

EXPLANATORY STATEMENT

Issued by the authority of the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

Civil Aviation Act 1988

Civil Aviation Safety Amendment (Part 91) Regulations 2018

The *Civil Aviation Act 1988* (the Act) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Subsection 98(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 98(1) also provides that the Governor-General may make regulations, for the purpose of, carrying out and giving effect to the provisions of the *Convention on International Civil Aviation* (the Chicago Convention) relating to aviation safety, and in relation to the safety of air navigation, being regulations with respect to any other matters to which the Parliament has power to make laws.

Subsection 9(1) of the Act specifies, in part, that the Civil Aviation Safety Authority (CASA) has the function of conducting the safety regulation of civil air operations in Australian territory by means that include developing and promulgating appropriate, clear and concise aviation safety standards and issuing certificates, licences, registrations and permits.

The *Civil Aviation Safety Amendment (Part 91) Regulations 2018* (the Regulations) amends the *Civil Aviation Safety Regulations 1998* (CASR), primarily to substitute a new Part 91 – General Operating and Flight Rules. Part 91 is part of a suite of legislative reform that encompasses the flight operations regulations comprising CASR Parts 91, 119, 121, 133, 135 and 138 and the related CASR Parts 103, 105 and 131.

The Regulations apply to the operation in Australia of Australian and foreign registered civil aircraft and foreign state aircraft, as well as the operation of Australian registered aircraft outside Australia. They set out the general operating and flight rules for those aircraft. The Regulations are mainly comprised of the current regulatory provisions contained in the *Civil Aviation Regulations 1988* (CAR) and Civil Aviation Orders as well as some new provisions. Once in force, they will form the foundation for all Australian flight operations and will apply, to pilots, aircraft owners and operators, people who fuel and handle aircraft and other aviation personnel.

Whilst the Regulations and the incorporated Part 91 Manual of Standards primarily consolidate and retain the existing rules, they also introduce new rules to enhance operational flexibility, improve aviation safety and bring Australian requirements more in line with the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO), of which Australia is a council member.

The improvements to aviation safety are achieved principally through the adoption of outcomes-based rather than prescriptive Regulations where the onus rests with pilots, owners and operators to make appropriate decisions to achieve required safety outcomes in a manner that is best suited to the operator. For example, rather than prohibiting the carriage of animals to ensure aviation safety, the Regulations permit the pilot to allow the carriage of an animal, provided the pilot takes reasonable steps to ensure that such carriage does not adversely affect aviation safety. Safety improvements are also expected from the transfer of prescriptive requirements that relate to particular technologies or systems, for example aircraft transponder equipment, to the Part 91 Manual of Standards, where they

are more easily amended to incorporate new technologies, standards and systems developments and remove obsolete or redundant requirements.

New requirements in the Regulations include:

- the retention of a journey log (for international flights), comprising basic flight information required by ICAO;
- to mitigate against the risk to aviation safety of continuing an approach when there is no likelihood of becoming visual, the introduction of an approach ban, for instrument flight rule (IFR) flights at aerodromes that measure visibility electronically and where the weather conditions relating to visibility for instrument approach operations are below the specified landing minima;
- the consolidation of the rules for the Minimum Equipment List (MEL) into the Part 91 Manual of Standards and a broadening of the agencies permitted to approve the MEL;
- the introduction of a requirement to carry cabin crew on non-air transport flights (private or aerial work operations) that carry 20 or more passengers;
- the retention of flight recorders and recordings following an immediately reportable matter to ensure their data, if required, are available to the Aviation Transport Safety Bureau (ATSB);
- the restriction of the simulation of certain emergencies in-flight to a narrower band of operational circumstances and restricting the persons carried on the aircraft to persons giving or receiving training, practising for the grant of an authorisation or being assessed for an authorisation, conducting or supervising an audit or an authorised officer conducting an examination, inspection or test.

Relaxed requirements in the Regulations include:

- the ability to carry flight related documents electronically (rather than paper originals);
- the ability of the pilot to permit the use of portable electronic devices provided they would not affect the safety of the aircraft (rather than requiring the stowage at prescribed times).

