance of a kind mentioned in paragraph (c); and
  - (da) the issuing of a certificate of release to service for an aircraft or aeronautical product in relation to maintenance carried out on the aircraft or aeronautical product; and
  - (e) the fuelling and maintenance of vehicles that will be used to fuel aircraft on aerodrome testing areas; and
  - (f) activities undertaken by an airport security guard or a screening officer in the course of the person's duties as a guard or officer; and
  - (g) activities undertaken by a member of the crew of an aircraft in the course of the person's duties as a crew member; and
  - (h) the loading and unloading of trolleys containing baggage for loading onto aircraft and the driving of such trolleys; and
  - (i) activities undertaken by a holder of an air traffic controller licence in the course of the person's duties as a controller; and
  - (j) activities undertaken by the supervisor of a holder of an air traffic controller licence in the course of the person's duties as such a supervisor; and
  - (k) providing flight information and search and rescue alert services:
    - (i) to a pilot or operator of an aircraft immediately before the flight of the aircraft; or
    - (ii) to a pilot or operator of an aircraft, during the flight of the aircraft; or

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- (iii) as an intermediary for communications between a pilot or operator of the aircraft, and an air traffic controller; and
  - (l) providing aviation fire fighting services.
- (3) This Part applies to the safety-sensitive aviation activities specified in paragraphs (2)(b) to (l) even if those activities do not occur in an aerodrome testing area.

**99.020 Substantial compliance with requirements of Part required**

- (1) A reference in this Part, other than in Subpart 99.B, to a test result for a drug or alcohol test is a reference to a test result that resulted from strict or substantial compliance with the requirements of this Part, including the following:
  - (a) requirements relating to the taking of a body sample for the test;
  - (b) requirements relating to the dealing with the body sample by the approved tester who took the sample;
  - (c) requirements relating to the storage of the body sample (if applicable);
  - (d) requirements relating to the conduct of the drug or alcohol test;
  - (e) requirements relating to the giving of notice in respect of a positive result;
  - (f) a requirement that a person must not interfere with the integrity of a body sample.
- (2) For subregulation (1), there is taken to be **substantial compliance** with the requirements of this Part in relation to a drug or alcohol test that results in a test result if there is no reasonable doubt as to the accuracy of the test result even though one or more of the requirements of this Part may not have been strictly complied with in relation to that drug or alcohol test.

Example: If an approved tester fails to initial a specimen tube containing a part of a body sample that is to be the subject of a confirmatory drug test, the test result is likely to be one that resulted from substantial compliance with the requirements of this Part as there will be no reasonable doubt as to the accuracy of the test result. However, if a person interferes with the integrity of a body sample, the test result for



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that sample is unlikely to be one that resulted from substantial compliance with the requirements of this Part as there will be a reasonable doubt as to the accuracy of the test result.

- (3) In this regulation, the *requirements of this Part* include the following:
- (a) the requirements of any legislative instruments made under this Part;
  - (b) a relevant Standard.

**Part 99** Drug and alcohol management plans and testing

**Subpart 99.B** Drug and alcohol management plans

**Division 99.B.1** Purposes of Subpart

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## **Subpart 99.B—Drug and alcohol management plans**

### **Division 99.B.1—Purposes of Subpart**

#### **99.025 Purposes of Subpart**

This Subpart provides for the following:

- (a) the persons required to have a DAMP;
- (b) the matters required to be included in a DAMP;
- (c) the implementation of a DAMP;
- (d) requirements associated with a DAMP;
- (e) offences relating to a DAMP.

## **Division 99.B.2—Persons required to have a DAMP**

### **99.030 Who must develop and maintain a DAMP**

- (1) An organisation must develop a DAMP that complies with regulation 99.045 if:
  - (a) the organisation:
    - (i) has an employee; or
    - (ii) has a contractor (including the employee of, or a subcontractor for, the contractor);who performs or is available to perform a SSAA; and
  - (b) the organisation is listed in subregulation (2).

Penalty: 50 penalty units.

- (2) For paragraph (1)(b), the organisations are as follows:
  - (a) an AOC holder;
  - (b) a person issued with a production certificate under regulation 21.134;
  - (c) the holder of an aerodrome certificate granted under regulation 139.050;
  - (d) a person approved as an ARFFS under Division 139.H.5;
  - (e) an ATS training provider within the meaning of Part 143;
  - (f) an ATS provider within the meaning of Part 172;
  - (g) the provider of any of the following services within the meaning of Part 171:
    - (i) a telecommunication service;
    - (ii) a radionavigation service;
  - (h) the operator of a registered aerodrome under regulation 139.265;
  - (i) the holder of a certificate of approval within the meaning of subregulation 2(1) of CAR;
  - (j) a Part 145 organisation;
  - (k) a Part 141 operator conducting flying training in aircraft;
  - (l) a screening authority within the meaning of the *Aviation Transport Security Regulations 2005*.

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- (3) The DAMP must be developed within the time required for implementation of a DAMP under subregulation 99.035(2).

Penalty: 50 penalty units.

- (4) A person who, under subregulation (1), is required to develop a DAMP must continue to have a DAMP that complies with regulation 99.045 for the period the person has SSAA employees performing an applicable SSAA or available to perform an applicable SSAA.

Penalty: 50 penalty units.

- (5) An offence against subregulation (1), (3) or (4) is an offence of strict liability.

**99.035 DAMP must be implemented**

- (1) A person who is required to develop a DAMP must implement a DAMP by:
- (a) giving effect to regulation 99.080; and
  - (b) making the DAMP available to the person's SSAA employees as required by this Subpart.

*Timeframe and implementation*

- (2) The DAMP must be implemented:
- (a) if the person:
    - (i) is a DAMP organisation on the commencement date; or
    - (ii) becomes a DAMP organisation within the period of 6 months after the commencement date (the ***transition period***);by the end of the transition period; or
  - (b) if the person becomes a DAMP organisation after the end of the transition period—immediately upon becoming a DAMP organisation.

**99.040 DAMP must be made available to SSAA employees**

- (1) Subject to subregulation (2), a DAMP organisation must ensure that its DAMP is made available to each of its SSAA employees before the employee begins to perform or becomes available to perform an applicable SSAA.

Penalty: 50 penalty units.

- (2) If a person is a SSAA employee of a DAMP organisation on the day the organisation implements its DAMP, the organisation must make the DAMP available to the employee by the end of the day the employee next performs or is available to perform an applicable SSAA for the DAMP organisation.

Penalty: 50 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

## **Division 99.B.3—Content and implementation of DAMP**

### **Subdivision 99.B.3.1—Content of DAMP**

#### **99.045 Content of DAMP**

A DAMP organisation's DAMP must:

- (a) apply to all SSAA employees of the organisation, and state each category of the organisation's SSAA employees covered by the DAMP; and
- (b) include the following:
  - (i) a drug and alcohol education program;
  - (ii) a drug and alcohol testing program, that meets the requirements specified in regulations 99.050, 99.055 and 99.060;
  - (iii) a drug and alcohol response program that meets the requirements specified in regulations 99.065, 99.070 and 99.075;and set out details of those programs; and
- (c) identify, and provide the contact details for, each person in the DAMP organisation who has any of the following roles:
  - (i) DAMP contact officer;
  - (ii) DAMP supervisor; and
- (d) be implemented as required by regulation 99.080 and set out the details of those requirements.

Note: A drug and alcohol education program includes the matters set out in the definition of drug and alcohol education program in subregulation 99.010(1).

### **Subdivision 99.B.3.2—Drug and alcohol testing program**

#### **99.050 Requirements for drug and alcohol testing**

- (1) For subparagraph 99.045(b)(ii), the DAMP must meet the following requirements:
  - (a) that any testing done under the organisation's DAMP will be conducted as follows:

- (i) for breath alcohol testing—using a device that meets the Standard mentioned in paragraph (a) of the definition of relevant Standard, or a device that meets the Standard mentioned in paragraph (b) of that definition;
    - (ii) for oral fluid testing—in accordance with the Standard mentioned in paragraph (c) of the definition of relevant Standard;
    - (iii) for urine testing—in accordance with the Standard mentioned in paragraph (d) of the definition of relevant Standard;
  - (b) that drug and alcohol testing of SSAA employees under the DAMP will be conducted in the circumstances set out in subregulation (2).
- (2) For paragraph (1)(b), the circumstances in which drug and alcohol testing will be conducted on SSAA employees are as follows:
- (a) when a person first joins the DAMP organisation, if the person will be working as a regular SSAA employee, or when an employee whose role in the organisation is to change to that of a regular SSAA employee on or after the commencement date, unless:
    - (i) the employee has been drug and alcohol tested; and
    - (ii) the tests were conducted less than 90 days before the employee is required to begin performing or being available to perform an applicable SSAA; and
    - (iii) each of the test results was not a positive result;
  - (b) after an accident or serious incident involving a SSAA employee that occurs while he or she is performing, or available to perform, an applicable SSAA, if suitable test conditions exist;
  - (c) if a DAMP supervisor has reasonable grounds to believe that a SSAA employee may be adversely affected by a testable drug or by alcohol while performing, or available to perform, an applicable SSAA;
  - (d) if a SSAA employee is returning to work after a period during which the employee was not permitted, under paragraph 99.065(1)(c), (d) or (e), to perform or be available to perform an applicable SSAA because of testable drug use.

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*Drug test results under DAMP*

- (3) A positive result for a confirmatory drug test conducted on a body sample under a drug and alcohol testing program mentioned in subparagraph 99.045(b)(ii), is taken not to be a positive result for the sample if a DAMP medical review officer has determined that the test result for the sample could be the result of legitimate therapeutic treatment or some other innocuous source.

**99.055 Requirements relating to DAMP medical review officer**

For subparagraph 99.045(b)(ii), the DAMP must include the requirement that the DAMP organisation must consult a DAMP medical review officer:

- (a) if a drug test conducted under the DAMP returns a confirmatory drug test result for a SSAA employee of the organisation that is a positive result—to determine if the presence and level of a testable drug detected by the test could be the result of legitimate therapeutic treatment or some other innocuous source; and
- (b) to review medical information concerning a person's failure to give a body sample for drug or alcohol testing because of a medical condition; and
- (c) to determine if the employee is fit to resume performing or being available to perform a SSAA.

**99.060 Requirements relating to use of testing devices**

For subparagraph 99.045(b)(ii), the DAMP must include the requirement that any devices used in drug or alcohol testing done under the DAMP must be used in a way that is not inconsistent with the instructions of the manufacturer of those devices.

**Subdivision 99.B.3.3—Drug and alcohol response program**

**99.065 Requirements relating to SSAA employees ceasing SSAAs**

- (1) For subparagraph 99.045(b)(iii), the DAMP must include the requirement that the DAMP organisation must not permit an



employee to perform, or be available to perform, an applicable SSAA in any of the following circumstances:

- (a) if the organisation is aware that a positive result for an initial drug test has been recorded for the employee and the employee has not, in respect of that test result, recorded a test result for a confirmatory drug test that is not a positive result;
  - (b) if the organisation is aware that a positive result for an initial alcohol test has been recorded for the employee and the employee has not, in respect of that test result, recorded a test result for a confirmatory alcohol test that is not a positive result;
  - (c) if the organisation is aware that:
    - (i) a positive result for a confirmatory drug test or a confirmatory alcohol test conducted under a drug and alcohol testing program mentioned in subparagraph 99.045(b)(ii) has been recorded for the employee; and
    - (ii) a DAMP medical review officer has not determined that the result recorded could be as a result of legitimate therapeutic treatment or some other innocuous source;
  - (d) if the organisation is aware that:
    - (i) a positive result for a confirmatory drug test or a confirmatory alcohol test conducted under Subpart 99.C has been recorded for the employee; and
    - (ii) a CASA medical review officer has not determined that the result recorded could be as a result of legitimate therapeutic treatment or some other innocuous source;
  - (e) if the organisation is aware that a SSAA employee after having been required to take a drug or alcohol test:
    - (i) refused to take the test; or
    - (ii) interfered with the integrity of the test.
- (2) For subparagraph 99.045(b)(iii), a DAMP must include the requirement that the DAMP organisation must not permit a SSAA employee to perform or be available to perform an applicable SSAA in the following circumstances:

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- (a) if a DAMP supervisor suspects the employee's faculties may be impaired due to the person being under the influence of a testable drug or of alcohol;
- (b) if an accident or serious incident has occurred involving the employee while he or she is performing or available to perform an applicable SSAA and either of the following apply:
  - (i) for the period that suitable test conditions exist for conducting drug or alcohol tests on the employee—a test has not been conducted;
  - (ii) if tests have been conducted under suitable test conditions—the DAMP organisation has not been notified of the test results.

**99.070 Requirements relating to returning to SSAAs**

- (1) For subparagraph 99.045(b)(iii), the DAMP must include the requirement that if:
  - (a) the DAMP organisation has not permitted a SSAA employee to perform, or be available to perform, an applicable SSAA; and
  - (b) the non-performance is a result of a circumstance mentioned in paragraph 99.065(1)(c), (d) or (e) (a *suspension event*), the organisation must only permit the employee to again begin performing or being available to perform an applicable SSAA if the circumstances set out in subregulation (2) apply.
- (2) For subregulation (1), the circumstances that must apply are as follows:
  - (a) the employee has undergone a comprehensive assessment for drug or alcohol use;
  - (b) if the comprehensive assessment recommended the employee commence a drug or alcohol intervention program—the employee has begun participating in a nominated drug or alcohol intervention program;
  - (c) the employee is considered fit to resume performing, or being available to perform, an applicable SSAA by:
    - (i) a DAMP medical review officer; and

- (ii) the employee's treating clinician, if any;
- (d) if the suspension event related to a drug test—at the time the employee was considered fit under paragraph (c), the employee receives a confirmatory drug test and records, for the test, a result that:
  - (i) was not a positive result; and
  - (ii) a DAMP medical review officer is satisfied indicates the absence of testable drug use.

### **99.075 Requirements relating to intervention programs**

- (1) Subject to subregulation (2), for subparagraph 99.045(b)(iii) the DAMP must include the requirement that a DAMP organisation must permit a SSAA employee of the organisation time to attend a nominated drug or alcohol intervention program, if:
  - (a) a DAMP medical review officer has advised the DAMP organisation that the employee should attend the program; and
  - (b) the employee is returning to work after a period during which the employee was not permitted, under regulation 99.340 or 99.345, to perform or be available to perform an applicable SSAA because of testable drug use or alcohol use.
- (2) A reference to a SSAA employee in the requirement under subregulation (1) is a reference to a SSAA employee that the DAMP organisation intends to allow to continue to perform or be available to perform a SSAA.

### **Subdivision 99.B.3.4—Implementing a DAMP**

#### **99.080 Implementing a DAMP**

- (1) For paragraph 99.045(d), the DAMP organisation, in implementing its DAMP, must ensure the following:
  - (a) that the organisation's SSAA employees and DAMP supervisors attend the organisation's drug and alcohol education program:

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- (i) for persons who begin work for the organisation after the commencement date—before commencing duties as a SSAA employee or DAMP supervisor; or
  - (ii) for persons working for the organisation as SSAA employees or DAMP supervisors on or before the commencement date—within 6 months of the commencement date; or
  - (iii) for persons working for the organisation as SSAA employees or DAMP supervisors who, after the commencement date, have attended the program—within 30 months of the person’s last attendance at the program;
- (b) that each SSAA employee of the DAMP organisation is informed that he or she must not perform, or be available to perform, an applicable SSAA if aware that he or she is adversely affected by a testable drug or by alcohol, until the employee is no longer adversely affected;
- (c) that each SSAA employee of the DAMP organisation is subject to drug and alcohol testing under the DAMP while performing, or available to perform, a SSAA of the DAMP organisation.
- (2) The DAMP organisation must also do the following:
- (a) encourage each of the organisation’s SSAA employees to disclose if he or she has consumed a level of alcohol, or is taking any drug, that may affect his or her ability to carry out an applicable SSAA;
  - (b) inform each SSAA employee of the organisation that drug and alcohol testing under this Subpart will require a person who is to be tested to provide a body sample;
  - (c) record the policy and procedures of the organisation’s DAMP using a controlled document protocol.

## **Division 99.B.4—Review and audit of DAMP**

### **99.085 Review of DAMP by DAMP organisation**

- (1) A DAMP organisation must review its DAMP to ensure compliance with the requirements of this Subpart:
  - (a) every 5 years, beginning on the date on which the DAMP was developed; and
  - (b) at any other time CASA directs.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

### **99.090 Audit of DAMP organisation by CASA**

- (1) CASA may audit the operation of a DAMP organisation to ensure appropriate development, implementation and enforcement of a DAMP.
- (2) For the audit, CASA may require the DAMP organisation to provide to CASA:
  - (a) information and records, as specified by CASA, demonstrating that the organisation has:
    - (i) developed a DAMP; and
    - (ii) implemented the DAMP; and
  - (b) a copy of the DAMP that is being implemented; and
  - (c) any other information and records specified by CASA that are relevant to the audit.
- (3) The DAMP organisation must comply with the requirement.

Penalty: 50 penalty units.
- (4) An offence against subregulation (3) is an offence of strict liability.

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**99.095 CASA may direct changes to DAMP**

- (1) CASA may at any time, for the purpose of ensuring compliance by a DAMP organisation with the requirements of regulation 99.045, direct the organisation to do any of the following:
  - (a) make a change specified by CASA to a provision in the organisation's DAMP;
  - (b) prepare a new DAMP that complies with the requirements of this Subpart;
  - (c) submit any proposed changes to the organisation's DAMP or submit a newly prepared DAMP, as the case may be, to CASA.
- (2) The DAMP organisation must comply with the direction.

Penalty: 50 penalty units.
- (3) An offence against subregulation (2) is an offence of strict liability.

## **Division 99.B.5—Provision of Information**

### **99.100 DAMP organisation or DAMP contractor to provide information**

*Information to be provided to CASA*

- (1) A DAMP organisation that has implemented a DAMP must provide the following information to CASA in respect of each DAMP reporting period, or part of a reporting period, during which the DAMP was implemented:
  - (a) the number of the organisation's employees who performed an applicable SSAA at least 2 or more times in the 90 days preceding the end of the reporting period;
  - (b) the number of the organisation's SSAA employees who attended a drug and alcohol education program during the period, including the number of employees who attended such a program:
    - (i) for the first time; and
    - (ii) for a second or subsequent time;
  - (c) the number and type of drug or alcohol tests undergone by SSAA employees under the DAMP during the period;
  - (d) the results of the tests, including the number of positive test results that a DAMP medical review officer has determined could be as a result of legitimate therapeutic treatment or some other innocuous source;
  - (e) the date and time that the tests under the DAMP were conducted;
  - (f) the role that each SSAA employee tested was undertaking at the time of being tested;
  - (g) the applicable SSAA that each SSAA employee tested was performing or available to perform at the time that he or she was tested;
  - (h) if testing was conducted following an accident or serious incident—information about the date, time and location of:
    - (i) the accident or serious incident; and

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- (ii) the testing conducted following the accident or serious incident;
- (i) follow-up action taken by the organisation under the DAMP in respect of SSAA employees:
  - (i) who were drug or alcohol tested under this Subpart; and
  - (ii) whose test results were positive results;
- (j) follow-up action taken by the organisation under the DAMP in respect of any SSAA employees:
  - (i) who were tested under Subpart 99.C; and
  - (ii) whose test results were positive results;
- (k) follow-up action taken by the organisation under the DAMP in respect of any SSAA employees who refused to take a drug or alcohol test, or interfered with the integrity of a drug or alcohol test, under this Subpart or Subpart 99.C;
- (l) the number of SSAA employees referred to a nominated drug or alcohol intervention program;
- (m) any other information relating to the implementation of a DAMP, or a drug or alcohol test under this Part, that CASA requests of the organisation in writing.

Penalty: 50 penalty units.

- (2) The information must be given in writing within 21 days after the end of the reporting period to which it relates.
- (3) The information must not include any information, other than that listed in subregulation (1), in respect of a SSAA employee that might identify the employee.

Penalty: 50 penalty units.

- (4) A DAMP organisation that has implemented a DAMP must provide the name and contact details of the organisation's current DAMP contact officer to CASA.

Penalty: 50 penalty units.



*Information to approved testers*

- (5) If a DAMP organisation or a DAMP contractor is required to provide information by an approved tester in the circumstances specified in paragraph 99.125(2)(b), the organisation or contractor must comply with the requirement within 1 hour of being given notification by the tester of the requirement.

Penalty: 50 penalty units.

- (6) An offence against subregulation (1), (3), (4) or (5) is an offence of strict liability.

**99.105 DAMP record-keeping**

- (1) A DAMP organisation must keep the records used to provide information to CASA under regulation 99.100 for 5 years from the date the information was provided to CASA.

Penalty: 50 penalty units.

- (2) The records must be kept in a secure location.

Penalty: 50 penalty units.

- (3) Within 6 months after the end of the 5 year period, the organisation must destroy or delete:

- (i) the records; or
- (ii) the parts of the records that relate to the results of drug or alcohol testing.

- (4) An offence against subregulation (1) or (2) is an offence of strict liability.

## **Subpart 99.C—Drug and alcohol testing by CASA**

### **Division 99.C.1—Preliminary**

#### **99.110 Purposes of Subpart**

- (1) This Subpart provides for drug and alcohol testing by CASA.
- (2) The Subpart sets out the following matters:
  - (a) who may be tested (Subdivision 99.C.1.1);
  - (b) certain powers of approved testers (Subdivision 99.C.1.2);
  - (c) approved drug testing devices and breathalysers (Subdivision 99.C.1.3);
  - (d) the conduct of initial drug tests and confirmatory drug tests (Division 99.C.2);
  - (e) the conduct of initial alcohol tests and confirmatory alcohol tests (Division 99.C.3).

#### **Subdivision 99.C.1.1—Who may be drug or alcohol tested**

##### **99.115 Who may be drug or alcohol tested**

- (1) An approved tester may require a body sample for the purposes of a drug or alcohol test under this Subpart from a person who is performing or available to perform an applicable SSAA.
- (2) However, an approved tester must not, for drug or alcohol testing under this Subpart, require a body sample from a passenger.

##### **99.120 Body samples may only be taken if person consents**

An approved tester is not authorised to use force to take a body sample from a person.

### **Subdivision 99.C.1.2—Powers of approved testers**

#### **99.125 Powers of approved testers**

- (1) In addition to any other powers set out in this Part, an approved tester has the powers specified in subregulation (2) in respect of taking a body sample from a donor for the following purposes:
  - (a) conducting an initial drug test;
  - (b) conducting an initial alcohol test or a confirmatory alcohol test (an *alcohol test*).
- (2) For subregulation (1), the powers are the following:
  - (a) the approved tester may require the donor to:
    - (i) produce identification of the kind mentioned in subregulation (3) to the tester; and
    - (ii) inform the tester of the donor's date of birth, address and telephone number;
  - (b) the tester may require from the donor's employer the donor's name, date of birth, address and telephone number if:
    - (i) on being required to produce identification, the donor is unable to produce identification of a kind set out in subregulation (3) to the tester; and
    - (ii) the donor's employer is a DAMP organisation or a DAMP contractor;
  - (c) the tester may require the donor to give a body sample for the drug or alcohol test;
  - (d) the tester may require the donor to stop performing, or stop being available to perform, an applicable SSAA, for the time it takes to take a body sample for testing and to conduct an initial drug test or alcohol test on the sample;
  - (e) the tester may require the donor to remain in the tester's presence for the time it takes to take a body sample and conduct an initial drug test or alcohol test on the sample.

Note: An approved tester may also ask for a body sample for a confirmatory drug test—see regulation 99.170.

- (3) For subregulation (2), the kinds of identification are:
  - (a) identification that:

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- (i) contains a photograph of the donor and sets out the donor's name, date of birth and address; and
- (ii) was issued by a Commonwealth, State, Territory or local government body; or
- (b) identification that is issued by a DAMP organisation that contains a photograph of the donor and the donor's name; or
- (c) an ASIC; or
- (d) a passport.

