

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 221**

Issued by the authority of the Minister for Infrastructure and Transport

*Airspace Act 2007*

*Airspace Amendment Regulation 2013 (No. 1)*

Section 15 of the *Airspace Act 2007* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 11(1) of the Act, the regulations may confer functions and powers on the Civil Aviation Safety Authority (CASA) in connection with the administration and regulation of Australian-administered airspace.

Under subsection 11(2) of the Act, the regulations may make provision for, and in relation to various matters, including, under paragraph (d), the designation of volumes of Australian-administered airspace for the purpose of restricting access to that airspace.

Subsection 12(2) of the Act, sets out matters that CASA must take into account in performing its functions and in exercising its powers conferred under the *Airspace Regulations 2007* (the Regulations). Subsection 12(3) provides that subsection 12(2) does not limit the matters that may be taken into account.

Under subregulation 6(3) of the Regulations, CASA must not declare an area to be a restricted area unless, in the opinion of CASA, it is necessary in the interests of public safety or the protection of the environment to restrict the flight of aircraft over the area to aircraft flown in accordance with specified conditions such as time, specified route and height conditions.

The Amendment Regulation substitutes a new subregulation 6(3) which has the effect of broadening the matters relevant to a decision to declare an area a restricted area, to also include the safety of aircraft in flight, and security. New subregulation 6(3) provides that a declaration of a restricted area may not be made unless, in the opinion of CASA, it is necessary in the interests of public safety, including the safety of aircraft in flight; or the protection of the environment; or security, to restrict the flight of aircraft over the area to aircraft flown in accordance with specified conditions.

Under paragraph 9(3) (cc) of the *Civil Aviation Act 1988* (the CA Act) CASA has any function conferred on CASA under the Airspace Act or the Regulations. Under subsection 13(1) of the CA Act, CASA has power to do all things necessary or convenient in connection with the performance of its functions. Under subsection 94(1) of the CA Act, the Director of Aviation Safety may delegate all or any of CASA's powers under the CA Act to "an officer". Those powers include anything that is necessary or convenient in connection with the performance of CASA's functions, including under the Airspace Act or the Regulations. The CA Act defines an officer as "a member of the staff of CASA". It is through these provisions that delegation of airspace powers and functions are currently made to CASA staff.

New subregulation 13(1A) sets out explicitly that a member of the staff of CASA may be delegated powers and functions under the Regulations, thereby removing the need to rely on the CA Act provisions for delegation.

Under subregulation 13(1) of the Regulations, CASA may only delegate powers and functions under certain provisions of the Regulations to an approved provider of air traffic services (ATS). Under subregulation 13(3) of the Regulations, an “approved provider of air traffic services” means “either an ATS provider within the meaning of regulation 172.015 of the *Civil Aviation Safety Regulations 1998*; or the Australian Defence Force”.

There is some doubt as to whether this broad formulation would allow a delegation to be conferred on an individual member of an approved provider of ATS such as an Australian Defence Force (ADF) officer on secondment to CASA. The amendment to subregulation 13(1A) of the Regulations confers on CASA express power to delegate powers and functions to “a member of the personnel” of an approved provider of air traffic services.

### **Consultation**

Consultation with industry, stakeholders and the general public was commenced via the CASA external website on 20 February 2013. Consultation with the Standards Consultative Committee and its Airspace and Infrastructure Users Group Sub-Committee, and Operational Standards Sub-Committee, was initiated on 21 February 2013. Public consultation closed on 12 March 2013. No comments were received on the amendments.

### **Regulation Impact Statement**

The OBPR assessed that the amendments are minor in nature and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 14814).

### **Statement of Compatibility with Human Rights**

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

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Details of the Amendment Regulation are set out in the [Attachment B](#).

The Amendment Regulation commences on the day after it is registered.

Authority: Section 15 of the  
*Airspace Act 2007*

## ATTACHMENT A

### Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011*

#### **Airspace Amendment Regulation 2013 (No. 1)**

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

The Amendment Regulation amends the Airspace Regulations 2007 (the Regulations) to broaden the matters relevant to a decision to declare an area a restricted area, to also include the safety of aircraft in flight and security; and to ensure there is adequate provision for the delegation of functions and powers to officers within the Civil Aviation Safety Authority (CASA), including officers on secondment to CASA.

Under subregulation 6(3) of the Regulations, CASA may make designations in relation to restricted areas, if in the opinion of CASA, it is necessary in certain circumstances. The Amendment Regulation substitutes a new subregulation 6(3) which provides that CASA must not declare an area to be a restricted area unless it is necessary in the interests of public safety, including the safety of aircraft in flight; the protection of the environment; or security, to restrict the flight of aircraft over the area to aircraft flown in accordance with specified conditions.

Under subregulation 13(1) of the Regulations, CASA may delegate to an approved provider of air traffic services, functions or powers under certain provisions of the Regulations. However, existing provisions are not clear about the delegation of functions and powers to officers within CASA, including officers on secondment to CASA. The Amendment Regulation inserts a new provision, subregulation 13(1A) which clarifies the delegation powers.

#### **Human rights implications**

By providing further scope for restricting access to certain airspace, the Amendment Regulation may engage the right to freedom of movement under the International Covenant on Civil and Political Rights (ICCPR). However, providing the ability to restrict airspace is considered a necessary part of the aviation safety regulatory system. As a regulated sector, individuals who participate in the aviation sector are deemed to have accepted certain conditions and controls, particularly where it is necessary to manage public safety risks and to maintain the integrity of the aviation safety system.

The instrument is otherwise compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not otherwise engage applicable rights or freedoms.

#### **Conclusion**

The legislative instrument is compatible with human rights and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate in the interests of aviation safety.

**Anthony Albanese**  
**Minister for Infrastructure and Transport**

**Details of the *Airspace Amendment Regulation 2013 (No. 1)***

**Section 1 – Name of Regulation**

Section 1 names the Regulation as the *Airspace Amendment Regulation 2013 (No 1)*.

**Section 2 - Commencement**

Section 2 provides that the Regulation commences on the day after it is registered.

**Section 3 - Amendment of *Airspace Regulations 2007***

Section 3 provides that Schedule 1 amends the *Airspace Regulations 2007*.

**Schedule 1 - Amendments to the *Airspace Regulations 2007***

**Item [1] - Subregulation 6(3)**

Item [1] substitutes a new subregulation 6(3) to provide that CASA must not declare an area to be a restricted area unless, in the opinion of CASA, it is necessary in the interests of any of the following to restrict the flight of aircraft over the area to aircraft flown in accordance with specified conditions:

- (a) public safety, including the safety of aircraft in flight;
- (b) the protection of the environment;
- (c) security.

**Item [2] – Subregulation 13(1)**

Item [2] is consequential to item 3.

**Item [3] – New subregulation 13(1A)**

Item [3] inserts a new subregulation 13(1A) which specifies that for subregulation (1) (that is for identifying to whom specified powers and functions under the Regulations may be delegated) the person (i.e. the delegate) may be any of the following:

- (a) a member of the staff of CASA;
- (b) an approved provider of air traffic services;
- (c) a member of the personnel of an approved provider of air traffic services.