Part 91 of CASR uses a number of new defined terms, which will not take effect until 25 March 2021. The new definitions will be included in Part 1 of the CASR Dictionary following the making and registration, in February 2019, of the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019* available in draft on the CASA Part 135 consultation webpage consultation.casa.gov.au/regulatory-program/cd1804os-1/.

Consultation

CASA undertook public consultation on the Regulations in 2011, 2015 and 2018. In February 2018, the Aviation Safety Advisory Panel (ASAP) convened a technical working group (TWG) to evaluate the proposed Regulations and associated Manual of Standards. The TWG made a number of suggestions and identified multiple issues, that CASA addressed in the draft Regulations released for public consultation between 27 March and 6 May 2018, which received 116 responses.

Fifty-one per cent of respondents agreed that the changes were generally appropriate, consolidated existing requirements satisfactorily and addressed aviation safety risks. Sixteen of the twenty specific proposals received majority support, with all being supported subject to amendments to satisfy the minority. In response, CASA amended the draft Regulations where appropriate but did not amend any of the specific proposals that did not receive majority support – the journey log, cabin crew, approach ban and MEL proposals. The ASAP subsequently confirmed that the matters had been satisfactorily resolved and supported the making of the Regulations.

Regulation Impact Statement

A Regulation Impact Statement (RIS) prepared by CASA was assessed by the Office of Best Practice Regulation as compliant with the Best Practice Regulation requirements with a level of analysis commensurate with the likely impacts (OBPR id: 23625).

A copy of the Statement is at Attachment A.

Incorporation by Reference

In accordance with paragraph 15J (2) (c) of the *Legislation Act 2003* and subsection 98 (5D) of the Act, the legislative instrument applies, adopts or incorporates matters contained in the following instruments:

- the Chicago Convention;
- Annex 2 to the Chicago Convention - Rules of the Air;
- aircraft flight manual instructions;
- exposition or operations manual of an operator;
- Part 91 MOS;
- certificate of airworthiness for an aircraft;
- master minimum equipment list for an aircraft, or MMEL ;
- the Aeronautical Information Publication (AIP);
- notices to airmen (NOTAMS);
- Standards Australia – Australian New Zealand Standard AS/NZS 1841: Portable fire extinguishers - General requirements (AS/NZS 1841);
- *International Regulations for Preventing Collisions at Sea, 1972* in the *Convention on the International Regulations for Preventing Collisions at Sea*, done at London on 20 October 1972.

Subsection 98 (5D) of the Act permits a non-legislative instrument to be incorporated as in force or existing at a particular time or from time to time, including a non-legislative instrument that does not exist when the legislative instrument is made.

Each incorporated document is described below, together with the manner of incorporation and how it may be obtained.

The Convention on International Civil Aviation concluded at Chicago on 7 December 1944 (the Chicago Convention):

The Chicago Convention is the multilateral treaty that establishes the safety regulatory framework for international aviation.

The definition of “Chicago Convention” in the Act includes any protocols that have effect to amend the Convention, meaning that the principal articles of the Convention are in effect incorporated as in force for Australia from time to time. The text of the Chicago Convention is freely available on the Federal Register of Legislation as Schedules to the Air Navigation Act 1920 as well as on the Australian treaties database.

Annexes to the Chicago Convention are publicly available but subject to copyright that belongs to ICAO. It is made available by ICAO for a subscription fee (<https://store.icao.int/>). CASA has incorporated the Chicago Convention, including its Annexes, into the Regulations because aviation safety outside Australian territory requires the reference to the documents and it is not practicable or reasonable to reproduce the whole of the Annexes in the Regulations and to update them in a timely

fashion if an Annex is amended. Further, CASA has not identified any reliable and freely available documents serving the relevant purpose. The Annexes are incorporated as in force from time to time, in accordance with clause 15 of Part 2 of the CASR Dictionary. CASA will make copies of the Annexes available for inspection at any CASA office by prior arrangement.