**Subdivision 99.C.1.3—CASA to approve testing devices**

**99.130 Approved drug and alcohol testing devices**

For drug and alcohol testing under this Subpart, CASA may by legislative instrument approve the following:

- (a) breathalysers for use in alcohol testing;
- (b) drug testing devices for use in initial drug testing.

Note: All approved breathalysers may be used for an initial alcohol test. Only some approved breathalysers may be used for a confirmatory alcohol test—see regulation 99.250.

## **Division 99.C.2—Drug testing**

### **Subdivision 99.C.2.1—General**

#### **99.135 Which body samples may be drug tested**

An approved tester may only take a sample of a person's oral fluid for drug testing under this Subpart.

#### **99.140 How samples are taken and tested**

An approved tester must take and prepare a body sample for drug testing in accordance with the procedures set out in a legislative instrument made by CASA for the purposes of this regulation.

#### **99.145 Approved drug testing devices to be used for initial drug tests**

- (1) If an approved tester is conducting an initial drug test under this Subpart, the tester must use an approved drug testing device to do the test.
- (2) The approved tester must ensure that the device is stored, tested, maintained and operated in accordance with the legislative instrument made by CASA for the purposes of this subregulation.

#### **99.150 Method for determining sample identifiers**

CASA must by legislative instrument specify a method for determining sample identifiers that are to be allocated to body samples that approved testers take under this Subpart and send for confirmatory drug tests.

### **Subdivision 99.C.2.2—Initial drug tests**

#### **99.155 Taking samples**

- (1) For the purposes of obtaining a body sample for drug testing, an approved tester may require a donor to do any or all of the following:

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- (a) swallow or otherwise remove substances from his or her mouth;
  - (b) demonstrate to the tester that the donor's mouth is free from foreign substances;
  - (c) in the tester's presence, rehydrate by drinking up to 300 ml of water within 15 minutes of being required to do so by the tester.
- (2) If the approved tester has required the donor to drink water, the tester:
- (a) must not take the body sample sooner than the period of 10 minutes after the donor finishes drinking; and
  - (b) must take the body sample as soon as practicable after the end of the period referred to in paragraph (a).
- (3) For the purposes of obtaining the body sample, the approved tester may require the donor to:
- (a) abstain from smoking, eating, drinking or chewing for 10 minutes prior to the taking of sample; and
  - (b) remain in the tester's presence for that period.

**99.160 Initial drug test**

As soon as practicable after the approved tester has taken a body sample from a donor for a drug test, the tester must conduct an initial drug test on the sample.

**99.165 If initial drug test result is not positive**

If the result of an initial drug test is not a positive result, the approved tester must, as soon as practicable after the result is returned:

- (a) discard the body sample, or deal with the body sample in such a way that the sample cannot be identified as being given by the donor of it; and
- (b) tell the donor the approved tester's name and allocated number, if requested by the donor.

**99.170 If initial drug test result is positive**

*Further body sample may be taken*

- (1) If the result of an initial drug test is a positive result, the approved tester may take a further body sample from the donor for a confirmatory drug test.
- (2) The further body sample, if any, must be taken as soon as practicable after the initial body sample was taken.
- (3) The approved tester may send either the initial body sample or the further body sample for a confirmatory drug test.
- (4) The approved tester must:
  - (a) inform the donor which body sample will be used for the confirmatory drug test; and
  - (b) discard the body sample that is not being used.

*Notice to be given*

- (5) If the result of an initial drug test is a positive result, the approved tester must, as soon as practicable:
  - (a) give the donor a notice that includes the information specified in subregulation 99.175(1) in respect of the test; and
  - (b) give the approved laboratory to whom the body sample will be sent for a confirmatory drug test a notice that includes the information specified in subregulation 99.175(3); and
  - (c) give CASA a notice that includes the information given to:
    - (i) the donor under the notice given under paragraph (a); and
    - (ii) the laboratory under paragraph (b).
- (6) The notice to the approved laboratory under paragraph (5)(b) must accompany the body sample to the laboratory.

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**99.175 Notices of initial drug test**

*Notice to donor*

- (1) The notice given to the donor under paragraph 99.170(5)(a) must contain the following:
- (a) the donor's name, date of birth, gender, residential address and telephone number, and an indication of whether those details were provided by the donor or the donor's DAMP organisation (if any) or a DAMP contractor;
  - (b) the date and time that the donor was asked by the approved tester to stop performing or being available to perform SSAAs for the purposes of giving a body sample for a drug test;
  - (c) the applicable SSAA that the donor was performing or available to perform at the time the donor was tested;
  - (d) the date, time and location of the place that an initial drug test was conducted on the donor's body sample;
  - (e) the test result for the initial drug test;
  - (f) the initials of the tester and his or her allocated number;
  - (g) the details of any photographic identification provided by the donor;
  - (h) the make, model and serial number of the approved drug testing device used to conduct the initial drug test;
  - (i) the sample identifier allocated to the body sample taken for a confirmatory drug test by the approved tester (see paragraph 99.180(1)(a));
  - (j) a certification by the tester about whether the body sample has been taken and tested in accordance with the requirements of the Regulations and any applicable legislative instrument made by CASA under regulation 99.140;
  - (k) a certification by the tester about whether the device has been stored, tested, maintained and operated in accordance with the legislative instrument made by CASA under subregulation 99.145(2).

Note: Subregulation 99.180(7) may also require the notice to contain certain things.



*Notice to approved laboratory*

- (3) For paragraph 99.170(5)(b), the notice must contain the following:
- (a) the sample identifier allocated to the body sample by the approved tester;
  - (b) the date time that the body sample was given;
  - (c) the results of the initial drug test;
  - (d) the list of testable drugs that the tester wants the approved laboratory to test for in the confirmatory drug test;
  - (e) the name of the approved tester.

**99.180 Dealing with samples for confirmatory drug test**

- (1) If the result of an initial drug test is a positive result, as soon as practicable after the result is known, the approved tester must:
- (a) allocate to the body sample a sample identifier; and
  - (b) divide the body sample into approximately equal lots to be known as Sample A and Sample B; and
  - (c) place Sample A and Sample B into separate specimen tubes; and
  - (d) place both tubes into a single container.
- (2) In allocating the sample identifier under paragraph (1)(a), the approved tester must use the method specified in a legislative instrument made by CASA under regulation 99.150.
- (3) The amount of body sample in Sample A and Sample B must be sufficient for a confirmatory drug test to be conducted.
- (4) Immediately before the body sample is placed in them, the tubes must:
- (a) be in the packages provided by the manufacturer; and
  - (b) not have been used for any purpose; and
  - (c) be in such a condition that they do not affect the quality of the body sample taken.
- (5) As soon as practicable after placing Sample A and Sample B into separate specimen tubes, the approved tester must:
- (a) securely seal each tube with tamper-evident seals; and

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- (b) label each tube with the following information:
  - (i) the tester's initials;
  - (ii) the sample identifier for the body sample;
  - (iii) information about whether the tube contains Sample A or Sample B.
- (6) The approved tester must ask the donor to:
  - (a) witness the tester's actions under this regulation in respect of the body sample; and
  - (b) initial the tamper-evident seals on the tubes; and
  - (c) sign the notice given to the donor under regulation 99.175.
- (7) If the donor refuses a request made by the approved tester under subregulation (6), the tester must, in the notice given under paragraph 99.170(5)(a), set out that fact.

**99.185 Transporting samples**

- (1) As soon as practicable after placing a body sample into specimen tubes, the approved tester must cause the tubes to be sent to an approved laboratory for confirmatory drug testing.
- (2) The approved tester must send the specimen tubes in a way that results in the tubes arriving at the approved laboratory as soon as practicable after the tester places the body sample into the tubes.

Note: Under subregulation 99.170(6), a notice from the approved tester must accompany the samples to the approved laboratory.

- (3) The specimen tubes must be stored prior to transport and transported in such a way that the integrity of the body sample is preserved.

**Subdivision 99.C.2.3—Receipt and storage of samples by approved laboratories**

**99.190 Receipt of samples**

- (1) If an approved laboratory receives a body sample divided into Sample A and Sample B for a confirmatory drug test, the

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laboratory must, as soon as practicable after receiving the specimen tubes:

- (a) inspect each tube for damage; and
  - (b) check that the seals on the tubes are intact.
- (2) If a seal on a specimen tube is not intact, or a specimen tube is damaged in such a way that the integrity of the body sample may have been compromised, the laboratory must:
- (a) not test the part of the body sample contained in the tube; and
  - (b) discard the contents of the tube.
- (3) If the laboratory discards the contents of both of the specimen tubes, as soon as practicable after the day the laboratory received the tubes, the laboratory must send to CASA a dated, written notice that includes the following information:
- (a) the date and time of receipt of the body sample at the laboratory;
  - (b) the sample identifier for the body sample;
  - (c) a statement about why both tubes were discarded.
- (4) As soon as practicable after CASA receives the notice from the laboratory, CASA must give a written a notice to the donor that includes the following:
- (a) the sample identifier for the body sample;
  - (b) a statement:
    - (i) that neither Sample A nor Sample B could be tested because the integrity of the body samples had been compromised; and
    - (ii) that both Sample A and Sample B were discarded by the laboratory.

### **99.195 Storage of samples**

*If neither Sample A nor Sample B is discarded*

- (1) Subregulations (2), (3) and (4) apply if:
- (a) an approved laboratory receives a body sample for a confirmatory drug test that is divided into Sample A and Sample B; and

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- (b) neither Sample A nor Sample B is discarded under subregulation 99.190(2) or (3).
- (2) Sample A and Sample B must be stored in a secured refrigeration unit until Sample A is tested.
- (3) If the test result for the confirmatory drug test on Sample A is a positive result, Sample B must be:
  - (a) stored in a secure freezer; and
  - (b) kept for 100 days from the date of the positive result and then discarded.
- (4) If the test result for Sample A is not a positive result, Sample B must be discarded.

*If one of the specimen tubes is discarded*

- (5) If:
  - (a) an approved laboratory receives a body sample for a confirmatory drug test that is divided into Sample A and Sample B; and
  - (b) either Sample A or Sample B is discarded under subregulation 99.190(2);then the remaining specimen tube must be stored in a secured refrigeration unit until it is tested.

**Subdivision 99.C.2.4—Conduct of drug tests by approved laboratories**

**99.200 Testing Sample A**

- (1) An approved laboratory must test Sample A of a body sample it receives for confirmatory drug testing if the laboratory is satisfied that Sample A retains its integrity.
- (2) If the integrity of Sample A of a body sample may have been compromised, or the Sample A is for some reason unavailable for confirmatory drug testing, the approved laboratory must deal with Sample B of the body sample as if it were Sample A.
- (3) These Regulations apply to the Sample B accordingly.

- (4) If Sample B of the body sample is to be dealt with as if it were Sample A, Sample B is to be known as Sample A from the time that Sample B, under this regulation, is required to be dealt with as Sample A.

### **99.205 Samples to be tested in accordance with National Association of Testing Authorities' accreditation**

An approved laboratory must test body samples received under this Subpart in accordance with the laboratory's accreditation by the National Association of Testing Authorities.

### **99.210 Notices of Sample A results**

#### *Laboratory to CASA*

- (1) As soon as practicable after a confirmatory test is conducted on Sample A of a body sample by an approved laboratory, the laboratory must send to CASA a dated, written notice that includes the following:
- (a) the date and time of receipt of the body sample at the laboratory;
  - (b) the sample identifier for the body sample;
  - (c) a statement as to whether the tamper-evident seals on the specimen tubes containing the body sample were intact on receipt by the laboratory;
  - (d) the list of testable drugs that the approved tester of the initial drug test asked to be tested;
  - (e) the date and time that Sample A was tested;
  - (f) the method used for the testing;
  - (g) the target concentrations of the testing;
  - (h) the result of the test;
  - (i) a statement about whether the body sample has been tested in accordance with these Regulations, and any conditions attached to the laboratory's National Association of Testing Authorities accreditation;
  - (j) the name of the person who declared the results of the test.
- (2) The notice must be signed by the laboratory's approved person.
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*CASA to donor—oral notice*

- (3) As soon as practicable after CASA receives the notice from the laboratory, CASA must give oral notice to the donor of the body sample of the confirmatory test result on Sample A.

*CASA to donor—written notice*

- (4) As soon as practicable after CASA gives the oral notice, CASA must give a written notice to the donor that includes the following:
- (a) the sample identifier for Sample A and Sample B;
  - (b) the list of testable drugs that were tested for;
  - (c) a statement as to whether the tamper-evident seals on the specimen tubes containing the body sample were intact on receipt by the approved laboratory that tested them;
  - (d) the date and time that Sample A was tested;
  - (e) the method used for the testing;
  - (f) the target concentrations of the testing;
  - (g) the result of the test;
  - (h) a statement about whether the body sample has been tested in accordance with these Regulations and any conditions attached to the laboratory's National Association of Testing Authorities accreditation;
  - (i) if the result of the test is a positive result:
    - (i) information about the donor's rights to have Sample B tested; and
    - (ii) information about how the donor gets Sample B tested and the costs associated with that testing.

**99.215 Donor may request testing of Sample B**

- (1) If the test result for Sample A of a body sample is a positive result, the donor of the body sample may apply to CASA to either:
- (a) have conducted on Sample B of the body sample a further confirmatory drug test by the approved laboratory (the ***original laboratory***) that tested Sample A; or
  - (b) have Sample B transferred to another approved laboratory (the ***second laboratory***) for a further confirmatory drug test.

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Note: If the integrity of either Sample A or Sample B of a body sample has been compromised, the compromised specimen tube will have been discarded. There will not be a Sample B to be tested because, under regulation 99.200, Sample B will become known as Sample A.

- (2) The application must be made within 90 days of the date of the written notice of the test result for the confirmatory drug test on Sample A being given to the donor.
- (3) The donor is liable to pay the costs of testing Sample B and any transportation costs associated with transporting Sample B to the second laboratory (if any).

*Original laboratory to test Sample B*

- (4) If the original laboratory is advised by CASA to test Sample B, it must do so.

*Second laboratory to test Sample B*

- (5) If the original laboratory is notified by CASA to transport Sample B to a specified second laboratory for testing, the original laboratory must package and transport Sample B as provided for in regulation 99.185 as if the original laboratory were the approved tester for the body sample.
- (6) The original laboratory must send the specimen tube in a way that results in the tube arriving at the approved laboratory as soon as practicable.
- (7) The specimen tubes must be stored prior to transport and transported in such a way that the integrity of the body sample is preserved.
- (8) CASA must notify the second laboratory of the matters specified in subregulation 99.175(3) in respect of Sample B.
- (9) On receipt of Sample B, the second laboratory must:
  - (a) test the sample in accordance with the notice; and
  - (b) deal with the sample as if it were the original laboratory and these Regulations apply to that second laboratory accordingly.

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**99.220 Approved laboratory to keep Sample B**

- (1) This regulation applies if:
  - (a) an approved laboratory receives a body sample for a confirmatory drug test that is divided into Sample A and Sample B; and
  - (b) the test result for the confirmatory drug test on Sample A is a positive result; and
  - (c) there is a Sample B remaining after Sample A is tested.
- (2) The approved laboratory must keep Sample B for the 100-day period specified in paragraph 99.195(3)(b), unless the donor:
  - (a) applies to CASA to have a confirmatory drug test conducted on Sample B; and
  - (b) applies within 90 days of the date of the written notice of the test result for the confirmatory drug test on Sample A being given to the donor.
- (3) If the donor does not apply to CASA within the 90-day period mentioned in subregulation (2), the approved laboratory must discard Sample B at the end of the 100-day period specified in paragraph 99.195(3)(b).

**99.225 Notices of Sample B results**

- (1) If a confirmatory drug test is conducted on Sample B of a body sample, the notices specified in subregulation 99.210(1) and (3) must be given in respect of that test.
- (2) The notices must be given in the form and within the timeframes required by regulation 99.210.
- (3) The written notice to the donor must contain the following:
  - (a) the sample identifier for Sample A and Sample B;
  - (b) a statement that Sample B was tested;
  - (c) a statement as to whether the tamper-evident seals on the specimen tubes containing the body sample were intact on receipt by the approved laboratory that tested them;
  - (d) the list of testable drugs that were tested for;
  - (e) the date and time that Sample B was tested;



- (f) the method used for the testing;
- (g) the target concentrations of the testing;
- (h) the result of the test;
- (i) a statement about whether the sample has been tested in accordance with these Regulations and any conditions attached to the laboratory's National Association of Testing Authorities accreditation.

### **99.230 Test results**

- (1) If a confirmatory drug test is conducted on Sample A of a body sample and the result is not a positive result, then the test result for the body sample is taken not to be a positive result.
- (2) Subject to subregulations (4) and (5), if a confirmatory drug test is conducted on Sample A of a body sample and the result is a positive result, then the test result for the body sample is taken to be a positive result.
- (3) Subject to subregulation (5), if:
  - (a) a confirmatory drug test is conducted on Sample A of a body sample and the result is a positive result; and
  - (b) the donor applies to CASA to have a confirmatory drug test conducted on Sample B of a body sample before the expiry of the period mentioned in subregulation 99.215(2); and
  - (c) the result of the test on Sample B is a positive result;then the test result for the body sample is taken to be a positive result.
- (4) If:
  - (a) a confirmatory drug test is conducted on Sample A of a body sample and the result is a positive result; and
  - (b) the donor applies to CASA to have a confirmatory drug test conducted on Sample B of the sample before the expiry of the period mentioned in subregulation 99.215(2); and
  - (c) the result of the test on Sample B is not a positive result, or Sample B is not available to be tested;then, despite the positive result for Sample A, the test result for the body sample is taken not to be a positive result.

**Part 99** Drug and alcohol management plans and testing

**Subpart 99.C** Drug and alcohol testing by CASA

**Division 99.C.2** Drug testing

**Regulation 99.235**

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Note: Under regulation 99.200, Sample B may have been dealt with as if it were Sample A. In that case, there will not be a Sample B to test.

- (5) A positive result for a confirmatory drug test on either Sample A or Sample B of a body sample is taken not to be a positive result for the sample if a CASA medical review officer has determined that the test result for the sample could be the result of legitimate therapeutic treatment or some other innocuous source.

**Subdivision 99.C.2.5—Record-keeping**

**99.235 Approved laboratory to keep records**

- (1) An approved laboratory must keep a copy of a notice sent under regulation 99.210 for 7 years from the date the notice was sent.

Penalty: 50 penalty units.

- (2) The laboratory must keep the copy in a secure location.

Penalty: 50 penalty units.

- (3) During the 7-year period, the laboratory must provide a copy of the notice to CASA if required to.

Penalty: 50 penalty units.

- (4) An offence against subregulation (1), (2) or (3) is an offence of strict liability.

- (5) Subject to any requirement in any other Commonwealth, State or Territory law, the copy must be destroyed at the end of the 7-year period.

## **Division 99.C.3—Alcohol testing**

### **99.240 Which body samples may be alcohol tested**

An approved tester conducting an alcohol test under this Subpart may only take a sample of a person's breath for testing.

### **99.245 How samples are taken and tested**

An approved tester must take body samples for alcohol testing in accordance with the procedures set out in a legislative instrument made by CASA for the purposes of this regulation.

### **99.250 Approved breathalysers to be used in alcohol tests**

- (1) If an approved tester is conducting an initial alcohol test under this Subpart, the tester must only use an approved breathalyser to conduct the test.
- (2) If the approved tester is conducting a confirmatory alcohol test under this Subpart, the tester must only use a breathalyser that:
  - (a) is an approved breathalyser; and
  - (b) meets the requirements of NMI R 126, *Pattern Approval Specifications for Evidential Breath Analysers*.
- (3) The approved tester must ensure that the breathalyser is stored, tested, maintained and operated in accordance with a legislative instrument made for the purposes of this subregulation.

### **99.255 Alcohol tests**

- (1) To conduct an initial alcohol test, an approved tester must take a breath sample.
- (3) If the result of the initial alcohol test is a positive result, the approved tester must take a further breath sample from the donor for a confirmatory alcohol test.

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- (4) The further sample must be taken as soon as practicable, but not sooner than 15 minutes, after the initial alcohol test sample was taken.
- (5) After the result of the confirmatory alcohol test is available, the approved tester must give the donor a notice that includes the information specified in subregulation 99.265(1).

**99.260 Test results**

- (1) If an initial alcohol test is conducted on a body sample and the result is not a positive result, then the test result for the body sample is taken not to be a positive result.
- (2) If:
  - (a) an initial alcohol test is conducted on a body sample and the result is a positive result; and
  - (b) a confirmatory alcohol test in respect of the initial alcohol test is conducted on a body sample; and
  - (c) the result of the confirmatory alcohol test is a positive result;then the test result for the body sample is taken to be a positive result.
- (3) If:
  - (a) an initial alcohol test is conducted on a body sample and the result is a positive result; and
  - (b) a confirmatory alcohol test is conducted on the body sample and the result of the test is not a positive result;then, despite the positive result for the initial alcohol test, the result for the body sample is taken not to be a positive result.

**99.265 Notice of alcohol test**

- (1) The notice given to the donor under subregulation 99.255(5) must contain the following:
  - (a) the donor's name, date of birth, gender, residential address and telephone number, and an indication of whether those details were provided by the donor or the donor's DAMP organisation (if any);

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- (b) the date and time that the donor was asked by the approved tester to stop performing or being available to perform SSAA's for the purposes of giving a body sample for an alcohol test;
  - (c) the date, time and location of the place that the donor's body sample was taken and tested;
  - (d) the test result;
  - (e) the applicable SSAA that the donor was performing or available to perform at the time the donor was tested;
  - (f) the make, model and serial number of the approved breathalyser used to conduct the testing of the body sample;
  - (g) the details of any photographic identification provided by the donor;
  - (h) a certification by the approved tester about whether the body sample has been taken and tested in accordance with the requirements of the Regulations and any applicable legislative instrument made under regulation 99.245;
  - (i) a certification by the tester about whether the breathalyser has been stored, tested, maintained and operated in accordance with the legislative instrument made under subregulation 99.250(3);
  - (j) the initials of the tester and his or her allocated number.
- (2) The approved tester must ask the donor to sign the notice at the time the approved tester gives the notice to the donor.

## **Subpart 99.D—Evidentiary certificates and prescribed proceedings**

### **Division 99.D.1—Purposes of Subpart**

#### **99.275 Purposes of Subpart**

This Subpart provides for the following:

- (a) evidentiary certificates (Division 99.D.2);
- (b) prescribed proceedings for paragraph 36(4)(d) of the Act (Division 99.D.3).

## **Division 99.D.2—Evidentiary certificates**

### **99.280 Certificates by approved tester**

*Matters relating to samples for initial drug tests*

- (1) A certificate that under subsection 36(4) of the Act is admissible in proceedings concerning an initial drug test must:
  - (a) be signed by an approved tester; and
  - (b) be in respect of a body sample taken by the tester for an initial drug test; and
  - (c) be in respect of a body sample that the tester conducted an initial drug test on; and
  - (d) state one or more of the matters set out in subregulation (3).
- (2) Subject to regulation 99.305, if subregulation (1) is complied with, then the certificate is admissible as evidence of the matters stated in the certificate in any proceedings under the Act, these Regulations or the *Criminal Code*.

Note: Regulation 99.315 prescribes proceedings under the *Criminal Code* for the purposes of paragraph 36(4)(d) of the Act.

- (3) For paragraph (1)(d), the matters are as follows:
  - (a) the approved tester's allocated number;
  - (b) that the tester who signed the certificate was an approved tester at the time the body sample was taken;
  - (c) when the body sample was taken;
  - (d) from whom the body sample was taken;
  - (e) the applicable SSAA that the donor was performing or available to perform at the time the body sample was taken;
  - (f) the make, model and serial number of the approved drug testing device used to conduct the test on the body sample;
  - (g) a description of the method of sampling;
  - (h) whether the test conducted on the body sample was an initial drug test;
  - (i) the result of the test conducted;
  - (j) the sample identifier, if any, for the body sample.