Annex 2, Rules of the Air, to the Chicago Convention:

Annex 2 to the Chicago Convention sets out general rules, visual flight rules and instrument flight rules and applies to a contracting State to the Chicago Convention without exception over the high seas and over national territories, to the extent that they do not conflict with the rules of the State being overflown. Consistent with Australia's obligations under the Chicago Convention, the Regulations give effect to Annex 2 in relation to the operation of Australian aircraft outside Australian territory.

The manner of incorporation and availability of Annex 2 is covered by the discussion of Annexes to the Chicago Convention above.

Aircraft flight manual instructions:

“Aircraft flight manual instructions”, for an aircraft, will be defined in the CASR Dictionary by the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019* (available in draft on the CASA Part 135 consultation webpage at consultation.casa.gov.au/regulatory-program/cd1804os-1/) to comprise the flight manual, checklists of normal, abnormal and emergency procedures for the aircraft and any operating limitation, instructions, markings and placards relating to the aircraft. The instructions comprise information required to safely operate the specific aircraft. Instructions are incorporated as they exist from time to time, consistent with the definition of “flight manual” in the CASR Dictionary.

These documents are publicly available but not for free. The aircraft flight manual instructions for an aircraft is proprietary to the owner of the aircraft design (usually the manufacturer). The incorporated requirements of an exposition are at the aircraft-specific level, and instructions are required to be provided to owners of aircraft. Where available, and by prior arrangement, CASA will make aircraft flight manual instructions available for inspection at any CASA office.

Exposition or operations manual of an operator:

An exposition or operations manual, of an operator, is a document, or suite of documents, that specifies the scope of the operations and activities conducted by the operator, and sets out the plans, processes, procedures, programs and systems implemented by the operator to comply with the civil aviation legislation.

An “exposition”, for an operator other than an operator certificated under Part 138 of CASR, means the exposition as changed from time to time, in accordance with the definition of “exposition” to be inserted into CASR by the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019* (available in draft on the CASA Part 135 consultation webpage consultation.casa.gov.au/regulatory-program/cd1804os-1/). An “operations manual”, for an operator certificated under Part 138 of CASR, will be inserted in the CASR Dictionary as the set of documents approved for an aerial work operator, as changed in accordance with Part 138. Accordingly, the term is taken to refer to an operations manual as it exists from time to time.

An exposition or operations manual is not publicly or freely available. They are proprietary to the operator and will generally include commercial in confidence information about the operator's

business. The incorporated requirements of an exposition or manual are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligations to make the exposition or manual available to its personnel who have obligations under the document.

Part 91 MOS:

The Part 91 MOS will be a legislative instrument that prescribes matters for purposes stated in the Regulations. The Regulations incorporate the MOS is in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*. When made, the MOS will be freely available on the Federal Register of Legislation.

Certificate of airworthiness for an aircraft:

A certificate of airworthiness for a particular aircraft is a document issued by the State of registry for an aircraft to the effect that the aircraft conforms to the approved design for the aircraft and stating any operational limitations applicable for operation of the aircraft. A certificate of airworthiness is incorporated by Part 91 for an aircraft as the certificate is issued for the aircraft from time to time. Certificates of airworthiness are reissued, not amended.

Certificates of airworthiness are not publicly or freely available. The certificate of airworthiness for an aircraft is issued to the registration holder or owner of the aircraft design and is required to be kept with the aircraft for reference by aircraft operators and maintainers. Where available, and by prior arrangement, CASA will make a copy of a certificate of airworthiness for an Australian-registered aircraft available for inspection at any CASA office.

Master minimum equipment list for an aircraft, or MMEL:

An MMEL for an aircraft type is a document that includes a list of items for the aircraft that may be inoperative for a flight of the aircraft, including any limitations or conditions in relation to an inoperative item. The MMEL for an aircraft type is normally developed by the aircraft manufacturer in conjunction with operators and is approved or accepted by the relevant National Aviation Authority (NAA). For aircraft the design of which is approved by a foreign NAA, CASA accepts MMELs approved by the NAA. An MMEL is approved for the aircraft type from time to time and incorporated for Part 91 purposes on that basis.

Most NAAs make MMELs that they approve publicly and freely available, for example the NAAs for the United States of America, Canada and Brazil. The European NAA does not make MMELs publicly available but requires the owners of aircraft designs to make MMELs available to any person with obligations in relation to the MMEL (called “Operational Suitability Data” by the European NAA).