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*Matters relating to alcohol tests*

- (4) A certificate that under subsection 36(4) of the Act is admissible in proceedings concerning an alcohol test under Subpart 99.C must:
- (a) be signed by an approved tester; and
  - (b) be in respect of a body sample taken by the tester for an alcohol test; and
  - (c) state one or more of the matters set out in subregulation (6).
- (5) Subject to regulation 99.305, if subregulation (4) is complied with, then the certificate is admissible as evidence of the matters stated in the certificate in any proceedings under the Act, these Regulations or the *Criminal Code*.

Note: Regulation 99.315 prescribes proceedings under the *Criminal Code* for the purposes of paragraph 36(4)(d) of the Act.

- (6) For paragraph (4)(c), the matters are as follows:
- (a) the approved tester's allocated number;
  - (b) that the tester who signed the certificate was an approved tester at the time the body sample was taken;
  - (c) when the body sample was taken;
  - (d) from whom the body sample was taken;
  - (e) the applicable SSAA that the donor was performing or available to perform at the time the body sample was taken;
  - (f) the make, model and serial number of the approved breathalyser used to take the body sample and conduct the test;
  - (g) a description of the method of sampling;
  - (h) the alcohol test conducted on the body sample;
  - (i) the result of the test conducted.

**99.285 Certificates by approved laboratory**

- (1) A certificate that under subsection 36(4) of the Act is admissible in proceedings concerning a confirmatory drug test must:
- (a) be signed by an approved laboratory; and
  - (b) be in respect of a body sample on which a confirmatory drug test was conducted by the laboratory; and



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- (c) state one or more of the matters set out in subregulation (3).
- (2) Subject to regulation 99.305, if subregulation (1) is complied with, then the certificate is admissible as evidence of the matters stated in the certificate in any proceedings under the Act, these Regulations or the *Criminal Code*.
- Note: Regulation 99.315 prescribes proceedings under the *Criminal Code* for the purposes of paragraph 36(4)(d) of the Act.
- (3) For paragraph (1)(c), the matters are as follows:
- (a) the sample identifier for the body sample;
  - (b) that the person who signed the certificate was an approved laboratory or the laboratory's approved person at the time the certificate was signed;
  - (c) when the body sample was received;
  - (d) what, if any, labels or other means of identifying the body sample accompanied the body sample when it was received;
  - (e) what container or containers the body sample was contained in when it was received;
  - (f) the state of the seals on the container or containers when the body sample was received;
  - (g) the state of the container or containers when the body sample was received;
  - (h) when the body sample was tested;
  - (i) a description of the way in which the body sample was stored by the laboratory;
  - (j) a description of the method of testing;
  - (k) the testable drugs tested for;
  - (l) the result of the test conducted.

**99.290 Document taken to be a certificate unless contrary intention established**

For the purposes of this Subpart, a document purporting to be a certificate referred to in regulation 99.280 or 99.285 is, unless the contrary intention is established, taken to be such a certificate and to have been duly given.

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**99.295 Certificate not to be admitted unless copy given**

A certificate must not be admitted in evidence under regulation 99.280 or 99.285 in any proceedings under the Act, these Regulations or the *Criminal Code* unless:

- (a) the person charged with the offence; or
- (b) a barrister or solicitor who has appears for the person in those proceedings;

has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

**99.300 Person signing the certificate may be called to give evidence**

- (1) Subject to subregulation (2), if, under regulation 99.280 or 99.285, a certificate is admitted in evidence in proceedings, the person charged with the offence may require the person who signed the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.
- (2) Subregulation (1) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless:
  - (a) the prosecutor has been given at least 4 days notice of the person's intention to require the person who signed the certificate to be so called; or
  - (b) the Court, by order, grants the person's application to require the calling of the witness.

**99.305 Rebuttal evidence**

- (1) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under regulation 99.280 or 99.285 must be considered on its merits, and the credibility and probative value of such evidence must be neither increased nor diminished because of this Subpart.

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- (2) The evidential burden in rebutting a matter stated in a certificate given under regulation 99.280 or 99.285 is on the balance of probabilities.

**99.310 CASA may ask for full certificate**

- (1) CASA may, by notice in writing, ask:
- (a) an approved tester to provide a certificate, under subregulation 99.280(1) or (4); or
  - (b) an approved laboratory to provide a certificate, under regulation 99.285;
- that contains all of the matters listed in the particular provision.
- (2) The approved tester or approved laboratory must comply with the notice within 7 days of receiving it.
- Penalty: 50 penalty units.
- (3) An offence against subregulation (2) is an offence of strict liability.

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**Subpart 99.D** Evidentiary certificates and prescribed proceedings  
**Division 99.D.3** Prescribed proceedings

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## **Division 99.D.3—Prescribed proceedings**

### **99.315 Prescribed proceedings**

For paragraph 36(4)(d) of the Act, proceedings under the *Criminal Code* are prescribed.

## **Subpart 99.E—Offences for Subpart 99.C**

### **Division 99.E.1—Purposes of Subpart**

#### **99.320 Purposes of Subpart**

This Subpart provides for the following:

- (a) offences relating to Subpart 99.C (Division 99.E.2);
- (b) CASA medical review officers (Division 99.E.3).

## **Division 99.E.2—Offences**

### **Subdivision 99.E.2.1—Offences relating to giving a body sample**

#### **99.325 Failing to carry identification whilst undertaking applicable SSAA**

- (1) If:
- (a) a person is performing or available to perform an applicable SSAA; and
  - (b) as part of the process of taking a body sample for a drug or alcohol test under Subpart 99.C, an approved tester requires the person to produce identification of a kind set out in subregulation (2);
- the person must either:
- (c) immediately produce to the tester the identification; or
  - (d) produce to the tester the identification within 1 hour after being required to do so.

Penalty: 10 penalty units.

- (2) For subregulation (1), the kinds of identification are as follows:
- (a) identification that:
    - (i) contains a photograph of the person and sets out the person's name, date of birth and address; and
    - (ii) was issued by a Commonwealth, State, Territory or local government body;
  - (b) identification that is issued by a DAMP organisation that contains a photograph of the person and the person's name;
  - (c) an ASIC;
  - (d) a passport.
- (3) An offence against subregulation (1) is an offence of strict liability.

#### **99.330 Refusing or failing to give a body sample**

- (1) A person must not refuse or fail to give a body sample to an approved tester for a drug or alcohol test under Subpart 99.C if:
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- (a) the person is performing or available to perform an applicable SSAA; and
- (b) at the time the person is performing or available to perform the applicable SSAA, the person is required to give a body sample for a drug or alcohol test by the approved tester; and
- (c) the approved tester, in requiring and taking or seeking to take the body sample, complies with the requirements of this Part or any legislative instrument made under this Part.

Penalty: 50 penalty units.

- (2) It is a defence to subregulation (1) if a person failed to give a body sample because the person had a medical condition that rendered the person unable to give the body sample.
- (3) An offence against subregulation (1) is an offence of strict liability.

**99.335 Continuing to perform applicable SSAA after refusing a drug or alcohol test or failing to give a body sample**

- (1) This regulation applies if:
  - (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person is required by an approved tester to provide a body sample for a drug or alcohol test under Subpart 99.C; and
  - (c) the person:
    - (i) refuses to provide a body sample to be tested; or
    - (ii) fails to provide a body sample to be tested.
- (2) The person must not again perform or be available to perform an applicable SSAA until the person is drug or alcohol tested under this Part.

Penalty: 50 penalty units.

Note 1: If the person receives a confirmatory drug test and the result is a positive result, the person may be liable to an offence if the person contravenes regulation 99.380.

Note 2: It is an offence for the person to contravene regulation 99.345 or 99.380 in respect of the drug test.

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- (3) An offence against subregulation (2) is an offence of strict liability.

**99.340 Failing to stop performing an applicable SSAA**

- (1) If an approved tester requires a person to stop performing or being available to perform an applicable SSAA for the time it takes for the tester to take a body sample from the person and conduct a drug or alcohol test under Subpart 99.C on the body sample, the person must comply with the requirement.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

**99.345 Failing to remain in approved tester's presence**

- (1) If an approved tester requires a person to remain in the tester's presence for the time it takes for the tester to take a body sample from the person and conduct a drug or alcohol test under Subpart 99.C on the body sample, the person must comply with the requirement.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

**99.350 Person must not interfere with integrity of body sample**

- (1) If a person is giving, or has given, a body sample for a drug or alcohol test under this Part, a person must not interfere with the integrity of that sample.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.



**Subdivision 99.E.2.2—Offences occurring after positive test result**

**99.355 Continuing to perform applicable SSAA between having initial drug test and confirmatory drug test**

- (1) This regulation applies if:
  - (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person receives an initial drug test; and
  - (c) the result of the initial drug test is a positive result; and
  - (d) the person's body sample in respect of the initial drug test is being subjected to confirmatory drug testing by an approved laboratory.
- (2) The person must not again perform or become available to perform an applicable SSAA until the person has received a confirmatory drug test in respect of the initial drug test.

Penalty: 50 penalty units

Note: Regulation 99.360 provides an offence for performing or being available to perform an applicable SSAA after a confirmatory drug test has been given and before the results of that confirmatory drug test are returned.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) It is not an offence against subregulation (2) for a person to perform or become available to perform an applicable SSAA if the person's body sample cannot be subjected to confirmatory drug testing by an approved laboratory.

**99.360 Continuing to perform applicable SSAA after having confirmatory drug test and before result returned**

- (1) This regulation applies if:
    - (a) a person is performing or available to perform an applicable SSAA; and
    - (b) the person receives an initial drug test; and
    - (c) the result of the initial drug test is a positive result; and
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- (d) the person receives a confirmatory drug test in respect of the initial drug test; and
  - (e) the test result for the confirmatory drug test has not been returned to the person.
- (2) The person must not again perform or be available to perform an applicable SSAA until the result of the confirmatory drug test has been returned to the person.

Penalty: 50 penalty units.

Note: If the returned test result is a positive result, then the person may be liable to an offence if the person contravenes regulation 99.380.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) It is not an offence against subregulation (2) for a person to perform or become available to perform an applicable SSAA if a test result for the confirmatory drug test cannot be returned to the person because it was not possible to conduct the confirmatory drug test.

**99.365 Continuing to perform applicable SSAA before confirmatory alcohol test result returned**

- (1) This regulation applies if:
- (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person receives an initial alcohol test; and
  - (c) the initial alcohol test result is a positive result.
- (2) The person must not again perform or be available to perform an applicable SSAA until the person has:
- (a) received a confirmatory alcohol test in respect of the initial alcohol test; and
  - (b) the test result for the confirmatory alcohol test has been returned to the person.

Penalty: 50 penalty units

Note: If the returned test result is a positive result, then the person may be liable to an offence if the person contravenes regulation 99.385.

- (3) An offence against subregulation (2) is an offence of strict liability.

**99.370 Performing applicable SSAA showing positive result for testable drug**

- (1) A person must not perform or be available to perform an applicable SSAA if:
- (a) while the person is performing or available to perform an applicable SSAA, the person gives a body sample for an initial drug test under Subpart 99.C; and
  - (b) a confirmatory drug test in respect of the initial drug test is conducted on Sample A of the person's body sample; and
  - (c) the result of the confirmatory drug test on Sample A is a positive result.

Penalty: 50 penalty units.

Note: Regulation 99.230 deals with how you determine the results of confirmatory drug tests.

- (2) It is a defence to subregulation (1) if Sample B of the person's body sample is tested within the period specified in subregulation 99.215(2) and returns a result that is not positive.
- (3) Subregulation (1) applies to create an offence in respect only of the applicable SSAA that the person was performing or available to perform at the time that the body sample for the initial drug test was taken.
- (4) An offence against subregulation (1) is an offence of strict liability.

**99.375 Performing applicable SSAA while showing positive result for a confirmatory alcohol test**

- (1) A person must not perform or be available to perform an applicable SSAA if:
- (a) while the person is performing or available to perform an applicable SSAA, the person gives a body sample for an initial alcohol test under Subpart 99.C; and
  - (b) the person gives a body sample for a confirmatory alcohol test in respect of the initial alcohol test; and

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(c) the result of the confirmatory alcohol test is a positive result.

Penalty: 50 penalty units.

Note: Regulation 99.260 deals with how you determine the results of alcohol tests.

(2) Subregulation (1) applies to create an offence in respect only of the applicable SSAA that the person was performing or available to perform at the time that the body sample for the initial alcohol test was taken.

(3) An offence against subregulation (1) is an offence of strict liability.

**Subdivision 99.E.2.3—Offences relating to returning to SSAAs after positive test result**

**99.380 Continuing to perform applicable SSAA after having confirmatory drug test**

- (1) This regulation applies if:
- (a) a person is performing or available to perform an applicable SSAA; and
  - (b) the person receives an initial drug test; and
  - (c) the initial drug test result is a positive result; and
  - (d) the person receives a confirmatory drug test in respect of the initial drug test; and
  - (e) the test result for the confirmatory drug test is a positive result.
- (2) The person must not again perform or be available to perform an applicable SSAA until all of the following have occurred:
- (a) the person has undergone a comprehensive assessment;
  - (b) if the comprehensive assessment recommended the person commence a drug or alcohol intervention program—the person has begun participating in a nominated drug or alcohol intervention program;
  - (c) the person is considered fit to resume performing, or being available to perform, an applicable SSAA by:

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- (i) if the person is an employee of a DAMP and the DAMP was notified of the test result for the confirmatory drug test by CASA—a DAMP medical review officer; or
- (ii) in any other case—a CASA medical review officer;
- (d) the person is considered fit to resume performing, or being available to perform, an applicable SSAA by the person's treating clinician, if any;
- (e) at the time the person was considered fit under paragraphs (c) and (d), the person receives a confirmatory drug test and records, for the test, a result that was not a positive result.

Penalty: 50 penalty units.

Note: Regulation 99.230 deals with test results for body samples that are drug tested.

- (3) An offence against subregulation (2) is an offence of strict liability.

**99.385 Continuing to perform applicable SSAA after confirmatory alcohol test**

- (1) This regulation applies if:
  - (a) a person was performing or available to perform an applicable SSAA; and
  - (b) the person has had an initial alcohol test; and
  - (c) the test result for the initial alcohol test was a positive result; and
  - (d) the person has had a confirmatory alcohol test in respect of the initial alcohol test; and
  - (e) the test result for the confirmatory alcohol test was again a positive result.
- (2) The person must not again perform or become available to perform an applicable SSAA until all of the following have occurred:
  - (a) the person has undergone a comprehensive assessment;
  - (b) if the comprehensive assessment recommended the person commence a drug or alcohol intervention program—the person has begun participating in a nominated drug or alcohol intervention program;

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- (c) the person is considered fit to resume performing, or being available to perform, an applicable SSAA by:
  - (i) if the person is an employee of a DAMP and the DAMP was notified of the test result for the confirmatory alcohol test by CASA—a DAMP medical review officer; or
  - (ii) in any other case—a CASA medical review officer;
- (d) the person is considered fit to resume performing, or being available to perform, an applicable SSAA by the person's treating clinician, if any.

Penalty: 50 penalty units.

Note: Regulation 99.260 deals with test results for body samples that are alcohol tested.

- (3) An offence against subregulation (2) is an offence of strict liability.

## **Division 99.E.3—CASA medical review officers**

### **99.390 CASA medical review officers**

- (1) CASA may, in writing, appoint a person entitled to practice as a medical practitioner under a law of a State or Territory to be a CASA medical review officer for the purposes of Subpart 99.C.
- (2) A CASA medical review officer must review:
  - (a) a positive result for a drug or alcohol test; and
  - (b) medical information concerning a person's failure to give a body sample for drug or alcohol testing because of a medical condition;  
before the result or failure is referred for action for an offence under this Subpart, or for other action under the Act or these Regulations.
- (3) CASA must take into account the results of a review carried out by a CASA medical review officer under subregulation (2) before it makes a decision to refer a positive result for action for an offence under this Subpart or for other action under the Act or these Regulations.

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## **Subpart 99.F—Provision of information**

### **Division 99.F.1—Purposes of Subpart**

#### **99.395 Purposes of Subpart**

This Subpart provides for the exchange of information about drug and alcohol tests between CASA and DAMP organisations, and CASA and foreign operators.



## **Division 99.F.2—Information**

### **99.400 Drug or alcohol test information given or required by CASA**

- (1) If:
- (a) a drug or alcohol test is conducted on a person under Subpart 99.C; and
  - (b) the person is a SSAA employee of a DAMP organisation or an employee of a foreign operator; and
  - (c) the result of the test is a positive result;

CASA may notify the organisation or foreign operator of the matters set out in a notice given to the person under Subpart 99.C.

*If CASA notifies a DAMP organisation*

- (2) If CASA notifies a DAMP organisation under subregulation (1) of the results of the test, CASA may require the organisation, by notice in writing, to provide CASA with the information set out in subregulation (3) in respect of the employee.
- (2A) If, under subregulation (2), CASA requires a DAMP organisation to provide CASA with information, the DAMP organisation must, in writing, provide CASA with that information.

Penalty: 50 penalty units.

- (3) CASA may require:
- (a) information about what, if any, action was taken by the DAMP organisation under its DAMP in respect of the employee and the test result; and
  - (b) information about when, after the result of the test became known, the employee again performed or became available to perform a SSAA; and
  - (c) if the employee ceases to be a SSAA employee of the organisation—information about whether the employee so ceased:
    - (i) before the employee had completed attending a nominated drug or alcohol intervention program; or

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- (ii) before the employee had been approved by the organisation to again perform or be available to perform a SSAA.

*If CASA notifies foreign operator*

- (4) If CASA notifies the foreign operator under subregulation (1) of the results of the test, CASA may require the operator, by notice in writing, to provide CASA with the information relating to the test result specified in the notice.
- (5) If, under subregulation (4), CASA requires a foreign operator to provide CASA with information, the operator must, in writing, provide CASA with that information.

Penalty: 50 penalty units.

- (6) An offence against subregulation (2A) or (5) is an offence of strict liability.

**99.405 Information that must be given to CASA following drug or alcohol test**

- (1) This regulation applies if:
  - (a) CASA notifies a DAMP organisation of a person's test results in accordance with subregulation 99.400(1); and
  - (b) the person is a SSAA employee of the DAMP; and
  - (c) the person ceases to be a SSAA employee of the DAMP organisation for any reason; and
  - (d) the cessation occurs after the test and before the employee:
    - (i) resumes performing or being available to perform an applicable SSAA with the organisation; or
    - (ii) satisfactorily completes a nominated drug or alcohol intervention program.
- (2) The DAMP organisation must, in writing, provide CASA with the information set out in subregulation (3) in respect of the employee.

Penalty: 50 penalty units.

- (3) The information is the following:

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- (a) the employee's name and address;
  - (b) the employee's ARN, if any;
  - (c) the date the employee ceased to work for the DAMP organisation.
- (4) An offence against subregulation (2) is an offence of strict liability.

## **Subpart 99.G—CASA's powers in relation to civil aviation authorisations**

### **Division 99.G.1—Purposes of Subpart**

#### **99.410 Purposes of Subpart**

This Subpart provides for CASA to vary, suspend or cancel a person's civil aviation authorisation in certain circumstances.

Note: CAR 269 allows CASA to vary, suspend or cancel a licence, certificate or authority, but under that regulation CASA must give the holder of the licence, certificate or authority notice and allow the holder an opportunity to show cause why the licence, certificate or authority should not be varied, suspended or cancelled.

#### **99.415 When CASA may vary, suspend or cancel a civil aviation authorisation**

- (1) CASA may, in writing, vary, suspend or cancel a person's civil aviation authorisation in the interests of aviation safety in the following circumstances:
  - (a) if:
    - (i) the person gives a body sample for drug or alcohol testing under Subpart 99.C; and
    - (ii) a confirmatory alcohol test or confirmatory drug test is conducted on the sample; and
    - (iii) the test result is a positive result;
  - (b) if a person refuses to give a body sample for drug or alcohol testing under Subpart 99.C.
- (2) If CASA determines that a person has contravened the requirements of a regulation in Division 99.E.2 (other than subregulation 99.325(1)), CASA may, in writing, vary, suspend or cancel the person's civil aviation authorisation in the interests of aviation safety.
- (3) If:

- (a) CASA determines that a person has contravened the requirements of a regulation in Subpart 99.B or 99.F; and
  - (b) the person holds a civil aviation authorisation;
- CASA may, in writing, vary, suspend or cancel the person's civil aviation authorisation in the interests of aviation safety.
- (4) Before making a decision to vary, suspend or cancel a person's civil aviation authorisation under subregulation (3), CASA must:
    - (a) give the person a notice setting out the reasons why CASA is considering making the decision; and
    - (b) allow the person to show cause, within such reasonable time as CASA specifies in the notice, why CASA should not make the decision.

Note: See section 31 of the Act for review of a decision under this regulation.

#### **99.420 When variation, suspension or cancellation takes effect**

A variation, suspension or cancellation of a civil aviation authorisation under regulation 99.415 takes effect from the date and time (if any) specified in the variation, suspension or cancellation.

#### **99.425 Notice**

- (1) If CASA varies, suspends or cancels a person's civil aviation authorisation under regulation 99.415, CASA must, as soon as practicable after the variation, suspension or cancellation, give the person a notice of the variation, suspension or cancellation that contains the following information:
  - (a) whether the person's authorisation is varied, suspended or cancelled;
  - (b) the authorisation that is so varied, suspended or cancelled;
  - (c) the reason for the variation, suspension or cancellation;
  - (d) the time (if any) and date that the variation, suspension or cancellation takes effect.
- (2) If the notice given under subregulation (1) is not a written notice, CASA must, within 48 hours after giving the notice under that

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subregulation, give the person a written notice of the matters specified in that subregulation.

**99.430 Effect of effluxion of time in relation to the suspension of civil aviation authorisation**

- (1) If a civil aviation authorisation is suspended under this Subpart, the authorisation has no force or effect for the duration of the suspension, but the period of currency of the authorisation continues to run.
- (2) If the period for which the authorisation is suspended is a period expiring after the expiration of the current period of the authorisation, the holder of the authorisation is not eligible for renewal of the authorisation until the period of suspension has expired.

**99.435 Effect of suspension of civil aviation authorisation**

If CASA suspends a civil aviation authorisation under this Subpart, its holder is taken not to be the holder of the authorisation during the period of the suspension.

## **Subpart 99.H—Approved testers and authorisations to conduct drug and alcohol tests**

### **Division 99.H.1—Purposes of Subpart**

#### **99.440 Purposes of Subpart**

This Subpart provides for the following:

- (a) approvals and authorisations of persons to take body samples and conduct drug and alcohol tests (Division 99.H.2);
- (b) obligations on approved testers, and protection of approved testers from liability in certain cases (Division 99.H.3);
- (c) powers of approved testers (Division 99.H.4);
- (d) identity cards for approved testers (Division 99.H.5);
- (e) notices for approved testers (Division 99.H.6).

## Division 99.H.2—Approvals and authorisations

### 99.445 CASA may approve persons to take body samples and conduct tests

(1) A person may apply to CASA, in writing, for approval to take body samples for the purposes of Part IV of the Act.

(1A) Subject to regulation 11.055, CASA must grant the approval.

(2) A person may apply to CASA, in writing, for approval to conduct alcohol tests and initial drug tests for the purposes of Part IV of the Act.

(2A) Subject to regulation 11.055, CASA must grant the approval.

(2B) A person may apply to CASA, in writing, for approval to conduct confirmatory drug tests for the purposes of Part IV of the Act.

(3) Subject to regulation 11.055, CASA must grant the approval if the National Association of Testing Authorities accredits the person:

(a) to AS 4760, *Procedures for specimen collection and the detection and quantitation of drugs in oral fluid*; or

(b) another Standard that is declared by CASA in a legislative instrument made for the purposes of this paragraph.

Note 1: An application must be in the approved form, include all the information required by these Regulations and be accompanied by every document required by these Regulations—see regulation 11.030.

Note 2: Under regulation 201.004, an application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision refusing to issue, or cancelling, suspending or varying, an approval; or

(b) a decision imposing a condition on an approval.

(5) If CASA approves a person under subregulation (1) or (2), CASA must allocate to the person a unique identifying number (an **allocated number**) for the purposes of this Subpart.

(6) The allocation must be in accordance with a method approved by CASA for the purposes of this subregulation.



- (7) The allocated number may include a numeral, letter or other character.

**99.450 Persons authorised to take body samples and conduct tests**

- (1) For subsection 36(2) of the Act, a person is authorised to take body samples for drug or alcohol tests under Subpart 99.C if the person is approved by CASA to do so under subregulation 99.445(1).
- (2) For subsection 36(3) of the Act, a person is authorised to conduct alcohol tests or initial drug tests under Subpart 99.C if the person is approved by CASA to do that under subregulation 99.445(2).
- (3) For subsection 36(3) of the Act, a person is authorised to conduct confirmatory drug tests under Subpart 99.C if the person is approved by CASA to do that under subregulation 99.445(3).

### **Division 99.H.3—Obligations on approved testers and protection from liability**

#### **99.455 Obligations on approved testers**

- (1) An approved tester who wants to take a body sample from a donor must comply with the requirements of this Part in requiring, taking and dealing with the body sample.
- (2) Before taking a body sample from a donor, an approved tester must give the donor notice, in relation to any information about the donor that is collected by the tester, that meets the requirements of Information Privacy Principle 2 of the *Privacy Act 1988*.
- (3) The tester must ensure that he or she does not delay the donor for longer than is necessary to take the body sample and to conduct the test.

#### **99.460 Approved testers not liable in certain cases**

An approved tester is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function or power conferred by this Part.

## **Division 99.H.4—Powers of approved testers**

### **99.465 Approved testers' powers to access premises**

- (1) Subject to any aviation security requirements, an approved tester must, at all reasonable times, have access to any place to which access is necessary for the purposes of carrying out any of the approved tester's powers and functions under this Part.
- (2) A person must not prevent, or hinder, access by an approved tester to any place to which access is necessary for the purposes of carrying out any of the approved tester's powers or functions under this Part.

Penalty: 50 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) An approved tester must produce his or her identity card for inspection if asked to do so by the occupier or person in charge, or apparently in charge, of the place to which the tester seeks access.
- (5) If an approved tester:
  - (a) is acting as an approved tester; and
  - (b) seeks or is allowed access to a place specified in subregulation (1); and
  - (c) fails to produce his or her identity card for inspection when asked to do so;the tester is not authorised to access the place under that subregulation and, if access has been given to the tester, the tester must leave the place.

## **Division 99.H.5—Identity cards**

### **99.470 Identity cards**

- (1) CASA must issue an approved tester with an identity card for the purposes of this Part.
- (2) The identity card is valid for the period that the person has been approved under regulation 99.445, or until that approval is suspended or revoked.
- (3) The card must:
  - (a) contain a recent photograph of the person; and
  - (b) specify whether the person is authorised to take body samples for drug or alcohol tests, or both; and
  - (c) specify that the person is authorised to conduct alcohol tests or initial drug tests, or both; and
  - (d) state the person's allocated number; and
  - (e) state the period for which the person is authorised to be an approved tester.

### **99.475 Return of identity card**

- (1) If:
  - (a) a person has been issued with an identity card; and
  - (b) either:
    - (i) the person ceases to be an approved tester; or
    - (ii) the person's approval under regulation 99.445 is suspended;

the person must return the card to CASA within 7 days of the person ceasing to be an approved tester, or of the person's approval being suspended, as the case may be.

Penalty: 10 penalty unit.

- (2) An offence against subregulation (1) is an offence of strict liability.

### **99.480 Display and production of identity cards**

- (1) If an approved tester is performing functions or exercising powers under this Part, the tester must:
  - (a) wear his or her identity card so that it can be readily seen; and
  - (b) upon request, show his or her identity card to a person from whom the approved tester intends to take a body sample for a drug or alcohol test.
- (2) A donor who has been required by an approved tester to give a body sample for a drug or alcohol test may refuse to give the body sample if:
  - (a) the donor requests the tester to show the donor the tester's identity card; and
  - (b) the tester does not show the donor the card.

### **99.485 Suspension or revocation of authorisation**

- (1) This regulation applies if an approved tester:
  - (a) breaches a condition of the tester's approval given under regulation 99.445; or
  - (b) does not comply with the requirements of this Part in performing functions or exercising powers under this Part.
- (2) CASA may do any or all of the following in respect of the breach:
  - (a) impose a further condition of approval;
  - (b) suspend the approved tester's authorisation under regulation 99.450;
  - (c) revoke the tester's authorisation under regulation 99.450.
- (3) If:
  - (a) CASA takes an action mentioned in paragraph (2)(a) or (b) because of a breach of a condition (the **first breach**); and
  - (b) CASA later becomes satisfied that the approved tester is not complying with a condition of the approval under regulation 99.445;

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CASA may revoke the tester's authorisation even if the period for fulfilling any condition, or the period of any suspension for the first breach, has not ended.

**99.490 Notices**

- (1) If CASA imposes on an approved tester a further condition of approval under paragraph 99.485(2)(a), CASA must give the tester notice in writing of the imposition of the condition, the terms of the condition and the date from which the condition takes effect.
- (2) If CASA suspends the approved tester's authorisation under paragraph 99.485(2)(b), CASA must give the tester notice in writing of the suspension, the date that the suspension takes effect and the period of the suspension.
- (3) If CASA revokes the approved tester's authorisation under paragraph 99.485(2)(c), CASA must give the tester notice in writing of the revocation and the date from which the revocation takes effect.
- (4) The date under this regulation must not be a date before the day the notice is given.
- (5) A notice under this regulation must also include a statement setting out the reason that the condition was imposed or that the authorisation was suspended or revoked, as the case may be.

## **Division 99.H.6—Notices to approved testers**

### **99.495 Notice to approved testers**

If a provision of these Regulations requires CASA to give a notice to an approved tester, the requirement is met if CASA gives that notice to the person who, as CASA's delegate, approved the tester as an approved tester.

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## **Subpart 101.A—Preliminary**

### **101.005 Applicability of this Part**

- (1) This Part sets out the requirements for the operation of unmanned aircraft (including model aircraft), and (to the extent that the operation of rockets and fireworks affects or may affect the safety of air navigation) the operation of rockets and the use of certain fireworks.
- (2) Nothing in this Part applies to the operation of a manned balloon or a hot air balloon.
- (3) Subparts 101.C to 101.I do not apply to the operation of:
  - (a) a control-line model aircraft (that is, a model aircraft that is constrained to fly in a circle, and is controlled in attitude and altitude, by means of inextensible wires attached to a handle held by the person operating the model); or
  - (b) a model aircraft indoors; or
  - (c) an unmanned airship indoors; or
  - (d) a small balloon within 100 metres of a structure and not above the top of the structure; or
  - (e) an unmanned tethered balloon that remains below 400 feet AGL; or
  - (f) a firework rocket not capable of rising more than 400 feet AGL.

Note: Subpart 101.B applies to the operation of all unmanned aircraft (including model aircraft) and rockets, including firework rockets.

- (4) For paragraph (3)(c), a flight does not take place indoors if the building in which it takes place has the roof, or 1 or more walls, removed.

### **101.010 Application to rocket-powered unmanned aircraft**

This Part applies to a rocket-powered unmanned aircraft, and to the operation of such an aircraft, unless the contrary intention appears.

### **101.015 Application of registration and marking requirements**

Parts 45 and 47 do not apply to an aircraft (other than a large UAV) to which this Part applies, nor to a micro UAV.

Note: A large UAV is required to carry a manufacturer's data plate and an aircraft registration identification plate—see respectively regulation 21.820 and Subpart 45.D of Part 45.

### **101.020 Exemption from certain other provisions of CAR 1988**

Parts 4, 4A, 4B, 4C, 5, 7, 9, 10, 11, 12, 13 and 14 of CAR 1988 do not apply to an aircraft to which this Part applies, nor to a micro UAV.

### **101.025 Meaning of *populous area***

For this Part, an area is a *populous area* in relation to the operation of an unmanned aircraft or rocket if the area has a sufficient density of population for some aspect of the operation, or some event that might happen during the operation (in particular, a fault in, or failure of, the aircraft or rocket) to pose an unreasonable risk to the life, safety or property of somebody who is in the area but is not connected with the operation.

### **101.030 Approval of areas for operation of unmanned aircraft or rockets**

- (1) A person may apply to CASA for the approval of an area as an area for the operation of:
  - (a) unmanned aircraft generally, or a particular class of unmanned aircraft; or
  - (b) rockets.
- (2) For paragraph (1)(a), the classes of unmanned aircraft are the following:
  - (a) tethered balloons and kites;
  - (b) unmanned free balloons;
  - (c) UAVs;
  - (d) model aircraft.

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- (3) In considering whether to approve an area for any of those purposes, CASA must take into account the likely effect on the safety of air navigation of the operation of unmanned aircraft in, or the launching of rockets in or over, the area.
- (4) An approval has effect from the time written notice of it is given to the applicant, or a later day or day and time stated in the approval.
- (5) An approval may be expressed to have effect for a particular period (including a period of less than 1 day), or indefinitely.
- (6) CASA may impose conditions on the approval in the interests of the safety of air navigation.
- (7) If CASA approves an area under subregulation (1), it must publish details of the approval (including any condition) in NOTAM or on an aeronautical chart.
- (8) CASA may revoke the approval of an area, or change the conditions that apply to such an approval, in the interests of the safety of air navigation, but must publish details of any revocation or change in NOTAM or on an aeronautical chart.
- (9) CASA must also give written notice of the revocation or change:
  - (a) to the person who applied for the approval of the area; or
  - (b) if that person applied for that approval as an officer of an organisation concerned with unmanned aircraft or rockets, and no longer holds that office—to the person who now holds the office.

**101.035 Requirements in this Part to give information to CASA**

- (1) If a provision of this Part requires a person to give information to CASA about the operation, launching or release of an unmanned aircraft or rocket, then, unless the provision says otherwise, the person may do so by giving the information to:
  - (a) if the person is an approved aviation administration organisation—the Australian NOTAM Office; or
  - (b) an appropriate approved aviation administration organisation.

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- (2) However, subregulation (1) does not apply in relation to the release of small balloons, or in relation to a firework display.
- (3) The information need not be given in writing unless:
  - (a) CASA or the authority to which it is given asks for it to be given in writing in the particular case; or
  - (b) another provision of these Regulations requires it to be given in writing.
- (4) If a person gives the information to an authority mentioned in paragraph (1)(a) or (b), then, subject to subregulation (6), the person is taken, for all purposes, to have complied with the requirement to give the information.
- (5) If in a particular case CASA or the authority to which the information is given reasonably requires extra information about the operation, launching or release, CASA or the authority may ask the person for the extra information.
- (6) If CASA or an authority asks for more information under subregulation (5), the person is not taken to have complied with the requirement mentioned in subregulation (1) to give the information until the person gives to CASA or the authority the extra information.
- (7) If a day is not a working day for the office of CASA or an authority to which notice of an event is given or an application made, that day does not count for the purpose of working out how many working days' notice of the event has been given, or how many working days before an event the application has been made.
- (8) In subregulation (7):  
***working day***, in relation to an office of CASA or an authority, means a day on which that office is open for business.

## **Subpart 101.B—General prohibition on unsafe operation**

### **101.050 Applicability of this Subpart**

This Subpart applies to the operation of all unmanned aircraft and rockets that are not aircraft, whether or not any of Subparts C to I applies.

### **101.055 Hazardous operation prohibited**

- (1) A person must not operate an unmanned aircraft in a way that creates a hazard to another aircraft, another person, or property.

Penalty: 50 penalty units.

- (2) A person must not launch a rocket that is not an aircraft in a way that creates a hazard to an aircraft.

Penalty: 50 penalty units.

- (3) A person must not launch a rocket that is not an aircraft in a way that creates a hazard to another person or to property.

Penalty: 50 penalty units.

- (3A) An offence against subregulation (1), (2) or (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is not a defence to a charge of contravening subregulation (1), (2) or (3) that the relevant unmanned aircraft was being operated, or the relevant rocket was launched, in a way that complied with the operations manual of an approved aviation administration organisation.

- (5) In subregulations (2) and (3):

***rocket*** includes a firework rocket.



## **Subpart 101.C—Provisions applicable to unmanned aircraft generally**

### **101.060 Applicability of this Subpart**

This Subpart applies to the operation of unmanned aircraft of all kinds, except operation mentioned in subregulation 101.005(3).

Note: Rockets that are not aircraft are dealt with separately in Subpart 101.H.

### **101.065 Operation in prohibited or restricted area**

- (1) A person may operate an unmanned aircraft in or over a prohibited area, or in or over a restricted area, only with the permission of, and in accordance with any conditions imposed by, the authority controlling the area.

Penalty: 25 penalty units.

Note: For *prohibited area* and *restricted area*, see regulation 6 of the *Airspace Regulations 2007*. Details of prohibited or restricted areas are published in the AIP or a NOTAM.

- (1A) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) In subregulation (1):

***authority controlling the area*** means:

- (a) in the case of a prohibited area—the Secretary to the Department of Defence; and
- (b) in the case of a restricted area—the authority mentioned in AIP (as issued from time to time) as the controlling authority for the area.
- (3) For subregulation (1):
- (a) the authority controlling the area must give a written statement of any condition so imposed to the person who applied for the permission; and

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- (b) unless the authority gives the statement to the person, the person is not bound by the condition.

**101.070 Operation in controlled airspace**

- (1) A person may operate an unmanned aircraft above 400 feet AGL in controlled airspace only:
  - (a) in an area approved under regulation 101.030 as an area for the operation of unmanned aircraft of the same kind as the aircraft, and in accordance with any conditions of the approval; and
  - (b) in accordance with an air traffic control clearance.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.075 Operation near aerodromes**

- (1) A person may operate an unmanned aircraft at an altitude above 400 feet AGL within 3 nautical miles of an aerodrome only if:
  - (a) the operation is permitted by another provision of this Part; or
  - (b) permission has been given for the operation under regulation 101.080.

Penalty: 25 penalty units.

- (2) A person may operate an unmanned aircraft over an area mentioned in paragraph (3)(a) or (b) only if:
  - (a) the operation is permitted by another provision of this Part; or
  - (b) permission has been given for the operation under regulation 101.080.

Penalty: 25 penalty units.

- (3) The areas for subregulation (2) are:
  - (a) a movement area or runway of an aerodrome; and

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- (b) the approach or departure path of a runway of an aerodrome.
- (4) A person must not operate an unmanned aircraft in such a manner as to create an obstruction to an aircraft taking off from, or approaching for landing at, a landing area or a runway of an aerodrome.
- Penalty: 25 penalty units.
- (5) An offence against subregulation (1), (2) or (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.080 Permission for operation of unmanned aircraft near aerodrome**

- (1) The authority from which permission must be obtained for the purposes of regulation 101.075 is:
- (a) if the aerodrome concerned is a controlled aerodrome—the air traffic control service for the aerodrome; or
  - (b) in the case of any other aerodrome—CASA.
- (2) A person applies for permission under this regulation by giving to the relevant authority mentioned in subregulation (1) the information required by table 101.080, so far as relevant to the proposed operation.

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**Subpart 101.C** Provisions applicable to unmanned aircraft generally

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**Table 101.080 Details of operation of unmanned aircraft to be given to CASA or ATC**

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<b>Item</b>	<b>Information to be provided</b>
1	In all cases: (a) the name, address and telephone number of the person who will operate the aircraft or (if the aircraft concerned is an unmanned free balloon) release the balloon (or, if several people will be involved, the name, address and telephone number of the person who will coordinate the operation); and (b) the date and time the operation or release is to begin and how long it is to last; and (c) where it is to be carried out; and (d) if more than 1 unmanned aircraft is to be operated at a time, how many unmanned aircraft are to be operated at that time
2	In the case of the operation of a tethered balloon or a kite: (a) a brief description of the balloon or kite, including its predominant colour; and (b) the height to which it is to be operated; and (c) its mass
3	In the case of the release of a free balloon: (a) how many balloons are to be released; and (b) the estimated size and mass of the balloon's payload
4	In the case of the release of a medium or heavy balloon: (a) the balloon's flight identification or its project code name; and (b) the balloon's classification, or a description of the balloon; and (c) the balloon's SSR code or NDB frequency, and its Morse identification; and (d) the expected horizontal direction of the balloon's ascent, and the balloon's expected rate of climb; and (e) the balloon's float level (given as pressure altitude); and (f) when the balloon is expected to reach 60 000 feet pressure altitude, and the location over which it is expected to do so; and

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**Table 101.080 Details of operation of unmanned aircraft to be given to CASA or ATC**

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**Item Information to be provided**

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(g) when the flight is expected to end, and where the balloon and its payload are expected to fall

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Note: For *free balloon* and *heavy balloon*, see regulation 101.145. For *tethered balloon*, see regulation 101.105.

- (3) If more than 1 aircraft is to be operated at a time, such a requirement is a requirement to give the information about each such aircraft.
- (4) Regulation 101.035 does not authorise a person who or that applies for permission under this regulation to make the application to a body mentioned in paragraph 101.035(1)(a) or (b).
- (5) If the authority grants the permission, it may impose conditions on the permission in the interests of the safety of air navigation.
- (6) A person must not contravene a condition imposed under subregulation (5).
- Penalty: 50 penalty units.
- (7) An offence against subregulation (6) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.085 Maximum operating height**

- (1) A person may operate an unmanned aircraft at above 400 feet AGL only:
- (a) in an area approved under regulation 101.030 as an area for the operation of unmanned aircraft of the same class as the aircraft concerned, and in accordance with any conditions of the approval; or
- (b) as otherwise permitted by this Part.
- Penalty: 50 penalty units.
- (2) An offence against subregulation (1) is an offence of strict liability.

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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.090 Dropping or discharging of things**

- (1) A person must not cause a thing to be dropped or discharged from an unmanned aircraft in a way that creates a hazard to another aircraft, a person, or property.

Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.095 Weather and day limitations**

- (1) A person may operate an unmanned aircraft:

- (a) in or into cloud; or
- (b) at night; or
- (c) in conditions other than VMC;

only if permitted by another provision of this Part, or in accordance with an air traffic control direction.

Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Subpart 101.D—Tethered balloons and kites**

### **101.100 Applicability of this Subpart**

This Subpart applies to the operation of tethered balloons and kites.

Note: This Subpart does not apply to:

- (a) the shielded operation (that is, operation within 100 metres of a structure and not above the top of the structure) of a small balloon; or
- (b) the operation of an unmanned tethered balloon or kite below 400 feet AGL.

See subregulation 101.005(3).

### **101.105 Definitions for Subpart**

- (1) In this Subpart:

***tethered balloon*** means a balloon that is attached to the ground, or an object on the ground, by a cable.

- (2) For this Subpart, the height of a tethered balloon is taken to be the height above ground or water level of the topmost part of its envelope.

### **101.110 Tethered balloons and kites that may be operated outside approved areas**

- (1) A person may operate a tethered balloon or a kite above 400 feet AGL outside an area approved under regulation 101.030 as an area for the operation of unmanned balloons or kites (as the case requires) only if:
- (a) the mass of the balloon or kite is no more than 15 kilograms; and
  - (b) the horizontal visibility at the time is at least 5 kilometres; and
  - (c) the person gives to CASA the information required by table 101.110 about the proposed operation at least 1 working day before it is due to start.

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Penalty: 10 penalty units.

Note 1: A person can comply with this requirement by telling:  
(a) if the person is an approved aviation administration organisation—the Australian NOTAM Office; or  
(b) the appropriate approved aviation administration organisation.  
See regulation 101.035.

Note 2: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

(1A) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) If more than 1 tethered balloon or kite is to be operated at a time, such a requirement is a requirement to give the information about each such balloon or kite.

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**Table 101.110 Details of operation of tethered balloon or kite to be given to CASA**

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<b>Item</b>	<b>Information to be provided</b>
1	The name, address and telephone number of the person who will operate the balloon or kite (or, if several people will be involved, the name, address and telephone number of the person who will coordinate the operation)
2	The date and time the operation is to begin, and how long it is to last
3	Where it is to be carried out
4	A brief description of the balloon or kite, including its predominant colour
5	The height to which it is to be operated
6	Its mass
7	If more than 1 tethered balloon or kite is to be operated at a time, how many tethered balloons or kites are to be operated at the time

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### 101.115 Mooring-line marking

(1) A person may operate a tethered balloon only if:

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- (a) each mooring line has coloured streamers attached at intervals of no more than 15 metres along it, with the first streamer no more than 150 feet AGL; and
- (b) the streamers would be visible in normal daylight for at least 1.5 kilometres.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.120 Operation of tethered balloon or kite under cloud**

- (1) A person may operate a tethered balloon or kite under cloud only if he or she keeps the balloon or kite at least 500 feet (measured vertically) below the cloud.

Penalty: 10 penalty units.

Note: For *tethered balloon*, see regulation 101.105.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.125 Tethered balloon to be lit at night**

- (1) A person may operate a tethered balloon at night at or above 400 feet AGL only if it is lit so as to be visible in VMC from at least 4 kilometres away.

Penalty: 10 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The lighting required by subregulation (1) may be inside the balloon, on its outside, or on the ground.

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**101.130 Rapid deflation device required**

- (1) A person may operate a tethered balloon only if it is fitted with a device that will cause it to deflate rapidly and completely if it escapes from its mooring.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.135 What to do if tethered balloon escapes**

- (1) If a tethered balloon escapes from its mooring, and the deflation device does not cause it to deflate, the person operating it must tell Airservices Australia as soon as possible:

- (a) where the balloon was launched; and
- (b) what time it broke free; and
- (c) the direction it was headed when last seen.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Subpart 101.E—Unmanned free balloons**

### **101.140 Applicability of this Subpart**

This Subpart applies to the operation of an unmanned free balloon.

### **101.145 Definitions for Subpart—free balloons**

- (1) For this Subpart:

*free balloon* means an unmanned balloon that is not tethered.

- (2) There are 4 kinds of free balloon: *small balloon*, *light balloon*, *medium balloon* and *heavy balloon*.

- (3) In this Subpart:

*small balloon* means a free balloon that can carry no more than 50 grams of payload.

- (4) In this Subpart:

*light balloon* means a free balloon that:

- (a) is no more than 2 metres in diameter at any time during its flight; and
- (b) can carry no more than 4 kilograms of payload.

- (5) In this Subpart:

*medium balloon* means a free balloon that:

- (a) may be more than 2 metres in diameter at some time in its flight; and
- (b) is capable of carrying more than 4 kilograms, but no more than 6 kilograms, of payload.

- (6) In this Subpart:

*heavy balloon* means a free balloon capable of carrying more than 6 kilograms of payload.

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**101.150 Definition for Subpart—*approved area***

In this Subpart:

***approved area*** means an area approved under regulation 101.030 as an area for the operation or release of unmanned free balloons.

Note: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

**101.155 Releasing small balloons**

- (1) A person may release a small balloon only if the person has first complied with any requirements as to approval or notice set out in table 101.155-1.

Penalty: 10 penalty units.

Note: For *small balloon*, see subregulation 101.145(3).

- (1A) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Subregulation (1) does not apply if no more than 100 balloons are to be released at once.