The incorporated requirements of an MMEL apply only in relation to the extension of a rectification interval for an inoperative item on an operator-specific minimum equipment list (MEL) for a particular aircraft, to ensure that the interval is consistent with the underlying MMEL. An operator-specific MEL for an aircraft is developed, and updated, by reference to the associated MMEL. On the basis that an MMEL is publicly available to, or will be provided to, an operator to establish and maintain an MEL, operators will be able to access MMELs to check whether the extension of the rectification interval requirement in Part 91 is met.

Although CASA generally does not hold MMELs for aircraft, CASA will, by prior arrangement, make any available MMEL for an aircraft available for inspection at any CASA office.

Aeronautical Information Package (AIP):

The AIP is published by Airservices Australia (AA) as an Aeronautical Information Service provider, under the *Air Services Regulations 1995*, to disseminate information relevant to aviation participants on matters essential to safe air navigation that are of lasting relevance. Some parts of the AIP are underpinned by legislative instruments, while other parts are not. The AIP is incorporated into Part 91 as the AIP exists and is published by AA from time to time. The AIP is freely available on the AA website www.airservicesaustralia.com/aip/aip.asp.

Notice to Airmen (NOTAMS):

NOTAMS are published by AA as an Aeronautical Information Service provider, under the *Air Services Regulations 1995*, to disseminate information relevant to aviation participants on matters essential to safe air navigation, for example to alert aircraft pilots of potential hazards along a flight route or at a location that could affect the safety of the flight. Information in NOTAMS is either of lasting relevance but needs to be published more urgently than the information can be incorporated into the AIP, or is of only temporary relevance. NOTAMS are generally not underpinned by legislative instruments. NOTAMS are incorporated into Part 91 as they exist and are published by AA from time to time. NOTAMS are freely available on the AA website www.airservicesaustralia.com/flight-briefing/.

AS/NZS 1841:

AS/NZS 1841 sets out general standards for portable fire extinguishers. It is not an aviation-specific document, and CASA does not consider it necessary or desirable to specify standards for these kinds of devices for use in aviation. Accordingly, the Regulations incorporate AS/NZS 1841, as in force from time to time.

AS/NZS 1841 is publicly available but subject to copyright that belongs to Standards Australia. It is made available by Standards Australia through its publisher, SAI Global, for a subscription fee. CASA has incorporated the document because aviation safety requires the application of standards for portable fire extinguishers on aircraft, and because there are no freely available and appropriate documents serving the relevant purpose.

In the case of both Annex 2 and AS/NZS 1841, CASA considers it extremely unlikely that the relevant owner of the document would sell CASA the copyright at a price that would be an effective and efficient use of CASA funds, or otherwise permit CASA to make the document freely available.

The cost of obtaining a copy of each of the foregoing documents is a matter for a person wishing to review the matter to which the document relates. CASA has no effective control over those costs. However, by prior arrangement with CASA, a copy of the document can be made available for viewing free of charge at any office of CASA.

International Regulations for Preventing Collisions at Sea, 1972 in the Convention on the International Regulations for Preventing Collisions at Sea, done at London on 20 October 1972:

The International Regulations are published by the International Maritime Organization (IMO) and set out the navigation rules to be followed by ships and other vessels at sea to prevent collisions. The Regulations apply these rules because Annex 2 provides that, in addition to the provisions of the Annex, rules set forth in the International Regulations apply to the operation of aircraft on water.

The International Regulations are incorporated as in force for Australia from time to time. The document can be viewed for free at Australian Treaty Series 1980 No. 5 ([1980] ATS 5), and could

at the commencement of the Regulations be viewed in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Criminal law issues

The Regulations provide for 148 offences of strict liability, which are outlined in the Statement of Compatibility with Human Rights at [Attachment B](#).

Consistent with the principles set out in the Attorney-General's [A Guide to Framing Commonwealth Offices, Infringement Notices and Enforcement Powers](#) (September 2011) (the *AGD Guide*) and the Sixth Report of 2002 of the Senate Standing Committee for the Scrutiny of Bills, [Application of Absolute and Strict Liability Offences in Commonwealth Legislation](#) (26 June 2002), the strict liability offences are considered reasonable, necessary and proportionate to the objective of ensuring aviation safety. In this regard, the offences are regulatory in nature, in other words their aim is to insist on reasonable compliance with regulated safety standards by those conducting activities which are otherwise intrinsically or potentially unsafe unless such high standards of compliance are met. Not having to prove fault in the relevant circumstances aims to provide a strong deterrent. To this extent, and in this context, they are consistent with other safety-focussed regulatory regimes and do not unreasonably or impermissibly limit the presumption of innocence. The offences are designed to achieve the legitimate objective of ensuring the integrity of the overall aviation safety regulatory scheme by promoting compliance and deterring non-compliance.

The rationale is that people who owe general safety duties should be expected to be aware of their duties and obligations. In the context of the general operating rules for pilots and operators, a defendant to a prosecution can reasonably be expected to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

For strict liability offences in the Regulations, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made that conduct innocent, it will be incumbent on the prosecution to establish, beyond reasonable doubt, that there was not an honest and reasonable mistake of fact.

The Regulations also contain 31 provisions that reverse the evidential burden of proof in relation to prescribed defences to strict liability offences ("offence-specific defences"). Consistent with section 4.3.1 of the *AGD Guide*, the provisions have been included in the Regulations because they relate to matters that are peculiarly within the knowledge of a defendant and/or would be significantly more difficult and more costly for the prosecution to disprove than for the defendant to establish the matter.

Details and justification of the offence-specific defences are provided in the Statement of Compatibility with Human Rights at [Attachment B](#).

In practice, any enforcement action contemplated by CASA is subject to the provisions of CASA's "just culture" policy as set out in CASA's Regulatory Philosophy.

Statement of Compatibility with Human Rights

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

Commencement and making

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

Details of the Regulations are set out at Attachment C.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The provisions of the *Civil Aviation Safety Amendment (Part 91) Regulations 2018* commence on 25 March 2021, to provide industry with time to prepare for the commencement of the regulations.

Authority: Subsection 98(1) of the *Civil Aviation Act 1988*

REGULATION IMPACT STATEMENT: PART 91 – GENERAL OPERATING AND FLIGHT RULES

Summary

The general operating and flight rules form the basis for safe aviation operations in a similar manner to the ‘rules of the road’. The rules apply to the operation of all private and commercial aircraft, regardless of size and complexity and include requirements for:

- flight preparation and planning;
- aircraft fuelling and fuel management;
- basic flight instruments and equipment;
- loading cargo;
- pilot procedures, including actions required to avoid collisions; and
- maintaining the safety of passengers.

These requirements are currently contained in multiple legislative instruments. A limited number of new requirements are proposed to address certain safety concerns, but the main effect of these changes is to provide additional administrative and operational flexibility to the aviation industry.

CASA is proposing to replace the various regulations and legislative instruments that relate to general and operating flight rules and consolidate the requirements in Part 91 of the Civil Aviation Safety Regulations 1998 and a Part 91 Manual of Standards. The majority of the requirements will be transferred without any change, however, there are changes, some of which are assessed to have an impact on pilots or operators. These changes relate to:

- cabin crew;
- journey log;
- simulation of failures in an aircraft;
- approach ban; and
- retention of recordings after an accident or incident.

These are relatively minor changes that will not have a significant impact. It is CASA’s assessment that the most significant impact of Part 91 of CASR will be the time that operators will be required to devote to understanding the new rules, in particular the change to the format of the regulations and to terminology changes.

Background

The general operating and flight rules form the basis for safe aviation operations in a similar manner to the ‘rules of the road’. The rules apply to the operation of all aircraft (except for balloons, unmanned and sports and recreational aircraft regulated exclusively by CASR Parts 131, 101 or 103), regardless of size and complexity and include requirements for:

- flight preparation and planning;
- aircraft fuelling;
- basic flight instruments and equipment;
- loading cargo;
- pilot procedures, including actions required to avoid collisions; and
- maintaining the safety of passengers.