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**Table 101.155-1 Requirements for release of small balloons**

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Item	Number of balloons to be released at once	Distance from place of release to nearest aerodrome			
		less than 3 nautical miles	3–6 nautical miles	6–12 nautical miles	over 12 nautical miles
1	101–1 000	approval required	NOTAM	no approval required	no approval required
2	1 001–10 000	approval required	approval required	NOTAM	no approval required
3	Over 10 000	approval required	approval required	approval required	NOTAM

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- (3) In the table, for a combination of a number of balloons to be released and a distance to an aerodrome:

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**approval required** means that an approval under subregulation (5) is required for the release of that number of balloons at a place within that distance from the nearest aerodrome.

**no approval required** means that no such approval is required for the release of that number of balloons at a place within that distance from the nearest aerodrome.

**NOTAM** means that CASA's approval is not required, but the person intending to release that number of balloons at a place that distance from the nearest aerodrome must give to CASA the information about the proposed release required by table 101.155-2.

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**Table 101.155-2 Details of release of small balloons to be given to CASA**

<b>Item</b>	<b>Information to be provided</b>
1	The name, address and telephone number of the person who will release the balloons (or, if several people will be involved, the name, address and telephone number of the person who will coordinate the release)
2	The date and time the release is to begin, and how long it will take
3	Where it is to be carried out
4	How many balloons are to be released
5	The estimated size and mass of any payload

Note: CASA will tell the NOTAM Office about the release.

- (4) A person may apply to CASA, in writing, for approval to release small balloons.

Note: An application must be in the approved form, include all the information required by these Regulations and be accompanied by every document required by these Regulations—see regulation 11.030.

- (5) Subject to regulation 11.055, if approval is required under subregulation (1) to release small balloons, CASA must grant the approval.

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- Note 1: Under regulation 201.004, an application may be made to the Administrative Appeals Tribunal for review of:
- (a) a decision refusing to issue, or cancelling, suspending or varying, an approval; or
  - (b) a decision imposing a condition on an approval.
- Note 2: CASA will tell the NOTAM Office about the release.

**101.160 Light balloons that may be released outside approved areas**

- (1) A person may release a light balloon outside an approved area only if the person gives to CASA the information required by table 101.160 at least 1 working day before the proposed release.

Penalty: 10 penalty units.

- Note 1: A person can comply with this requirement by telling:
- (a) if the person is an approved aviation administration organisation—the Australian NOTAM Office; or
  - (b) the appropriate approved aviation administration organisation.
- See regulation 101.035.

Note 2: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

Note 3: For *light balloon*, see subregulation 101.145(4).

- (1A) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) If more than 1 balloon is to be released at a time, such a requirement is a requirement to give the information about each such balloon.

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**Table 101.160 Details of release of light balloon to be given to CASA**

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<b>Item</b>	<b>Information to be provided</b>
1	The name, address and telephone number of the person who will release the balloon (or, if several people will be involved, the name, address and telephone number of the person who will coordinate the release)
2	The date and time the release is to begin

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**Table 101.160 Details of release of light balloon to be given to CASA**

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<b>Item</b>	<b>Information to be provided</b>
3	Where it is to be carried out
4	The estimated size and mass of the balloon's payload
5	If more than 1 balloon is to be released at a time, how many balloons are to be released at the time

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- (3) Subregulation (1) does not require the Bureau of Meteorology to give notice of the proposed release of a light balloon if:
- (a) the release is part of the Bureau's normal meteorological procedures; and
  - (b) the release location has been notified in AIP or NOTAM.

**101.165 Release of medium and heavy balloons outside approved areas**

- (1) Subject to subregulation (3), a person may release a medium or heavy balloon outside an approved area only if the person gives to CASA the information required by table 101.165 at least 2 working days before the proposed release.

Penalty: 10 penalty units.

Note 1: A person can comply with this requirement by telling:

- (a) if the person is an approved aviation administration organisation—the Australian NOTAM Office; or
- (b) the appropriate approved aviation administration organisation.

See regulation 101.035.

Note 2: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

Note 3: For *heavy balloon* and *medium balloon*, see regulation 101.145.

- (2) If more than 1 balloon is to be operated at a time, such a requirement is a requirement to give the information about each such balloon.

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**Table 101.165 Details of release of medium or heavy balloon to be given to CASA**

<b>Item</b>	<b>Information to be provided</b>
1	The name, address and telephone number of the person who will release the balloon (or, if several people will be involved, the name, address and telephone number of the person who will coordinate the release)
2	The date and time the release is to begin
3	Where it is to be carried out
4	The estimated size and mass of the balloon's payload
5	The balloon's flight identification or the project code name
6	The balloon's classification, or a description of the balloon
7	The balloon's SSR code or NDB frequency, and its Morse identification
8	The expected horizontal direction of the balloon's ascent, and the balloon's expected rate of climb
9	The balloon's planned float level (given as pressure altitude)
10	The time the balloon is expected to reach 60 000 feet pressure altitude, and the location over which it is expected to do so
11	The time the flight is expected to end, and where the balloon and its payload are expected to fall
12	If more than 1 balloon is to be released at a time, how many balloons are to be released at the time

- (3) Subregulation (1) does not require the Bureau of Meteorology to give notice of the proposed release of a medium balloon if:
- (a) the release is part of the Bureau's normal meteorological procedures; and
  - (b) the release location has been notified in AIP or NOTAM.
- (4) Subject to subregulation (5), the person must also confirm the details of the proposed release to the air traffic control service that has responsibility for the airspace within which the balloon will be released no later than the earlier of:
- (a) 6 hours before the expected release time; or
  - (b) the time the balloon begins to be inflated.



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Penalty: 10 penalty units.

- (4A) An offence against subregulation (1) or (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) Subregulation (4) does not require the Bureau of Meteorology to confirm the details of the release of a medium balloon with an air traffic control service if:
- (a) the release is part of the Bureau's normal meteorological procedures; and
  - (b) the release location has been notified in AIP or NOTAM.

**101.170 Medium and heavy balloons not to be flown low**

- (1) A person who is operating a medium or heavy balloon must not allow it to go below 3 000 feet AGL while it is over a populous area.

Penalty: 10 penalty units.

Note: For *heavy balloon* and *medium balloon*, see regulation 101.145. For *populous area*, see regulation 101.025.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.175 Medium and heavy balloons to be flown in clear sky**

- (1) Subject to subregulations (3) and (4), a person must not operate a medium or heavy balloon below 60 000 feet pressure altitude if, at the altitude at which the balloon is being operated, the horizontal visibility is less than 8 kilometres.

Penalty: 10 penalty units.

Note: For *heavy balloon* and *medium balloon*, see regulation 101.145.

- (2) Subject to subregulations (3) and (4), a person who is operating a medium or heavy balloon must not allow it to remain at an altitude below 60 000 feet pressure altitude at which cloud, fog or mist obscures more than half the sky.

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Penalty: 10 penalty units.

- (2A) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulations (1) and (2) do not apply to operation outside controlled airspace if CASA approves the operation and the operation is carried out in accordance with the approval.
- (4) Those subregulations also do not apply to operation in controlled airspace in accordance with an air traffic control clearance.

### **101.180 How payload must be supported—medium and heavy balloons**

- (1) A person may operate a medium or heavy balloon only if the means by which the payload is attached to the balloon can support at least 10 times the mass of the payload.

Penalty: 10 penalty units.

Note: For *heavy balloon* and *medium balloon*, see regulation 101.145.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.185 Equipment that must be carried—medium and heavy balloons**

- (1) A person may operate a medium or heavy balloon only if:
- (a) the balloon is fitted with at least 2 independent ways (either automatic or remotely-operated) of releasing its payload; and
  - (b) if the balloon is not a zero-pressure balloon, it has at least 2 independent ways of ending the flight of the balloon envelope; and
  - (c) either:
    - (i) the balloon envelope carries a radar reflector, or radar-reflective material, that will return an echo to a surface radar operating in the frequency range 200 megahertz to 2 700 megahertz; or

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- (ii) the balloon is fitted with a device to allow it to be continuously tracked by the operator beyond the range of ground-based radar; and
- (d) if the balloon is operated in an area in which ground-based secondary surveillance radar is in use, it is fitted with an SSR transponder (with altitude-reporting capability) that either operates continuously or can be turned on by the operator if an air traffic control service so requires.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.190 Lighting—medium and heavy balloons**

- (1) A person may operate a medium or heavy balloon below 60 000 feet pressure altitude at night only if both the balloon and its payload are lit (whether or not they become separated during the operation) so as to be visible, under the prevailing conditions, for at least 4 kilometres in all directions.

Penalty: 25 penalty units.

Note: For *heavy balloon* and *medium balloon*, see regulation 101.145.

- (2) For subregulation (1), a balloon is being operated at night if the sun is below the balloon's horizon.
- (3) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.195 Marking—free balloons generally**

- (1) A person may operate a free balloon that carries a trailing antenna that requires a force of more than 230 newtons to break it only if the antenna has coloured streamers or pennants attached to it every 15 metres.

Penalty: 25 penalty units.

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- (2) A person may operate a free balloon that carries a payload only if the payload has fixed to it a durable identification plate carrying sufficient information:
- (a) to identify the payload; and
  - (b) to enable somebody who finds the payload to contact the person who released the balloon.

Penalty: 10 penalty units.

Note: For *free balloon*, see regulation 101.145.

- (3) Subregulation (2) does not apply to a light or medium balloon operated by the Bureau of Meteorology.

Note: For *light balloon* and *medium balloon*, see regulation 101.145.

- (4) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.200 Marking by day—heavy balloons**

- (1) A person may operate a heavy balloon (being a heavy balloon that has its payload suspended more than 15 metres below the envelope) above 60 000 feet pressure altitude by day only if:
- (a) the payload's suspension is coloured in alternate bands of conspicuous colours, or has coloured pennants attached to it; or
  - (b) the balloon has a conspicuous payload-recovery parachute suspended under the envelope, or the balloon is suspended beneath a conspicuous open parachute.

Penalty: 25 penalty units.

Note: For *heavy balloon*, see subregulation 101.145(6).

- (2) For subregulation (1), a balloon is being operated by day if the sun is above the balloon's horizon.

- (3) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**101.205 Lighting by night—heavy balloons**

- (1) A person may operate a heavy balloon above 60 000 feet pressure altitude at night only if it is lit so as to be visible in VMC from at least 4 kilometres away.

Penalty: 25 penalty units.

Note: For *heavy balloon*, see subregulation 101.145(6).

- (2) For subregulation (1), a balloon is being operated at night if the sun is below the balloon's horizon.
- (3) The lighting required by subregulation (1) may be inside the balloon, on its outside, or on the ground.
- (4) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.210 Obligation to stay in communication with ATC—medium and heavy balloons**

- (1) The operator of a medium or heavy balloon must establish and maintain communication with the relevant air traffic control service from the time the balloon begins to be inflated until the flight ends.

Penalty: 25 penalty units.

Note: For *heavy balloon* and *medium balloon*, see regulation 101.145.

- (2) The operator must tell the relevant air traffic control service at least 1 hour before the balloon is launched.

Penalty: 50 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**101.215 Tracking of flight—medium and heavy balloons**

- (1) The operator of a medium or heavy balloon must track its flight continuously.

Penalty: 10 penalty units.

Note: For *heavy balloon* and *medium balloon*, see regulation 101.145.

- (2) While the balloon is below 60 000 feet pressure altitude, if it cannot be tracked visually from the ground or by radar, the operator must ensure that a tracking aircraft accompanies it continuously.

Penalty: 10 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.220 Flight reporting—medium and heavy balloons**

- (1) The operator of a medium or heavy balloon must report the progress of the balloon's flight to the relevant air traffic control service as follows:
- (a) the operator must tell the service immediately when the balloon is released;
  - (b) the operator must tell the service when the balloon leaves each 10 000-foot level up to 60 000 feet (pressure altitude);
  - (c) the operator must report the balloon's position to the relevant air traffic control service periodically, as follows:
    - (i) when required to do so by the service;
    - (ii) while the balloon is below 60 000 feet pressure altitude—every 10 minutes;
    - (iii) while the balloon is at or above 60 000 feet pressure altitude—every 2 hours;
  - (d) if the operator loses the balloon's position, the operator must tell the service immediately that tracking has been lost and the balloon's last known position;

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- (e) after having re-established tracking of the balloon, the operator must tell the service immediately that tracking has been re-established and the balloon's position at that time.

Penalty: 10 penalty units.

Note: For *heavy balloon* and *medium balloon*, see regulation 101.145.

- (2) If the balloon is being accompanied by a tracking aircraft, the operator must ensure that the crew of the aircraft maintains continuous 2-way communication with the relevant air traffic control service.

Penalty: 10 penalty units.

- (2A) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A reference in this regulation to the relevant air traffic control service is to be read, at a particular time, as a reference to the air traffic control service that is responsible for the airspace in which the balloon is located at the time.

### **101.225 Ending flight and recovery—medium and heavy balloons**

- (1) The operator of a medium or heavy balloon must give to the relevant air traffic control service at least 1 hour's notice of the time the flight is planned to end, and when doing so must also give to the air traffic control service the following information:
- (a) the balloon's current position and altitude;
  - (b) the estimated time at which, and the estimated location over which, the balloon will pass through 60 000 feet pressure altitude during its descent;
  - (c) the estimated time when, and place where, the payload will fall.

Penalty: 10 penalty units.

Note: For *heavy balloon* and *medium balloon*, see regulation 101.145.

- (2) The operator may command the balloon to end its flight only:

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- (a) in an emergency; or
- (b) if cleared to do so by the relevant air traffic control service.

Penalty: 50 penalty units.

- (3) If the operator commands the balloon to end its flight when not cleared by air traffic control to do so, the operator must tell the relevant air traffic control service immediately, and when doing so must also give to it the following information:
  - (a) the balloon's current position and altitude;
  - (b) the estimated time when and place where the payload will fall.

Penalty: 10 penalty units.

- (4) The operator must tell the relevant air traffic control service as soon as possible after the balloon's payload falls.

Penalty: 10 penalty units.

- (4A) An offence against subregulation (1), (2), (3) or (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) A reference in this regulation to the relevant air traffic control service is to be read, at a particular time, as a reference to the air traffic control service that is responsible for the airspace in which the balloon is located at the time.

**101.230 Direction by ATC to end flight in certain circumstances**

- (1) If a balloon is in controlled airspace and an air traffic control service considers that it poses a hazard to other aircraft, or to people or property on the ground, that service may direct the balloon's operator to end the balloon's flight immediately.
- (2) The operator must comply with the direction by ending the balloon's flight by the fastest possible method.

Penalty: 50 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.



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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## Subpart 101.F—UAVs

### Division 101.F.1—General

#### 101.235 Applicability of this Subpart

- (1) This Subpart applies to:
  - (a) the operation of a large UAV; and
  - (b) the operation of a small UAV for purposes other than sport or recreation.

Note 1: There is no practicable distinction between a small UAV and a model aircraft except that of use—model aircraft are flown only for the sport of flying them.

Note 2: For *large UAV* and *small UAV*, see regulation 101.240. For *model aircraft* see the Dictionary.

- (2) Nothing in this Subpart applies to the operation of a UAV if:
  - (a) while it is being operated, the person operating it keeps it in sight; and
  - (b) it is operated in a way that complies with Subpart 101.G.

- (3) This Subpart does not apply to the operation of a micro UAV.

Note 1: See subregulation 101.005(3).

Note 2: For *micro UAV*, see regulation 101.240.

#### 101.240 Definitions for Subpart

In this Subpart:

***approved area*** means an area approved under regulation 101.030 as an area for the operation of UAVs.

Note: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

***certified UAV controller*** means a person certified under Division 101.F.3 as a controller of UAVs.

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**controller** of a UAV means a person who performs a function that would be, if the UAV were a manned aircraft, a function of its flight crew.

**large UAV** means any of the following:

- (a) an unmanned airship with an envelope capacity greater than 100 cubic metres;
- (b) an unmanned powered parachute with a launch mass greater than 150 kilograms;
- (c) an unmanned aeroplane with a launch mass greater than 150 kilograms;
- (d) an unmanned rotorcraft with a launch mass greater than 100 kilograms;
- (e) an unmanned powered lift device with a launch mass greater than 100 kilograms.

**micro UAV** means a UAV with a gross weight of 100 grams or less.

**small UAV** means a UAV that is not a large UAV nor a micro UAV.

**UAV** means unmanned aircraft, other than a balloon or a kite.

## **Division 101.F.2—Operation of UAVs generally**

### **101.245 Operation near people**

- (1) Subject to subregulations (2) and (3), a person must not operate a UAV within 30 metres of a person who is not directly associated with the operation of the UAV.

Penalty: 10 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Subregulation (1) does not apply in relation to a person who stands behind the UAV while it is taking off.
- (3) Subregulation (1) also does not prevent the operation of a UAV airship within 30 metres of a person if the airship approaches no closer to the person than 10 metres horizontally and 30 feet vertically.

### **101.250 Where small UAVs may be operated**

- (1) A person may operate a small UAV outside an approved area only if:
- (a) where the UAV is operated above 400 feet AGL, the operator has CASA's approval to do so; and
  - (b) the UAV stays clear of populous areas.

Penalty: 10 penalty units.

Note 1: For *populous area*, see regulation 101.025. For *small UAV*, see regulation 101.240.

Note 2: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

Note 3: For the kinds of UAV operation to which this Subpart does not apply, see regulation 101.235.

- (2) An offence against subregulation (1) is an offence of strict liability.

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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.255 Large UAVs—requirement for certificate**

- (1) A person may operate a large UAV only if either a special certificate of airworthiness (restricted category), or an experimental certificate, has been issued for it under Subpart 21.H of Part 21.

Penalty: 50 penalty units.

Note 1: For *large UAV*, see regulation 101.240.

Note 2: A large UAV is required to carry a manufacturer's data plate and an aircraft registration identification plate—see respectively regulation 21.820 and Subpart 45.D of Part 45.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.260 Maintenance of large UAVs**

- (1) Subdivision 2 of Division 2 of Part 4A of CAR 1988 applies to large UAVs.

Note: That is, a large UAV must be maintained as a Class B aircraft.

- (2) A person who carries out maintenance on a large UAV must comply with any directions given in writing by CASA in relation to the maintenance of the UAV, or the maintenance of UAVs of a class that includes the UAV.

**101.265 Application of s 20AB of the Act to large UAVs**

- (1) For paragraph 20AB(1)(b) of the Act, a person may act as the controller of a large UAV that is an Australian aircraft if the person is certified as a UAV controller under Division 101.F.3.

Note: For the kinds of UAV operation to which this Subpart does not apply, see regulation 101.235.

- (2) For that paragraph, a person may perform any other duty that is essential to the operation of a large UAV that is an Australian aircraft even if the person does not hold the appropriate civil aviation authorisation.

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- (3) For subsection 20AB(2) of the Act, and despite anything in regulation 42ZC of CAR 1988, a person may carry out maintenance on:
- (a) a large UAV that is an Australian aircraft; or
  - (b) an aircraft component for such a UAV; or
  - (c) aircraft material for such a UAV;
- if the person:
- (d) holds an airworthiness authority that authorises the maintenance; or
  - (e) carries out the maintenance under the supervision of a person who holds such an authority.

**101.270 Requirement for UAV operator's certificate**

- (1) A person may operate a UAV for hire or reward only if the person holds a UAV operator's certificate that authorises the person to operate the UAV.

Penalty: 50 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.275 Approval of operation of large UAVs**

- (1) A person may operate a large UAV only with CASA's approval.

Penalty: 50 penalty units.

- (1A) A person may apply to CASA, in writing, for approval to operate a large UAV.

Note 1: An application must be in the approved form, include all the information required by these Regulations and be accompanied by every document required by these Regulations—see regulation 11.030.

Note 2: Part 11 deals with applications and decision making.

- (1B) Subject to regulation 11.055, CASA must grant the approval if:
- (a) the person is certificated as an operator of large UAVs; and

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- (b) the operation would not contravene any condition of the certification.

Note 1: Under regulation 201.004, an application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision refusing to issue, or cancelling, suspending or varying, an approval; or  
(b) a decision imposing a condition on an approval.

Note 2: For certification as an operator of UAVs, see Division 101.F.4.

- (3) Without limiting regulations 11.056 and 11.067, CASA may impose conditions on an approval:
- (a) prohibiting the operation of the relevant UAV at night or in conditions other than VMC; or  
(b) restricting the extent to which the UAV may be operated at night or in conditions other than VMC; or  
(c) requiring the UAV to stay within a specified area, or  
(d) requiring the operator to make specified broadcasts.
- (6) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 101.280 UAVs not to be operated over populous areas

- (1) In this regulation:

*certificated UAV* means a UAV for which a certificate of airworthiness has been issued.

- (2) A person must not operate a UAV that is not a certificated UAV over a populous area at a height less than the height from which, if any of its components fails, it would be able to clear the area.

Penalty: 50 penalty units.

Note 1: For *populous area*, see regulation 101.025. For *UAV*, see regulation 101.240.

Note 2: For the kinds of UAV operation to which this Subpart does not apply, see regulation 101.235.

- (3) Without the approval of CASA, a person must not operate a certificated UAV over a populous area at a height less than the

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height from which, if any of its components fails, it would be able to clear the area.

Penalty: 50 penalty units.

- (3A) An offence against subregulation (2) or (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) In considering whether to give an approval under subregulation (3), CASA must take into account:
- (a) the degree of redundancy in the UAV's critical systems; and
  - (b) any fail-safe design characteristics of the UAV; and
  - (c) the security of its communications and navigation systems.
- (5) Before giving an approval under subregulation (3), CASA must be satisfied that the person who intends to operate the UAV will take proper precautions to prevent the proposed flight being dangerous to people and property.

**101.285 Use of aeronautical radio**

- (1) A person may control a UAV in controlled airspace only if he or she:
- (a) holds an aeronautical radio operator certificate; and
  - (b) maintains a listening watch on a specified frequency or frequencies; and
  - (c) makes broadcasts on a specified frequency or frequencies at the specified interval giving the specified information.

Penalty: 25 penalty units.

Note: This Subpart does not apply to the operation of micro UAVs—see subregulation 101.235(3).

- (2) In subregulation (1):

*specified frequency* for particular airspace means a frequency specified from time to time in AIP or by ATC as a frequency for use in the airspace.



***specified information*** for particular airspace means information specified from time to time in AIP or by ATC as information that must be broadcast in the airspace.

***specified interval*** for particular airspace means the interval specified from time to time in AIP or by ATC as the interval at which broadcasts must be made while in that airspace.

- (3) CASA may direct that a particular person must not control a UAV unless the person:
- (a) holds an aeronautical radio operator certificate; and
  - (b) maintains a listening watch on a frequency or frequencies specified in the direction; and
  - (c) makes broadcasts:
    - (i) on a frequency or frequencies; and
    - (ii) at intervals; and
    - (iii) giving information—  
specified in the direction.

- (4) The person must comply with the direction.

Penalty: 50 penalty units.

- (5) CASA may direct, in regard to a particular UAV or type of UAV, that a person must not control the UAV, or a UAV of that type, unless he or she:
- (a) holds an aeronautical radio operator certificate; and
  - (b) maintains a listening watch on a frequency or frequencies specified in the direction; and
  - (c) makes broadcasts:
    - (i) on a frequency or frequencies; and
    - (ii) at intervals; and
    - (iii) giving information—  
specified in the direction.

- (6) The person must comply with the direction.

Penalty: 50 penalty units.

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- (7) For subregulations (3) and (5), CASA may specify that a frequency is to be a frequency specified under paragraph 99A(3)(b) of CAR for a particular area or aerodrome.
- (8) An offence against subregulation (1), (4) or (6) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **Division 101.F.3—Certification of UAV controllers**

Note: In addition to the provisions of this Division, Part 11 contains provisions relating to an application for certification as a UAV controller.

#### **101.290 Application for certification as UAV controller**

- (1A) An individual may apply to CASA, in writing, for certification as a UAV controller.

Note: An application must be in the approved form, include all the information required by these Regulations and be accompanied by every document required by these Regulations—see regulation 11.030.

- (1) An application for certification as a UAV controller must include the following information:
- (a) details of any flight crew licence, air traffic control licence or flight service licence that the applicant holds (including details of ratings, endorsements and qualifications);
  - (b) details of any aeronautical experience that the applicant has;
  - (c) details of any aviation theory examinations the applicant has passed (other than any examination passed in the course of gaining a licence mentioned in paragraph (a));
  - (d) if the applicant does not hold a licence mentioned in paragraph (a), details of any aeronautical radio operator certificate that the applicant holds;
  - (e) details of the applicant's experience in operating UAVs;
  - (f) evidence of the completion of any training course in UAV operation that the applicant has undertaken.

#### **101.295 Eligibility for certification as UAV controller**

- (2) Subject to regulation 11.055, CASA must certify an applicant as a UAV controller if he or she:
- (a) qualifies for the issue of an aeronautical radio operator certificate; and

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- (b) has been awarded a pass in an aviation licence theory examination (other than a flight radio operator's examination); and
- (c) has been awarded a pass in an instrument rating theory examination; and
- (d) has completed a training course in the operation of the type of UAV that he or she proposes to operate, conducted by the UAV's manufacturer; and
- (e) has at least 5 hours experience in operating UAVs outside controlled airspace.

Note: Under regulation 201.004, an application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision refusing to grant, or cancelling, suspending or varying, a certificate; or
- (b) a decision imposing a condition on a certificate.

See also section 31 of the Act.

- (3) A person who holds or has held:
  - (a) a flight crew licence with an instrument rating; or
  - (b) a military qualification equivalent to a licence and rating mentioned in paragraph (a); or
  - (c) an air traffic control licence, or a military qualification equivalent to an air traffic control licence;is taken to satisfy the conditions in paragraphs (2)(a), (b) and (c).

**101.300 Conditions on certification as UAV controller**

- (2) Without limiting regulations 11.056 and 11.067, a condition may:
  - (a) allow the person to control UAVs of only specified kinds; or
  - (b) limit the areas where he or she may control UAVs; or
  - (c) allow him or her to control UAVs only in VMC.
- (3) It is a condition of a UAV controller's certification that he or she must not operate a UAV in controlled airspace unless he or she holds an aeronautical radio operator certificate.

### **101.315 Notice to certified UAV controller to show cause**

- (1) CASA may give a show cause notice to a certified UAV controller if there are reasonable grounds for believing that there are facts or circumstances that would justify the cancellation of the certification under regulation 101.320.
- (2) A show cause notice must:
  - (a) tell the controller of the facts and circumstances that, in CASA's opinion, would justify the cancellation of the certification under regulation 101.320; and
  - (b) invite the controller to show in writing, within a reasonable time stated in the notice, why the certification should not be cancelled.
- (3) A show cause notice may state that the certification is suspended if CASA reasonably considers that there may be a serious risk to the safety of air navigation if the certification were not suspended.
- (4) If a show cause notice states that the certification is suspended, the certification is suspended from when the notice is given to the holder.
- (5) CASA may at any time revoke the suspension.
- (6) If the approval is suspended and CASA has not dealt with it under regulation 101.320 within 90 days after the day it is suspended, the suspension lapses at the end of that period.

Note: Regulation 201.004 provides for review of certain decisions by the Administrative Appeals Tribunal.

### **101.320 Cancellation of UAV controller's certification**

- (1) CASA may cancel a certified UAV controller's certification by written notice to the controller, if:
  - (a) CASA has given to the controller a show cause notice under regulation 101.315 in relation to it; and
  - (b) CASA has taken into account any representations made, within the period stated in the notice, by or on behalf of the controller; and
  - (c) there are reasonable grounds for believing that the controller:

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- (i) has operated a UAV in contravention of these Regulations or of a condition of the certification; or
  - (ii) has operated the UAV negligently or carelessly; or
  - (iii) in operating the UAV, has recklessly endangered human life or property.
- (2) If CASA has given a show cause notice under regulation 101.315 to a certified UAV controller, and it decides not to cancel the approval, it:
- (a) must tell the controller in writing of the decision; and
  - (b) must, if the controller's certification is suspended under that regulation, revoke the suspension.

Note: Regulation 201.004 provides for review of certain decisions by the Administrative Appeals Tribunal.

## **Division 101.F.4—Certification of UAV operators**

Note: In addition to the provisions of this Division, Part 11 contains provisions relating to an application for certification as a UAV operator.

### **101.330 Application for certification as UAV operator**

(1A) A person may apply to CASA, in writing, for certification as a UAV operator.

Note: An application must be in the approved form, include all the information required by these Regulations and be accompanied by every document required by these Regulations—see regulation 11.030.

(1) An application for certification as a UAV operator must include:

(a) details of:

- (i) the applicant's structure and organisation; and
- (ii) its staff and their qualifications and experience (including, in particular, the names, qualifications, experience, duties and functions of the persons who are to be the applicant's chief UAV controller and maintenance controller); and
- (iii) its facilities and equipment; and
- (iv) its practices and procedures; and

(b) a general description of the proposed operations, including the type or types of UAV to be used.

(2) The application must be accompanied by a copy of each of the applicant's manuals relevant to the operation of UAVs.

### **101.335 Eligibility for certification as UAV operator**

(1A) Subject to regulation 11.055, CASA must certify an applicant as a UAV operator if the applicant is eligible to be certificated as a UAV operator in accordance with this regulation.

Note: Under regulation 201.004, an application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision refusing to grant, or cancelling, suspending or varying, a certificate; or

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(b) a decision imposing a condition on a certificate.

See also section 31 of the Act.

- (1) A person is eligible to be certificated as a UAV operator if:
  - (a) the person has an organisation and structure that is appropriate for safe operation of UAVs; and
  - (b) the person has enough qualified and experienced personnel to undertake the proposed operations safely; and
  - (c) the person has facilities and equipment appropriate to carry out the proposed operations using UAVs of the type to be used; and
  - (d) the person has suitable practices and procedures to do so; and
  - (e) if necessary, the flight crew are certified as UAV controllers and hold aeronautical radio operator certificates; and
  - (f) the person has nominated suitable persons to be its chief UAV controller and maintenance controller.
- (2) A body that is not a legal person is not eligible to be certified as a UAV operator.
- (3) Two or more persons cannot be certified jointly as a UAV operator.

**101.340 Conditions on certification**

- (1) It is a condition of the certification of a person as a UAV operator that the person:
  - (a) maintains within its organisation a position of chief UAV controller having at least the functions and duties of a chief controller set out in Annex 3 of Advisory Circular 101.1, as issued by CASA from time to time; and
  - (b) employs as its chief UAV controller a person who is certified as a UAV controller and who is competent to carry out those duties and perform those functions; and
  - (c) either:
    - (i) maintains a position within its organisation of maintenance controller, with the functions and duties set out in that Annex; or



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- (ii) has an arrangement with another qualified and competent person to carry out those functions and duties; and
  - (d) if it maintains within its organisation a position of maintenance controller—employs as its maintenance controller a person who is competent to carry out the duties and perform the functions of a maintenance controller.
- (2) If the UAV operator operates more than 1 UAV, the chief UAV controller must carry out the duties and functions of a chief UAV controller on a full-time basis.
- (4) Without limiting regulations 11.056 and 11.067, a condition may:
  - (a) allow the person to operate UAVs of only specified kinds; or
  - (b) allow the person to operate UAVs only for specified purposes; or
  - (c) limit the areas where the person may operate UAVs; or
  - (d) allow the person to operate UAVs only in VMC.

**101.360 Notice to certified UAV operator to show cause**

- (1) CASA may give a show cause notice to a certified UAV operator if there are reasonable grounds for believing that there are facts or circumstances that would justify the cancellation of the approval under regulation 101.365.
- (2) A show cause notice must:
  - (a) tell the holder of the facts and circumstances that, in CASA's opinion, would justify the cancellation of the certification under regulation 101.320; and
  - (b) invite the operator to show in writing, within a reasonable time stated in the notice, why the certification should not be cancelled.
- (3) A show cause notice may state that the certification is suspended if CASA reasonably considers that there may be a serious risk to the safety of air navigation if the approval were not suspended.

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- (4) If a show cause notice states that the certification is suspended, the certification is suspended from when the notice is given to the holder.
- (5) CASA may at any time revoke the suspension.
- (6) If the approval is suspended and CASA has not dealt with it under regulation 101.320 within 90 days after the day it is suspended, the suspension lapses at the end of that period.

Note: Regulation 201.004 provides for review of certain decisions by the Administrative Appeals Tribunal.

**101.365 Cancellation of UAV operator's certification**

- (1) CASA may cancel a certified UAV operator's certification by written notice to the operator, if:
  - (a) CASA has given to the operator a show cause notice under regulation 101.315 in relation to it; and
  - (b) CASA has taken into account any representations made, within the period stated in the notice, by or on behalf of the operator; and
  - (c) there are reasonable grounds for believing that:
    - (i) the operator has operated a UAV in contravention of these Regulations or of a condition of the certification; or
    - (ii) an employee of the operator has operated a UAV negligently or carelessly; or
    - (iii) an employee of the operator, in operating a UAV, has recklessly endangered human life or property.
- (2) If CASA has given a show cause notice under regulation 101.315 to a certified UAV operator, and it decides not to cancel the approval, it:
  - (a) must tell the operator in writing of the decision; and
  - (b) must, if the operator's certification is suspended under that regulation, revoke the suspension.

Note: Regulation 201.004 provides for review of certain decisions by the Administrative Appeals Tribunal.

## Subpart 101.G—Model aircraft

### 101.375 Applicability of this Subpart

This Subpart applies to the operation of model aircraft weighing 100 grams or more (except operation mentioned in paragraph 101.005(3)(a) or (b)).

Note 1: For *model aircraft*, see the Dictionary.

Note 2: This Subpart does not apply to:

- (a) a control-line model aircraft (that is, a model aircraft that is constrained to fly in a circle, and is controlled in attitude and altitude, by means of inextensible wires attached to a handle held by the person operating the model); or
- (b) a model aircraft flown indoors.

See subregulation 101.005(3).

### 101.380 Definitions for Subpart

In this Subpart:

***approved area*** means an area approved under regulation 101.030 as an area for the operation of model aircraft.

Note: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

***giant model aircraft*** means a model aircraft that has a take-off mass (excluding fuel) of more than 25 kilograms, but not more than 150 kilograms.

Note: For *model aircraft*, see the Dictionary.

### 101.385 Visibility for operation of model aircraft

- (1) A person may operate a model aircraft only if the visibility at the time is good enough for the person operating the model to be able to see it continuously.

Penalty: 25 penalty units.

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- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.390 Operating model aircraft at night**

- (1) A person may operate a model aircraft at night only in accordance with the written procedures of an approved aviation administration organisation.

Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.395 Keeping model aircraft away from people**

- (1) A person must not operate a model aircraft over a populous area at a height less than the height from which, if any of its components fails, it would be able to clear the area.

Penalty: 50 penalty units.

Note: For *populous area*, see regulation 101.025.

- (2) Subject to subregulations (3) and (4), somebody who is operating a powered model aircraft must ensure that, while the model aircraft is in flight, or is landing or taking off, it stays at least 30 metres away from anyone not directly associated with the operation of model aircraft.

Penalty: 50 penalty units.

- (3) Subregulation (2) is not contravened if somebody stands behind the model aircraft while it is taking off.

- (4) Subregulation (2) is also not contravened if, as part of a model flying competition, a model aircraft is flown within 30 metres of somebody who is judging the competition.

- (5) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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### **101.400 Operation of model aircraft outside approved areas**

- (1) A person may operate a model aircraft outside an approved area above 400 feet AGL only if he or she:
  - (a) keeps it in sight; and
  - (b) keeps it clear of populous areas.

Penalty: 10 penalty units.

Note 1: For *populous area*, see regulation 101.025.

Note 2: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.405 Giant model aircraft**

- (1) A person may operate a giant model aircraft only in accordance with:
  - (a) the rules and procedures of an approved aviation administration organisation; or
  - (b) an approval given by CASA.

Penalty: 50 penalty units.

Note: For *giant model aircraft*, see regulation 101.380.

- (2) CASA may impose a condition on the operation of a giant model aircraft if the condition is reasonably necessary in the circumstances in the interests of aviation safety.
- (3) The operator of a giant model aircraft must comply with any condition imposed under subregulation (2).

Penalty: 50 penalty units.

- (4) An offence against subregulation (1) or (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**101.410 Model flying displays**

- (1) A person may conduct a model aircraft flying display only in compliance with subregulation (2) or (3).

Penalty: 50 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) A person complies with this subregulation if the display is conducted:

- (a) in an approved area; and
- (b) in accordance with the rules and procedures of an approved aviation administration organisation.

Note: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

- (3) A person complies with this subregulation if the display is conducted in accordance with the following conditions and any other conditions imposed by CASA under subregulation (4):

- (a) at least 21 days before the display, somebody is nominated as the organiser of the display;
- (b) at least 21 days before the display, he or she gives to CASA the following information:
  - (i) his or her name, address and telephone number;
  - (ii) the proposed program of flying;
  - (iii) where the display will be held, and how big the intended flying field is;
  - (iv) how many spectators are expected, and where they will be;
- (c) he or she ensures that:
  - (i) having regard to the events making up the display, proper precautions are taken for the safety of the participants and spectators; and
  - (ii) the operators participating in the display are competent to carry out each proposed manoeuvre safely.

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- (4) CASA may impose a condition on the conduct of a model flying display if in the circumstances the condition is reasonably necessary in the interests of aviation safety.

## Subpart 101.H—Rockets

### 101.415 Applicability of this Subpart

This Subpart applies to the operation of rockets of all kinds, except rockets mentioned in paragraph 101.005(3)(f).

Note 1: That is, this Subpart does not apply to a firework rocket not capable of rising more than 400 feet AGL. See paragraph 101.005(3)(f).

Note 2: **Rocket** in this Subpart does not include a rocket-powered aircraft—see regulation 101.425.

### 101.420 Application of State and Territory laws about rockets

- (1) If a law of a State or Territory deals with the operation or use of rockets, and is not inconsistent with this Subpart, nothing in this Subpart affects the operation of the law.
- (2) For subregulation (1), a law of a State or Territory is not inconsistent with this Subpart if it is possible to comply with both this Subpart and the State or Territory law at once.

### 101.425 Definitions for Subpart

In this Subpart:

**approved area** means an area approved under regulation 101.030 as an area for the operation of rockets.

Note: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

**high power rocket** means a rocket that is not a model rocket, and, to avoid doubt, includes:

- (a) a sounding rocket; and
- (b) a sub-orbital rocket; and
- (c) a launch vehicle (within the meaning given by the *Space Activities Act 1998*).



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**model rocket** means a rocket that:

- (a) weighs no more than 1 500 grams; and
- (b) carries no more than 125 grams of propellant; and
- (c) produces no more than 320 newton-seconds of impulse; and
- (d) is made of balsa, wood, paper or plastics or a combination of those materials, but contains no metal as structural parts.

**rocket** does not include a rocket-powered or rocket-assisted aircraft.

**101.430 Launching rocket in or over prohibited or restricted area**

- (1) A person may launch a rocket (including a model rocket) in or over a prohibited area, or in or over a restricted area, only with the permission of, and in accordance with any conditions imposed by, the authority controlling the area.

Penalty: 25 penalty units.

Note: For **prohibited area** and **restricted area**, see regulation 6 of the *Airspace Regulations 2007*. Details of prohibited or restricted areas are published in the AIP or a NOTAM.

- (2) In subregulation (1):

**authority controlling the area** means:

- (a) in the case of a prohibited area—the Secretary to the Department of Defence; and
- (b) in the case of a restricted area—the authority mentioned in AIP (as issued from time to time) as the controlling authority for the area.

- (3) An offence against subregulation (1) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

**101.435 Launching rockets into controlled airspace**

- (1) A person may launch a rocket (including a model rocket) to higher than 400 feet AGL in controlled airspace only:
    - (a) in an approved area; or
    - (b) in accordance with an air traffic control clearance.
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Penalty: 50 penalty units.

Note: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

(2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.440 Launching rockets near aerodromes**

(1) A person may launch a rocket that is not a small model rocket to higher than 400 feet AGL within 3 nautical miles of an aerodrome only if:

- (a) doing so is permitted by another provision of this Part; or
- (b) permission has been given for the operation under regulation 101.445.

Penalty: 25 penalty units.

Note 1: For *model rocket*, see regulation 101.425.

Note 2: Some special provisions apply to model rockets—see regulation 101.470.

(2) In subregulation (1):

*small model rocket* means a model rocket that weighs less than 500 grams and either:

- (a) uses no more than 25 grams of propellant; or
- (b) produces no more than 20 newton-seconds of impulse.

(3) A person may launch a rocket (including both a small model rocket and any other model rocket) from or over an area mentioned in paragraph (4)(a) or (b) only if:

- (a) doing so is permitted by another provision of this Part; or
- (b) permission has been given for the operation under regulation 101.445.

Penalty: 25 penalty units.

(4) The areas for subregulation (3) are:

- (a) a movement area or runway of an aerodrome; and

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- (b) the approach or departure path of a runway of an aerodrome.
- (5) An offence against subregulation (1) or (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.445 Getting permission for launch of rocket near aerodrome**

- (1) The authority that must give permission for regulation 101.440 is:
- (a) if the aerodrome concerned is a controlled aerodrome—the air traffic control service for the aerodrome; or
  - (b) in the case of any other aerodrome—CASA.
- (2) A person applies for permission under this regulation by giving to the relevant authority mentioned in subregulation (1) the information required by table 101.445, so far as relevant to the proposed launch:

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**Table 101.445 Details of launching of rocket to be given to CASA**

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<b>Item</b>	<b>Information to be provided</b>
1	The name, address and telephone number of the person who will launch the rocket (or, if several people will be involved, the name, address and telephone number of the person who will coordinate the launching)
2	The date and time the rocket is to be launched
3	Where it is to be carried out
4	The size and mass of the rocket
5	The estimated greatest altitude or flight level that the rocket will reach
6	If more than 1 rocket is to be launched at a time, how many rockets are to be launched at the time

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- (3) If more than 1 rocket is to be launched at a time, such a requirement is a requirement to give the information about each such launch.

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- (4) Regulation 101.035 does not authorise a person who or that applies for permission under this regulation to make the application to a body mentioned in paragraph 101.035(1)(a) or (b).
- (5) An authority mentioned in subregulation (1) may impose conditions on a permission in the interests of the safety of air navigation.
- (6) A person must not contravene a condition imposed under subregulation (5).
- Penalty: 50 penalty units.
- (7) An offence against subregulation (6) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.450 High power rockets**

- (1) A person may launch a high power rocket, or permit a high power rocket to be launched, only in an approved area.
- Penalty: 10 penalty units.
- Note 1: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).
- Note 2: For *high power rocket*, see regulation 101.425.
- (2) A person may launch a high power rocket, or permit a high power rocket to be launched, only if the person gives the details listed in the table following subregulation 101.445(2) to CASA at least 1 working day before the intended time of the launch.
- Penalty: 10 penalty units.
- Note: A person can comply with this requirement by telling:
- (a) if the person is an approved aviation administration organisation—the Australian NOTAM Office; or
  - (b) the appropriate approved aviation administration organisation.
- See regulation 101.035.

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- (3) If more than 1 rocket is to be launched at a time, such a requirement is a requirement to give the information about each such rocket.
- (4) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.455 Maximum operating height of rockets**

- (1) A person may launch a rocket that is not a model rocket to higher than 400 feet AGL only:
  - (a) in an approved area; or
  - (b) as permitted by another provision of this Part.

Penalty: 10 penalty units.

Note: CASA must publish details of the approval of an area (including any conditions) in NOTAM or on an aeronautical chart—see subregulation 101.030(5).

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.460 Dropping or discharging of things from rockets**

- (1) A person must not cause anything to be dropped or discharged from a rocket in a way that creates a hazard to an aircraft.

Penalty: 25 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.465 Weather and day limitations—rockets other than model rockets**

- (1) A person may launch a rocket that is not a model rocket:
  - (a) in or into cloud; or
  - (b) at night; or
  - (c) in conditions other than VMC;

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only as permitted by another provision of this Part, or in accordance with an air traffic control clearance.

Penalty: 10 penalty units.

Note: For *model rocket*, see regulation 101.425.

- (2) However, subregulation (1) does not prevent rockets being operated as part of a firework display.
- (3) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**101.470 Model rockets**

- (1) A person must not launch a model rocket into cloud.

Penalty: 10 penalty units.

Note: For *model rocket*, see regulation 101.425.

- (2) A person must not launch a model rocket to higher than 400 feet AGL within 5 nautical miles of an aerodrome.

Penalty: 10 penalty units.

- (2A) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subject to subregulations (1) and (2) and Subpart 101.B, a person may launch a model rocket outside an approved area, or at night.

## **Subpart 101.I—Firework displays**

### **101.475 What this Subpart does**

This Subpart regulates the conduct of certain firework displays, to the extent necessary to prevent them being a hazard to the safety of air navigation.

### **101.480 Application of State and Territory laws about fireworks**

- (1) If a law of a State or Territory deals with the use of fireworks, and is not inconsistent with this Subpart, nothing in this Subpart affects the operation of the law.
- (2) For subregulation (1), a law of a State or Territory is not inconsistent with this Subpart if it is possible to comply with both this Subpart and the State or Territory law at once.

### **101.485 Meaning of *operate a firework display***

For this Subpart, a person *operates a firework display* if the person places the fireworks for the display, or fires them off.

### **101.490 Certain projectiles prohibited in firework displays**

- (1) A person may use, in a firework display, a projectile that is capable of reaching more than 400 feet AGL only if CASA so approves.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **101.495 Firework displays not permitted near aerodromes**

- (1) A person may operate a firework display in or over an area mentioned in paragraph (2)(a) or (b) only if subregulation (3) or (4) applies to the display.

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Penalty: 10 penalty units.

(1A) An offence against subregulation (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) The areas for subregulation (1) are:

- (a) a movement area or runway of an aerodrome; and
- (b) the approach or departure path of a runway of an aerodrome.

(3) This subregulation applies to a firework display if:

- (a) permission for the display has been given by:
  - (i) if the aerodrome is a controlled aerodrome—the air traffic control service for the aerodrome; and
  - (ii) in the case of any other aerodrome—CASA; and
- (b) the person who proposes to operate the display has, before doing so, given to CASA the details required by table 101.500.

(4) This subregulation applies to a firework display if the fireworks are set off on or near domestic premises by or for somebody who lives there.

#### **101.500 Notice to CASA of certain firework displays**

(1) A person may operate a firework display at a place within 3 nautical miles of an aerodrome only if the person has given at least 2 working days' notice to CASA.

Penalty: 10 penalty units.

(2) However, subregulation (1) does not apply if:

- (a) the fireworks are set off on or near domestic premises by or for somebody who lives there; and
- (b) either:
  - (i) if a law of a State or Territory allows fireworks to be set off in that place only on a particular day or days—the fireworks are set off on such a day; or
  - (ii) if there is no such law in that place—the fireworks are set off on a day on which fireworks are customarily set off on domestic premises in that place.



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- (3) When the person tells CASA, the person must also give to CASA the information required by table 101.500.

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**Table 101.500 Details of firework display to be given to CASA**

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<b>Item</b>	<b>Information to be provided</b>
1	The name, address and telephone number of the person who will operate the display (or, if several people will be involved in its operation, the name, address and telephone number of the person who will coordinate it)
2	The date the display is to begin, the starting time, and how long it is to last
3	Where it is to be given
4	How many projectiles capable of reaching more than 400 feet AGL are to be used in the display
5	A general description of the pyrotechnic characteristics of each such projectile
6	The estimated highest altitude that any projectile can reach
7	The maximum burst radius of the pyrotechnics in a projectile

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- (4) CASA may impose a condition on the operation of a firework display if the condition is reasonably necessary in the circumstances in the interests of the safety of air navigation.
- (5) A person operating a display must comply with any condition imposed under subregulation (4).

Penalty: 50 penalty units.

- (6) An offence against subregulation (1) or (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**Part 103—Sport and recreational aviation  
operations**

Note: This Part heading is reserved for future use.

## **Part 105—Sport and recreational parachuting from aircraft**

Note: This Part heading is reserved for future use.

## **Part 115—Commercial sport and recreational aviation operations**

Note: This Part heading is reserved for future use.

## **Part 117—Representations and surveys**

### **Contents of Part 117**

- 117.005 What this Part is about
- 117.010 Misrepresentations about holding certain civil aviation authorisations
- 117.015 Safety-related surveys or questionnaires—holders of certain civil aviation authorisations

### **117.005 What this Part is about**

This Part provides for offences for:

- (a) misrepresentations about holding certain civil aviation authorisations; and
- (b) not completing safety-related surveys or questionnaires.

### **117.010 Misrepresentations about holding certain civil aviation authorisations**

- (1) A person commits an offence if:
  - (a) the person represents to another person, in any way, that the person is willing to conduct an activity using an aircraft; and
  - (b) the person does not hold a particular civil aviation authorisation authorising the person to conduct the activity using the aircraft; and
  - (c) under the Act or these Regulations, it is an offence for a person to conduct the activity using the aircraft if the person does not hold the civil aviation authorisation.

Penalty: 50 penalty units.

- (2) An offence against this regulation is an offence of strict liability.

Note: For the definition of *civil aviation authorisation*, see section 3 of the Act.

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**117.015 Safety-related surveys or questionnaires—holders of certain civil aviation authorisations**

- (1) CASA may, by written notice given to a person mentioned in subregulation (2), direct the person to:
  - (a) complete a safety-related survey or questionnaire by accurately answering all mandatory questions in the survey or questionnaire; and
  - (b) submit the completed survey or questionnaire to CASA within the time stated in the notice.
- (2) For subregulation (1), the persons are the following:
  - (a) the holder of an AOC;
  - (b) a Part 141 operator who conducts flight training in aircraft.
- (3) The person may, before the end of the time stated in the notice, apply in writing to CASA for an extension.
- (4) CASA may, by written notice given to the person (the *notice of extension*), grant the extension.
- (5) The person commits an offence if the person does not comply with the direction within:
  - (a) if CASA grants an extension under subregulation (4)—the time stated in the notice of extension; or
  - (b) if paragraph (a) does not apply—the time stated in the notice under subregulation (1).

Penalty: 25 penalty units.

- (6) An offence against this regulation is an offence of strict liability.

**Part 119—Air operator certification—commercial  
air transport**

Note: This Part heading is reserved for future use.

**Part 121—Commercial air transport operations  
(aeroplanes)**

Note: This Part heading is reserved for future use.



**Part 129—Commercial air transport operations  
(foreign operators)**

Note: This Part heading is reserved for future use.

**Part 133—Commercial air transport and aerial  
work operations (rotorcraft)**

Note: This Part heading is reserved for future use.

## **Part 137—Aerial application operations—other than rotorcraft**

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## **Subpart 137.A—Applicability and definitions**

### **137.005 Applicability**

- (1) Subject to this regulation, this Part applies to aerial application operations using aeroplanes.

#### *Operators*

- (2) This Part applies to a person who is applying for an AOC, on or after the commencing day, to authorise the person to undertake application operations.

- (3) If:

- (a) a person has applied, on or after the application day but before the commencing day, for an AOC to authorise the holder to undertake agricultural operations or purposes substantially similar to agricultural operations; and
- (b) before the commencing day, the person has not been issued with the AOC;

this Part applies to the person and the application as if:

- (c) the application had been made on the commencing day; and
- (d) the application was for an authorisation to undertake application operations.

- (4) If, on the commencing day, a person holds an AOC that covers agricultural operations or purposes substantially similar to agricultural operations:

- (a) the person may, after the commencing day, prepare and submit to CASA an operations manual; and
- (b) this Part applies to the person and the manual as if the person was applying for an AOC on or after the commencing day to authorise the person to undertake application operations.

- (5) This Part applies on and after the day that falls 12 months after the commencing day to a person who has an AOC that authorises the person to undertake agricultural operations or purposes substantially similar to agricultural operations if:

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- (a) that AOC is in effect on that day; and
- (b) this Part does not otherwise apply to the person.

*Pilots*

- (6) If:
  - (a) a pilot is engaged in an application operation on or after the commencing day; and
  - (b) the pilot is not employed by an operator for that operation; this Part applies to the pilot for that operation.
- (7) If:
  - (a) this Part applies to an operator on a particular day; and
  - (b) a pilot employed by the operator undertakes an application operation for the operator on that day; this Part applies to the pilot for that operation.
- (8) In this regulation:

***application day*** means the day that falls 30 days before the day this Part commences.

***commencing day*** means the day this Part commences.

### **137.010 Definitions**

In this Part:

***aerial application operation*** (or application operation) means:

- (a) a flight that is carried out by an aeroplane to apply application material; and
- (b) a flight by an aeroplane that is for, or partly for, 1 or more of the following:
  - (i) inspection of a work area;
  - (ii) pilot training or checking relating to a flight mentioned in paragraph (a);
  - (iii) training of a crew member other than the pilot;
  - (iv) travel from a landing area to a work area and back;

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- (v) the carriage of a passenger specified in regulation 137.135 for a purpose set out in that regulation; and
- (c) preparation for any activities mentioned in paragraphs (a) and (b).

**application material** means fertiliser, trace elements, seeds, baits, water, pesticides or other material.

**apply**, in relation to application material, means to drop or spray the material onto the ground or water.

**crew member** includes a person who is on board an aeroplane to give, or receive, training in an aspect of application operations.

**employ**, in relation to a pilot, includes to engage as an independent contractor.

**GPS marking system** means a system that uses global positioning system equipment to show the flight path required for an aeroplane when applying application material.

**head of aeroplane maintenance control**, in relation to an operator, means the person who holds the position whose duties include those mentioned in regulation 137.070.

**head of flight operations**, in relation to an operator, means the person who holds the position whose duties include those mentioned in regulation 137.065.

**key personnel position**, in relation to an operator, means the positions of head of aeroplane maintenance control and head of flight operations for the operator.

**landing area** means a place, whether or not an aerodrome, where an aeroplane is able to take off and land.

**MEL**, or **minimum equipment list**, for an aeroplane, means an approved list that provides for the operation of the aeroplane with particular equipment inoperative, and sets out any special conditions for such operation.



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**operations manual**, in relation to an operator or an application operation carried out by an operator, means:

- (a) the manual, and the schedule of differences (if any), approved under regulation 137.050; and
- (b) any amendments approved under regulation 137.080, 137.085 or 137.090, as appropriate.

Note: An operations manual may comprise a standard operations manual and a schedule of differences: see subregulation 137.035(2).

**operator**, in relation to an aeroplane, means a person who holds an AOC that authorises the use of the aeroplane in application operations.

**populous area**, in relation to a flight by an aeroplane, means an area where, if the aeroplane's engine failed, the aeroplane would not be able to glide safely clear of any occupied building.

**resting time**, for a pilot, means any time during a tour of duty when the pilot:

- (a) has no duties to perform; and
- (b) has access to accommodation that is conducive to rest and includes a comfortable chair.

**role equipment** means equipment fitted to an aeroplane for an application operation, including booms, spreaders and mirrors.

**schedule of differences**, for an operator, means the schedule prepared by the operator under paragraph 137.045(3)(c) and approved by CASA under regulation 137.050.

**sleeping time**, for a pilot, means any time during a tour of duty when the pilot:

- (a) has no duties to perform; and
- (b) has access to a comfortable room that:
  - (i) is subject to minimal noise levels; and
  - (ii) is well ventilated; and
  - (iii) is equipped with a method of controlling the entry of light; and
  - (iv) is equipped with a comfortable bed and chair.

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***standard operations manual*** means an operations manual approved under regulation 137.040.

***work area***, in relation to an application operation, means:

- (a) the area of ground or water where application material is to be applied; and
- (b) the area over which the aeroplane concerned flies as it approaches and departs from the area mentioned in paragraph (a).

## **Subpart 137.B—General**

### **137.015 Approvals**

If a provision of this Part provides that anything (including a document, body or activity) must be approved, CASA may approve the thing, in writing, for the provision.

### **137.020 Effect of other provisions**

If a provision in these Regulations is inconsistent with a provision in this Part, the provision in this Part prevails to the extent of the inconsistency.

### **137.025 Aeroplane—type certificate**

- (1) If an aeroplane does not conform to a type certificate or type acceptance certificate in the normal, restricted or utility category:
  - (a) the operator of the aeroplane must not allow it to be used for an application operation; and
  - (b) a pilot must not use it to carry out an application operation.

Penalty: 50 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

Note: CASA may grant an exemption from a provision of these Regulations: see Subpart 11.F.

### **137.030 Authority of the pilot**

The operator of an aeroplane must take all reasonable measures to ensure that, if the pilot in command of the aeroplane, acting in accordance with a provision of these Regulations, directs anybody to do something, or not do something, the person complies with the direction.

## **Subpart 137.C—Operator certification and supervision**

### **137.035 Applicant to prepare manual**

- (1) A person applying for an AOC to cover application operations must prepare a manual that:
  - (a) specifies procedures to be followed by crew members and other persons to ensure the safety of the operations that are to be covered by the AOC; and
  - (b) includes the names of the persons who are to be the CEO and holders of the key personnel positions.
- (2) The person may comply with subregulation (1) by:
  - (a) nominating a standard operations manual to apply to the person's operations; and
  - (b) preparing a schedule of differences to the standard operations manual.
- (3) The manual may:
  - (a) consist of 1 or more volumes; and
  - (b) include material prepared by someone other than the person making the application; and
  - (c) incorporate another document or documents by reference.

Note: CASA approves the manual under regulation 137.050 when approving the application for the AOC.

### **137.040 Standard operations manual**

- (1) CASA may approve, in writing, a manual prepared by a person other than an operator, as a standard operations manual.
- (2) The manual must specify procedures to be followed by crew members of aeroplanes and other persons engaged in application operations to ensure the safety of the operations.

### **137.045 Application for an AOC or variation of an AOC**

- (1) An application by a person for an AOC to cover application operations must be submitted to CASA at least 90 days before the date of intended operation.
- (2) The manual that, for subsection 27AB(2) of the Act, must be lodged with CASA by the person need not include landing area information.
- (3) If the person nominates a standard operations manual the application must include:
  - (a) a statement identifying the standard operations manual; and
  - (b) an undertaking to comply with the standard operations manual as in force from time to time; and
  - (c) a schedule to the standard operations manual, prepared by the applicant, showing:
    - (i) the ways (if any) in which the person's application operations are proposed to differ from those described in the standard operations manual adopted by the person under paragraph (b); and
    - (ii) the names of the persons who are proposed to be the CEO and holders of the key personnel positions.
- (4) The manual or schedule (if any) that relates to the application must be submitted to CASA at least 60 days before the date of intended operation.
- (5) An application for a variation of an AOC must be submitted to CASA at least 30 days before the date of the proposed change to the operation.

Note: For matters about which CASA must be satisfied before issuing an AOC, see section 28 of the Act.

- (6) CASA may accept an application later than required under subregulation (1) or (5), or a late submission under subregulation (4).

### **137.050 Decision on AOC and manual**

- (1) CASA must, in writing, approve or refuse to approve:
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- (a) an application for an AOC; and
  - (b) an application for a variation of an AOC.
- (2) If CASA approves an application for an AOC under subregulation (1), it is taken to have approved:
- (a) the applicant's manual; and
  - (b) if applicable—the schedule mentioned in paragraph 137.045(3)(c).
- (3) CASA is taken to have refused an application for an AOC if it has not approved or refused the application within the period of 90 days starting on the later of the following:
- (a) the day the application is made;
  - (b) the day the applicant has complied with any notice given by CASA under section 27AC of the Act.
- (4) CASA is taken to have refused an application for a variation of an AOC if it has not approved or refused the application within the period of 90 days starting when the application is made.

**137.055 Offences concerning operations manual**

- (1) An operator must conduct application operations in accordance with:
- (a) the operations manual; and
  - (b) if the operator has an exemption given by CASA under Part 11—the exemption.

Penalty: 25 penalty units.

- (2) The operator must ensure that the manual, and information relating to any exemption, is available to crew members and other persons engaged in application operations for the operator.

Penalty: 25 penalty units.

- (3) A contravention of subregulation (1) or (2) is an offence of strict liability.

### **137.060 Operator's organisational structure**

- (1) An operator must nominate an individual to be chief executive officer (**CEO**) of the operator's organisation.
- (2) The CEO must be responsible for ensuring that all application operations and aeroplane maintenance can be carried out to the standard required by these Regulations.
- (3) An operator must nominate individuals to hold the key personnel positions in the organisation.
- (4) If, having regard to the size of an operator's organisation or the nature and scope of operations authorised by the operator's AOC, it would not adversely affect the safety of the operations to do so, an operator may:
  - (a) appoint a person to a key personnel position on a part-time basis; or
  - (b) appoint a person to more than 1 key personnel position.
- (5) An operator must ensure that, at all times, a person is occupying, or acting in, each key personnel position.

### **137.065 Head of flight operations**

- (1) Subject to subregulation (5), an operator must nominate an individual to be head of flight operations in the operator's organisation.
- (2) The duties of the head of flight operations must include being responsible for the following:
  - (a) monitoring the operator's compliance with the Act, these Regulations and the conditions to which the operator's AOC is subject, and reporting on compliance to the operator's CEO;
  - (b) monitoring the adequacy of the operator's systems and procedures to ensure safe operations under the operator's AOC, and reporting on the adequacy of the systems and procedures to the CEO;
  - (c) arranging rosters for the pilots employed to carry out application operations for the operator;

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- (d) maintaining an efficient system for recording flight and duty times for each pilot;
  - (e) maintaining up-to-date records of all licences, ratings, medical certificates and endorsements held by each pilot;
  - (f) maintaining a system that will ensure compliance with the relevant loading procedures for each type of aeroplane used in operations carried out under the operator's AOC;
  - (g) ensuring that the operator keeps any documents required by the Act, these Regulations and the conditions of the operator's AOC;
  - (h) setting and monitoring the standard of application operations, including activities on the ground, carried out under the operator's AOC;
  - (i) ensuring that the checking required by Subpart 137.N is carried out and, if a pilot fails a check, that the appropriate retraining and re-checking are carried out;
  - (j) allocating an aeroplane for use in each operation carried out under the operator's AOC.
- (3) If an operator uses only 1 aeroplane for application operations, the person occupying the position of head of flight operations must have at least 300 hours total flight time as pilot in command in application operations.
- (4) If an operator uses more than 1 aeroplane for application operations, the person occupying the position of head of flight operations must hold an agricultural pilot (aeroplane) grade 1 rating within the meaning given in Civil Aviation Order 40.6.
- (5) A person who, under Civil Aviation Order 82.0, is approved as Chief Pilot of an operator, is taken to be the head of flight operations for the operator.

**137.070 Head of aeroplane maintenance control**

- (1) An operator must nominate an individual to be head of aeroplane maintenance control in the operator's organisation.
- (2) The duties of the head of aeroplane maintenance control must include ensuring that the operator complies with Subpart 137.M.



### **137.075 Replacement of holder of key personnel position**

If an operator proposes a replacement of the holder of a key personnel position, the operator must:

- (a) notify CASA as soon as is practicable before the proposed replacement; and
- (b) if the replacement does not take effect—notify CASA accordingly.

### **137.080 Amendments to operations manual by operator**

- (1) This regulation applies to an operator that:
  - (a) is using an operations manual prepared by the operator; and
  - (b) proposes a change to a procedure or another matter that, because of its nature, would require amendment of the manual.
- (2) The operator must:
  - (a) prepare an amendment to the manual to reflect the proposed change; and
  - (b) give the amendment to CASA as soon as practicable after preparing it and before implementing the change.
- (3) CASA must, in writing, approve or refuse to approve the proposed amendment.

### **137.085 Amendments to schedule of differences**

- (1) This regulation applies to an operator that:
  - (a) has adopted a standard operations manual; and
  - (b) proposes a change to a procedure or another matter that, because of its nature, would require amendment of the schedule of differences.
- (2) The operator must:
  - (a) prepare an amendment to the schedule to reflect the proposed change; and
  - (b) give the amendment to CASA as soon as practicable after preparing it and before implementing the change.

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- (3) CASA must, in writing, approve or refuse to approve the proposed amendment.

**137.090 Amendments to standard operations manual**

- (1) A person that has prepared a standard operations manual may prepare an amendment of the manual.
- (2) The person must submit the amendment to CASA.
- (3) CASA must, in writing, approve or refuse to approve the amendment.

## **Subpart 137.D—Operational procedures**

### **137.095 Operation to be in VMC**

- (1) The pilot in command of an aeroplane may only conduct an application operation in VMC.

Penalty: 25 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

### **137.100 Use of weather forecasts or observations**

- (1) This regulation applies to the operator of the aeroplane and its pilot in command if the operator is planning an application operation that is to take place more than 50 nautical miles from the take-off aerodrome.

- (2) The operator and pilot must:

- (a) use a weather forecast or report prepared by the Bureau of Meteorology or another approved body; or
- (b) if the pilot is not reasonably able to obtain a weather forecast or report of a kind mentioned in paragraph (a)—satisfy subregulation (4).

Penalty: 5 penalty units.

- (3) The operator must provide any equipment necessary to obtain the forecast or report.

Penalty: 10 penalty units.

- (4) The operator and pilot satisfy this subregulation if the pilot:

- (a) uses his or her observations, or weather information from a source other than those mentioned in paragraph (2)(a); and
- (b) the pilot reasonably believed it was safe to use the observations or information.

- (5) A contravention of subregulation (2) or (3) is an offence of strict liability.

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**137.105 Landing areas**

Despite any other provision of these Regulations, the pilot in command of an aeroplane engaged in an application operation may use any landing area that can be used safely for take-offs and landings.

**137.110 Safety of persons other than crew at landing areas**

- (1) The operator of an aeroplane must, for the safety of persons during application operations at a landing area:
  - (a) use appropriate procedures, including those necessary for the safe loading and unloading of aeroplanes; and
  - (b) provide appropriate equipment, including any necessary lighting.

Penalty: 25 penalty units.

- (2) The procedures must be set out in the operations manual.
- (3) A contravention of subregulation (1) is an offence of strict liability.

**137.115 Refuelling**

- (1) An operator must use appropriate safety procedures for the refuelling of each of the operator's aeroplanes that is used in an application operation.

Penalty: 25 penalty units.

- (2) The operations manual must set out the procedures.
- (3) A contravention of subregulation (1) is an offence of strict liability.

**137.120 Documents to be carried on a flight**

- (1) The pilot in command of an aeroplane being used for an application operation must have a copy of the aeroplane's flight manual, or an approved alternative document, on board the aeroplane on every flight.

Penalty: 10 penalty units.

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- (2) The pilot must also have the documents or copies mentioned in subregulations (4) and (5) on board the aeroplane on a flight if the aeroplane will be more than 1 hour's flying time (at cruise speed in still air) from the operator's principal operating base.

Penalty: 10 penalty units.

- (3) However, if:
- (a) the aeroplane is to be based for more than 7 days at a place that is not the operator's principal operating base (a *substitute base*); and
  - (b) the aeroplane is less than 1 hour's flying time (at cruise speed in still air) from the substitute base;
- the documents or copies mentioned in subregulations (4) and (5) may be kept at the substitute base.

- (4) For subregulations (2) and (3), the documents are:
- (a) the aeroplane's flight and maintenance records; and
  - (b) each of the following documents, or copies of the documents:
    - (i) the aeroplane's certificate of registration;
    - (ii) the aeroplane's certificate of airworthiness (or, if applicable, special flight permit);
    - (iii) the current medical certificate for, and licence of, the pilot.

- (5) However, if the operations manual states that only a specified part of a document mentioned in subregulation (1) or paragraph (4)(a) must be carried during a flight, only that part need be carried.

- (6) A contravention of subregulation (1) or (2) is an offence of strict liability.

### **137.125 Manipulation of flight controls**

- (1) While an aeroplane is engaged in an application operation its flight controls may be manipulated by a person only if the person is:
- (a) the pilot in command of the aeroplane; or
  - (b) a pilot who is being trained in application operations; or
  - (c) a person authorised to do so by CASA.

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Penalty: 25 penalty units.

- (2) If an aeroplane engaged in an application operation is on the ground with the engine running, the pilot in command must be at the controls unless:
- (a) the pilot is refuelling the aeroplane in accordance with the operations manual; or
  - (b) the following apply:
    - (i) the pilot remains near the aeroplane;
    - (ii) the wheel brakes are locked and, if practicable, the wheels are chocked;
    - (iii) the aeroplane's power controls are friction locked and, if possible, the propeller is feathered;
    - (iv) the engine is retarded to idle and, if possible, ground idle.

Penalty: 25 penalty units.

- (3) Subregulation (4) applies if a person who is not, under these Regulations, entitled to manipulate the aeroplane's flight controls:
- (a) occupies a control seat fitted with fully or partially functioning controls; or
  - (b) is seated in a position where he or she could interfere with the controls.
- (4) The pilot in command of the aeroplane must:
- (a) instruct the person not to interfere with the controls; and
  - (b) be satisfied on reasonable grounds that the person has understood the instruction.

Penalty: 25 penalty units.

- (5) A contravention of subregulation (1) or (2) is an offence of strict liability.
- (6) Strict liability applies to the physical element mentioned in paragraph (4)(a).

### **137.130 Use of seats, seatbelts and harnesses**

- (1) A person in an aeroplane engaged in an application operation must occupy a seat and wear a seatbelt or harness whenever the aeroplane is moving under its own power.

Penalty: 10 penalty units.

- (2) However, subregulation (1) does not apply to a person in the aeroplane if, during the operation:
- (a) he or she is acting in accordance with an instruction by the pilot in command; or
  - (b) he or she is wearing an approved restraint device and either:
    - (i) has satisfactorily completed a course of training in the operation and is directly involved in the operation; or
    - (ii) is being trained in the operation.

- (3) A contravention of subregulation (1) is an offence of strict liability.

### **137.135 Carriage of passengers**

- (1) If an aeroplane is engaged in an application operation, neither the operator nor the pilot in command may allow a passenger to be carried unless subregulation (2), (3) or (4) applies to the operation and the passenger.

Penalty: 50 penalty units.

- (2) This subregulation applies if the passenger is an officer, or delegate of CASA, who is on board the aeroplane to carry out his or her duties.
- (3) This subregulation applies if:
- (a) the passenger is on board the aeroplane to identify the area where the application material is to be applied; and
  - (b) no application material is applied during the operation.
- (4) This subregulation applies if:
- (a) the passenger is on board the aeroplane to carry out duties necessary for his or her employment; and

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- (b) both the operator and the pilot agree to the carriage of the passenger.

Note: The operator and pilot must take precautions to ensure the safety of the passenger: see regulation 224 of CAR.

- (5) A contravention of subregulation (1) is an offence of strict liability.

**137.140 Minimum height and lateral separation for operation**

- (1) Subject to subregulations (2), (3) and (4) the pilot in command of an aeroplane engaged in an application operation may fly at any height while:
  - (a) over the work area; or
  - (b) travelling from the landing area used for loading the aeroplane to the work area.

- (2) In a populous area, the aeroplane must not fly closer than 100 metres, measured horizontally, from an occupied building.

Penalty: 25 penalty units.

- (3) In an area other than a populous area the aeroplane must not fly less than 350 feet AGL while closer than 100 metres, measured horizontally, from an occupied building.

Penalty: 25 penalty units.

- (4) The aeroplane may fly closer to a building and to the ground than provided for in subregulation (2) or (3) if:
  - (a) more than 48 hours before the proposed operation, the occupier of the building was notified in writing about the operation and did not object to the operator about it; or
  - (b) if it was not reasonably practicable to give written notice—the occupier was notified verbally before the operation and did not object to the operator about it.

- (5) A contravention of subregulation (2) or (3) is an offence of strict liability.



### **137.145 Application over populous areas**

- (1) A person may conduct an application operation over a populous area only if:
  - (a) the person is an operator; and
  - (b) the procedures for the operation are set out in the operations manual; and
  - (c) the operation was requested by a person that, under a law of a State or Territory, may authorise the operation.

Penalty: 25 penalty units.

- (2) An operator must, before conducting the operation, make a plan for the operation that:
  - (a) includes consultation with the person that requested the operation; and
  - (b) identifies any obstructions to flight and sets out how these will be avoided; and
  - (c) identifies the most suitable emergency landing area for the operation; and
  - (d) sets out any coordination with ATC that is necessary for the operation.

Penalty: 25 penalty units.

- (3) A contravention of subregulation (1) or (2) is an offence of strict liability.

### **137.150 In-flight fuel management**

- (1) The pilot in command of an aeroplane engaged in an application operation must plan a flight for the operation so that, at all times, the aeroplane has enough fuel to complete the flight safely.

Penalty: 50 penalty units.

- (2) If an operations manual applies to the pilot, it must set out:
  - (a) the procedures that the pilot must follow to ensure that the aeroplane carries enough fuel; and
  - (b) a procedure to ensure that in-flight fuel checks and fuel management are carried out.

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- (3) A contravention of subregulation (1) is an offence of strict liability.

**137.155 Operations near RPT flight**

- (1) The pilot in command of an aeroplane must not engage in an application operation within 5 nautical miles of an aerodrome during:
- (a) the period commencing 10 minutes before the estimated time of arrival at the aerodrome of an aeroplane with an MTOW of more than 5 700 kg that is conducting a regular public transport operation (an *RPT aeroplane*) and finishing when the RPT aeroplane lands; and
  - (b) the period commencing when an RPT aeroplane starts to taxi for take-off at the aerodrome and finishing when the RPT aeroplane is at an altitude that is 500 feet greater than the maximum operating altitude that is to be reached by the aeroplane during the operation.

Penalty: 50 penalty units.

- (2) Subregulation (1) does not apply if the pilot is:
- (a) subject to instructions by ATC; or
  - (b) in radio contact with the RPT aeroplane.
- (3) A contravention of subregulation (1) is an offence of strict liability.

**137.160 Aerodrome circuit requirements**

- (1) The pilot in command of an aeroplane engaged in an application operation that involves a take-off from, or landing at, an aerodrome need not conform with the circuit traffic protocol specified in the AIP for the aerodrome if:
- (a) the aeroplane is fitted with a radio; and
  - (b) the pilot:
    - (i) maintains a continuous listening watch on the aerodrome frequency; and
    - (ii) broadcasts his or her intentions in accordance with the AIP; and
    - (iii) gives priority to other traffic.

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- (2) However, subregulation (1) does not apply if the flight is subject to ATC instructions.
- (3) In this regulation, *AIP* includes a document that is equivalent to the AIP.

**137.165 Close proximity operations**

- (1) For this regulation, 2 or more aeroplanes are engaged in a *close proximity operation* if they are flying so close to each other during an application operation as to create a collision hazard if special measures are not taken.

- (2) A person must not operate an aeroplane in a close proximity operation if the person is not an operator.

Penalty: 25 penalty units.

- (3) The pilot in command of an aeroplane must not engage in a close proximity operation unless the operation is coordinated by:
  - (a) if the operation is to be conducted by 1 operator—the operator’s head of flight operations, or another person nominated by the operator; or
  - (b) otherwise—a suitably qualified pilot agreed to by all pilots involved in the operation.

Penalty: 25 penalty units.

- (4) The coordinator must give, to all pilots involved in the operation, instructions about the following:
  - (a) transit between the landing area and the work area;
  - (b) radio communications, including loss-of-communication procedures;
  - (c) refuelling arrangements;
  - (d) the conduct of the operation.

Penalty: 25 penalty units.

- (5) During the operation each pilot must:
  - (a) maintain safe lateral separation from the other aeroplanes by visual and radio contact; and

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- (b) comply with the instructions of the person coordinating the operation.

Penalty: 25 penalty units.

- (6) A contravention of subregulation (2), (3), (4) or (5) is an offence of strict liability.

**137.170 Night operations**

- (1) This regulation applies to an application operation conducted at night.
- (2) The pilot in command of the aeroplane to be used in the operation must, by inspection during daylight, be familiar with:
  - (a) the work area; and
  - (b) the route between the work area and the landing area.

Penalty: 25 penalty units.

- (3) The operator of the aeroplane must plan the operation so the distance from a work area to a landing area is less than 30 minutes flying time at normal cruise power in still air, unless:
  - (a) the aeroplane is equipped, and certificated under Part 21, for night VFR flight; and
  - (b) the pilot holds, in addition to any rating required for night application operations, the rating required for a VFR flight at night.

Penalty: 25 penalty units.

- (4) The operator must not allow the operation to commence unless the aeroplane is equipped with a two-way radio that enables the pilot to communicate with each person on the ground who has a role in the operation.

Penalty: 25 penalty units.

- (5) The pilot must not commence or continue the operation if horizontal visibility from the aeroplane is less than 5 km.

Penalty: 25 penalty units.

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- (6) The operator must ensure that lights are placed at the work area to help the pilot with orientation.

Penalty: 25 penalty units.

- (7) A contravention of subregulation (2), (3), (4), (5) or (6) is an offence of strict liability.

**137.175 Firefighting operations**

- (1) A person must not operate an aeroplane for an application operation that involves firefighting unless the emergency control authority responsible for the firefighting:

- (a) has not, when the operation commences, taken control of the fighting of the fire; or  
(b) has taken control of the firefighting and asks the person to carry out the operation.

Penalty: 50 penalty units.

- (2) A pilot is authorised to conduct an application operation that:

- (a) involves firefighting; and  
(b) is requested by the relevant emergency control authority; only if he or she has more than 500 hours experience as pilot in command in application operations when the operation commences.

Penalty: 50 penalty units.

- (3) A contravention of subregulation (1) or (2) is an offence of strict liability.

**Part 137** Aerial application operations—other than rotorcraft  
**Subpart 137.E** All-weather operations

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**Subpart 137.E—All-weather operations**

Note: Reserved for future use.

## **Subpart 137.H—Aeroplane performance**

### **137.180 General**

- (1) The pilot in command of an aeroplane engaged in an application operation must, before take-off, take reasonable steps to satisfy himself or herself that the take-off can be safely carried out by considering the aeroplane's take-off weight and each other relevant factor.

Penalty: 50 penalty units.

- (2) Before landing, the pilot must satisfy himself or herself that the landing can be safely carried out by considering the aeroplane's landing weight and each other relevant factor.

Penalty: 50 penalty units.

- (3) A contravention of subregulation (1) or (2) is an offence of strict liability.

### **137.185 Take-off over a populous area**

- (1) The pilot in command of an aeroplane engaged in an application operation may commence a take off over a populous area only if the aeroplane's performance will allow it to be 200 feet or more AGL when it crosses the aerodrome boundary and climbing at 200 feet or more per minute.

Penalty: 50 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

## **Subpart 137.J—Weight and balance**

### **137.190 Weight limitations**

- (1) The pilot in command of an aeroplane engaged in an application operation must not commence a take-off if the aeroplane's gross weight exceeds:
  - (a) the maximum gross weight shown in the aeroplane's flight manual; or
  - (b) any maximum gross weight that:
    - (i) has been established for that type of aeroplane by a flight test supervised by CASA; and
    - (ii) is shown on a placard, approved by CASA and displayed in the aeroplane's cockpit; or
  - (c) the maximum gross weight shown on the type certificate, or type certificate data sheet, that is issued for the aeroplane by the national aviation authority of the State of Design (within the meaning given in Annex 8 to the Chicago Convention) of the aeroplane.

Penalty: 50 penalty units.

- (2) The pilot must calculate the take-off weight by a method that includes calculating the weight of:
  - (a) the crew and any equipment carried; and
  - (b) the aeroplane's fuel and load.

Penalty: 50 penalty units.

- (3) The operator of the aeroplane must not specify a minimum load to be carried by the aeroplane that is greater than the load that the pilot reasonably considers to be safe.

Penalty: 50 penalty units.

- (4) A contravention of subregulation (1), (2) or (3) is an offence of strict liability.



**137.195 Loading—supervision**

- (1) The pilot in command of an aeroplane to be used in an application operation must:
  - (a) supervise the loading of the aeroplane; and
  - (b) not commence the operation unless the load is placed in a way that is consistent with the data used for the calculation of the aeroplane's weight and balance.

Penalty: 25 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

## **Subpart 137.K—Instruments and equipment**

### **137.200 Installation of instruments and equipment**

- (1) Subject to subregulation (3), the operator of an aeroplane that is to be used in an application operation must ensure that instruments and items of equipment, other than role equipment, used in the aeroplane are:
- (a) other than items mentioned in subregulation (3)—approved; and
  - (b) properly installed so they are fit for their purpose, and do not interfere with the operation of any other equipment; and
  - (c) except as provided in the applicable MEL—serviceable.

Penalty: 50 penalty units.

- (2) For paragraph (1)(b), an instrument or item of equipment is properly installed if:
- (a) there is a Part 21 approval that covers the installation; and
  - (b) the instrument or item is installed in accordance with its approved design; and
  - (c) the instrument or item is compatible with the configuration of the aircraft; and
  - (d) the instrument or item is installed by a person who:
    - (i) has been trained to carry out the installation; and
    - (ii) is authorised, under these Regulations, to carry out the installation.
- (3) The following items are not required to be approved:
- (a) electric torch;
  - (b) timepiece;
  - (c) a GPS marking system;
  - (d) chart holder;
  - (e) first-aid kit;
  - (f) survival and pyrotechnic signalling equipment.
- (4) A contravention of subregulation (1) is an offence of strict liability.
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Regulation 137.210

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(5) In this regulation:

*approved design*: see subregulation 42.015(1).

*Part 21 approval*: see subregulation 42.015(1).

**137.210 Position of instruments and equipment**

- (1) The operator of an aeroplane must not allow the aeroplane to be used in an application operation unless:
- (a) equipment on the aeroplane that is operated during flight by only 1 crew member is installed so that it can readily be operated from the member's station; and
  - (b) an instrument that need only be read by 1 crew member is installed:
    - (i) so the crew member can easily read the instrument from his or her station; and
    - (ii) as close as practicable to the crew member's line of vision in the direction of the flight path.

Penalty: 50 penalty units.

(2) A contravention of subregulation (1) is an offence of strict liability.

**137.215 Instruments and equipment required**

- (1) The operator of an aeroplane must not allow the aeroplane to engage in an application operation unless it is fitted with the equipment mentioned in each item of Table 137.215-1.

Penalty: 50 penalty units.

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**Table 137.215-1 Equipment for all application operations**

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<b>Item</b>	<b>Equipment</b>
1	A magnetic compass
2	A timepiece showing the time in hours, minutes and seconds (unless the pilot in command carries such a timepiece)

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Regulation 137.215

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**Table 137.215-1 Equipment for all application operations**

<b>Item</b>	<b>Equipment</b>
3	A sensitive pressure altimeter that: (a) reads in feet; and (b) has a sub-scale setting, calibrated in hectopascals, that can be set to any barometric pressure that may occur during flight
4	An airspeed indicator calibrated in knots
5	A slip indicator
6	An outside air temperature indicator calibrated in degrees Celsius
7	If the aeroplane is equipped with radio—a headset, whether or not built into a helmet, with a boom microphone or an equivalent microphone
8	Any other instruments and equipment required to be fitted for type certification.

- (2) The operator must not allow the aeroplane to engage in an application operation at night unless it is fitted with the equipment mentioned in each item of Table 137.215-2.

Penalty: 50 penalty units.

**Table 137.215-2 Equipment for night application operations**

<b>Item</b>	<b>Equipment</b>
1	At least 2 serviceable work lights that are suitable for the operation, installed so as to minimise glare in the cockpit
2	Navigation lights
3	An approved anti-collision lighting system
4	A system of cockpit lighting that is appropriate to the operation
5	Either: (a) a turn indicator; or (b) an attitude indicator that provides pitch and roll information at all attitudes

Regulation 137.220

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- (3) A contravention of subregulation (1) or (2) is an offence of strict liability.

**137.220 Crew intercom system**

- (1) The operator of an aeroplane that requires a crew of more than 1 person must not allow it to engage in an application operation unless it is equipped with an intercom system that:
- (a) can be used by all members of the crew; and
  - (b) includes headsets, whether or not built into a helmet, and microphones that are not of a handheld type.

Penalty: 25 penalty units.

- (2) Subregulation (1) does not apply to the operation if:
- (a) the use of any item of intercom equipment may adversely affect the safety of the operation; and
  - (b) another appropriate method of communication between the crew is arranged before the operation commences.
- (3) A contravention of subregulation (1) is an offence of strict liability.

**137.225 Seatbelts and harnesses**

- (1) This regulation applies to an aeroplane, other than an aeroplane that has been certified in the normal category.
- (2) The operator of the aeroplane must not allow it to engage in an application operation unless:
- (a) the pilot's seat is equipped with a four-point restraint harness with a single point release; and
  - (b) a harness or seatbelt for any other crew member is equipped with a single point release.

Penalty: 50 penalty units.

- (3) A contravention of subregulation (2) is an offence of strict liability.

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## **Subpart 137.M—Aeroplane maintenance**

### **137.230 Fitting and removal of role equipment**

- (1) A person must not fit role equipment to, or remove role equipment from, an aeroplane that is used in an application operation.

Penalty: 25 penalty units.

- (2) Subregulation (1) does not apply to a person who:
- (a) has been trained by an operator, or an approved person, in the fitting and removal of a kind of role equipment; and
  - (b) fits or removes equipment of that kind.
- (3) A contravention of subregulation (1) is an offence of strict liability.

## **Subpart 137.N—Pilots**

### **137.235 Pilot in command must be authorised under Part 61**

- (1) The operator of an aeroplane commits an offence if:
  - (a) the aeroplane is used to conduct an application operation; and
  - (b) the pilot in command of the aeroplane is not authorised under Part 61 to pilot the aeroplane in the operation.

Penalty: 50 penalty units.

- (2) An offence against this regulation is an offence of strict liability.

### **137.240 Operator proficiency checks**

- (1) For this regulation, a pilot holds a *valid operator proficiency check* if:
  - (a) he or she has satisfactorily completed a check that satisfies the criteria in subregulations (3), (4), (5) and (9); and
  - (b) under subregulations (7) and (8), the check is valid.
- (2) The operator of an aeroplane commits an offence if:
  - (a) the aeroplane is used to conduct an application operation; and
  - (b) the pilot in command of the aeroplane does not hold a valid operator proficiency check.

Penalty: 50 penalty units.

- (3) An operator proficiency check for a pilot who is employed by an operator must be conducted by:
  - (a) the operator's head of flight operations; or
  - (b) a flight examiner or instructor authorised under Part 61 to conduct application operations.
- (4) An operator proficiency check for the operator's head of flight operations must be conducted by an examiner or instructor mentioned in paragraph (3)(b).

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- (5) Despite subregulations (3) and (4), an operator proficiency check for a pilot who, in the 12 months immediately before the check, has completed less than 50 hours flight time in application operations must be conducted by an examiner or instructor mentioned in paragraph (3)(b).
- (6) A synthetic flight trainer may be used for a check, or part of a check, if CASA approves its use for the purpose.
- (7) A check is valid for 12 months from the day on which the check is completed.
- (8) However, if the check is completed less than 3 months before the day on which the check would otherwise expire (the *expiry day*), the check is valid for 12 months commencing at the end of the expiry day.
- (9) To complete an operator proficiency check the pilot must demonstrate that he or she is familiar with the systems, the normal and emergency flight manoeuvres, performance, fuel consumption rates, and weight and balance requirements for an aeroplane that he or she flies.  

Note: A check of a pilot of a single seat aeroplane may be conducted by observation from the ground and may include review of GPS data logs, job planning and post flight records.
- (11) A contravention of subregulation (2) is an offence of strict liability.



## **Subpart 137.P—Manuals, logs and records**

### **137.245 Flight manual**

- (1) An operator must maintain a current aircraft flight manual, or another approved document, for each aeroplane used by the operator for application operations.

Penalty: 25 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

### **137.250 Checking records**

- (1) An operator must:
  - (a) make a record of the checking that is:
    - (i) required, under Subpart 137.N, for each pilot employed by the operator; and
    - (ii) completed by each pilot; and
  - (b) allow each pilot to examine and copy the records that relate to him or her.

Penalty: 10 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

Note: Records made for this regulation must be retained: see regulation 137.255.

### **137.255 Document retention periods**

- (1) The operator of an aeroplane that is used for application operations must keep an aircraft maintenance record relating to the aeroplane (including a record of the time in service of each component for which that information is kept):
  - (a) for at least 90 days after the aeroplane concerned is in a condition that prevents it being flown in the future; and
  - (b) in a form that is suitable for, and allows access to, the information.

Regulation 137.255

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Penalty: 50 penalty units.

- (2) The operator of an aeroplane must keep each record mentioned in column 2 of an item in Table 137.255:
- (a) for at least the period mentioned in column 3 of the item; and
  - (b) in a form that is suitable for, and allows access to, the information.

Penalty: 25 penalty units.

- (3) A contravention of subregulation (1) or (2) is an offence of strict liability.

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**Table 137.255**

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<b>Item</b>	<b>Record</b>	<b>Period</b>
1	A copy of the following that relates to each pilot employed by the operator: (a) medical certificate; (b) licence; (c) any rating, endorsement or approval that is relevant to the pilot's employment by the operator	Until the pilot ceases to be employed as a pilot by the operator
2	The 2 most recent records of any training undertaken by a pilot employed by the operator if: (a) the training is required under the operations manual; and (b) the record is not retained for item 2	Until the pilot ceases to be employed as a pilot by the operator
3	A report about an event relating to the safety of an application operation made by a pilot employed by the operator	90 days from the day on which it is made
4	Pilot flight, duty and rest times	15 months from the day of the most recent entry in the document
5	Pilot conversion training	36 months from the day of the most recent entry in the document

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Regulation 137.260

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**Table 137.255**

<b>Item</b>	<b>Record</b>	<b>Period</b>
6	Pilot recurrent training and annual proficiency check for Subpart 137.N	36 months from the day of the most recent entry in the document

**137.260 Maintenance record to be given to new operator**

- (1) A person that ceases to be the operator of an aeroplane that is used for application operations must, if another person becomes the operator, give the aeroplane's aircraft maintenance record, or a copy of the record, to the other person.

Penalty: 25 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

## **Subpart 137.Q—Flight duty time limitations and rest requirements**

### **137.265 Application of Subpart 137.Q**

This Subpart sets out requirements about duty and rest times for a pilot who conducts application operations.

### **137.270 Subpart not to affect subsection 1 of CAO 48.1**

This Subpart does not affect the operation of subsection 1 of Civil Aviation Order 48.1.

### **137.275 Limit on flying hours**

- (1) The pilot must not fly more than:
  - (a) 1 200 hours in 365 consecutive days; or
  - (b) 170 hours in 28 consecutive days.

Penalty: 25 penalty units.

- (2) A contravention of subregulation (1) is an offence of strict liability.

### **137.280 Off-duty period before and after tour of duty**

- (1) Subject to subregulations (2) and (3), the pilot must not undertake duties relating to his or her employment by an operator, including being on call or planning less than:
  - (a) 8 hours before commencing a tour of duty; or
  - (b) 8 hours after completing a tour of duty of 10 hours or less; or
  - (c) 10 hours after completing a tour of duty of more than 10 hours.

Penalty: 25 penalty units.

- (2) No less than 8 hours after completing a tour of duty of more than 10 hours, the pilot may choose to recommence duty up to 1 hour

Regulation 137.285

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earlier than the time required under paragraph (1)(c) if the pilot believes he or she is mentally and physically able to do so.

- (3) The pilot must not recommence duty under subregulation (2) if, in doing so, he or she would be in breach of regulation 137.275, 137.285, 137.290, 137.295 or 137.300.
- (4) A contravention of subregulation (1) is an offence of strict liability.

**137.285 Tour of duty—duration**

- (1) The pilot must not undertake, and a person must not require the pilot to undertake, a tour of duty that exceeds 14 hours.  
Penalty: 25 penalty units.
- (2) However, the pilot may extend a tour of duty in accordance with subregulation (3), (4) or (5) if:
  - (a) the pilot reasonably believes he or she is mentally and physically able to do so; and
  - (c) in doing so, the pilot would not be in breach of regulation 137.275, 137.280, 137.290, 137.295 or 137.300.
- (3) After the pilot has completed 14 hours of a tour of duty, he or she may extend the tour of duty by no more than 1 hour.
- (4) If, during a tour of duty, the pilot has had 3 or more consecutive hours of resting time, the pilot may extend the tour of duty by no more than the lesser of the following:
  - (a) 50% of the duration of the resting time;
  - (b) 2 hours.
- (5) If, during a tour of duty, the pilot has had 2 or more consecutive hours of sleeping time, the pilot may extend the tour of duty by no more than the lesser of the following:
  - (a) the duration of the sleeping time;
  - (b) 3 hours.
- (6) A contravention of subregulation (1) is an offence of strict liability.

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**137.290 Off-duty period each 14 days**

- (1) In any 14 consecutive days the pilot must have a continuous period of at least 36 hours during which he or she carries out no duties for an operator.

Penalty: 25 penalty units.

- (2) A person must not require the pilot to contravene subregulation (1).

Penalty: 25 penalty units.

- (3) A contravention of subregulation (1) or (2) is an offence of strict liability.

**137.295 Limit on time spent on tours of duty**

- (1) The pilot must not spend more than:  
(a) 44 hours on tours of duty in any 3 consecutive days; or  
(b) 98 hours on tours of duty in any 7 consecutive days.

Penalty: 25 penalty units.

- (2) However, if:

- (a) the pilot has 1 or more periods of resting time during any of the days mentioned in subregulation (1); and  
(b) each period is 6 or more continuous hours;

the maximum amount of time for the subregulation is increased by 50% of the duration of the resting time (or the total of those resting times).

- (3) Despite subregulation (2), the maximum time for subregulation (1) is not increased if, in doing so, the pilot would be in breach of regulation 137.275, 137.280, 137.285, 137.290 or 137.300.

- (4) A person must not require the pilot to contravene subregulation (1).

Penalty: 25 penalty units.

- (5) A contravention of subregulation (1) or (4) is an offence of strict liability.

**137.300 Pilot to be fit for duty**

- (1) The pilot must not commence an application operation if he or she is not fit for duty.

Penalty: 25 penalty units.

- (2) The operator of an aeroplane to be used in an application operation must not allow the pilot to commence the operation if the operator has reason to believe that the pilot is not fit for duty.

Penalty: 25 penalty units.

- (3) For subregulations (1) and (2), a pilot is ***not fit for duty*** if, for example:

- (a) he or she has not had adequate rest, food or drink; or  
(b) he or she is adversely affected by a medical condition or a psychoactive substance.

Note: The expression ***psychoactive substances*** refers to alcohol, drugs and volatile solvents, but not coffee and tobacco: see clause 60 of Part 2 of the Dictionary.

- (4) In paragraph (3)(b):

***medical*** includes psychological and psychiatric.

- (5) A contravention of subregulation (1) or (2) is an offence of strict liability.

## **Part 138—Search and rescue operations**

Note: This Part heading is reserved for future use.