The rules are currently contained in multiple instruments including the *Civil Aviation Act 1988*, *Civil Aviation Regulations 1988* (CARs), *Civil Aviation Orders* (CAOs), a number of legislative

instruments and Advisory Circulars (ACs) that are adopted by the regulations.

In addition to the legislation, the requirements are replicated or summarised in other publications, including:

- the Aeronautical Information Package (AIP) published by Airservices Australia;
- the Visual Flight Rules Guide (VFRG) published by CASA; and
- Aviation Law examination books published by various private publishers.
- various Guidance Material and other advisory publications.

These publications are a common source for private pilots to obtain information on the general operating and flight rules. In general, most private pilots will be able to operate in compliance with the rules by referencing these publications.

For commercial operators the general operating and flight rules are supplemented by additional regulatory requirements specific to their operation type.

Problem

There are a small number of safety risks that are proposed to be addressed in this change to the General Operating and Flight rules. Additionally, there are medium to longer term administrative problems that need to be addressed.

Safety risks

Aspects of the current rules have been identified as not meeting a contemporary safety standard, in particular those related to the simulation of emergencies.

No single regulatory part

The current requirements are not contained in one regulation, with a number of legislative instruments issued that are not referenced in the regulations, but which supplement the regulations and have general applicability. This can make it difficult for individuals and organisations to easily identify regulatory requirements. For ease of access there is a strong case for all requirements to be in one legal instrument, or at least to minimise the number of current instruments.

No recent holistic amendment of the requirements

Whilst the current general operating and flight rules have been subject to review over several years, the recommendations from these reviews have not been fully implemented and the only changes to be implemented in recent years have been ad-hoc. This has resulted in some regulatory requirements that do not reflect technological change, changes to international standards or operational experience within Australia.

ICAO non-compliance

There are some general operating and flight rules that do not meet the relevant international standard published by ICAO. In general, a high degree of compliance with ICAO standards and recommended practices will enhance Australia's aviation safety reputation internationally, increase the likelihood of Australian operators being able to operate internationally without restrictions and make it easier for international operators to operate within Australia.

Objective

The objectives for the regulatory reform of the general operating and flight rules are four-fold:

Enhance safety in certain targeted circumstances;

Consolidate existing general operating and flight rules in a single regulatory part;

Provide clarity for existing rules (when consolidated) to enhance understanding and ease of application; and

Increase ICAO compliance where appropriate.

Options

Status Quo

The first option would maintain the status quo with the general operating and flight rules contained in multiple regulatory instruments, including the *Civil Aviation Act 1988*, *Civil Aviation Regulations 1988* (CARs), *Civil Aviation Orders* (CAOs) and *Advisory Circulars* (ACs). This option would also maintain the existing legislative instruments including exemptions that are relevant to the general operating and flight rules.

Option for Part 91 of CASR

The second option would specify the general operating and flight rules in Part 91 of the *Civil Aviation Safety Regulations 1998* (CASR) and a Part 91 Manual of Standards (MOS) supplemented by guidance material. The majority of the existing general operating and flight rules would be transferred to Part 91 of CASR and the Part 91 MOS without any change to the requirements, other than to specify them in a form that meets current legal drafting standards. The existing legislative instruments would be repealed and the *Aeronautical Information Package* (AIP) and *Visual Flight Rules Guide* (VFRG) updated.

Whilst the majority of the existing requirements will not change, there will be some new requirements that will have an impact on individuals or operators. These new requirements with an impact are limited to these areas:

- Journey log;
- Approach ban;
- Cabin crew for private flights;
- Retention of flight data recordings; and
- Simulation of certain emergencies in flight.

Journey log

For international flights a requirement will be for the pilot in command and the operator to complete and carry a journey log. A journey log specifies basic information about the flight including; details of the aircraft, the crew, and the points of departure and destination. The journey log is a baseline requirement of the *Convention on International Civil Aviation* (the *Chicago Convention*) to which Australia is a signatory. Journey logs are then further detailed in multiple ICAO Annexes. The journey log was a requirement for international private operations until 2008 when the instrument containing the requirement expired and was not replaced.

Approach ban

An approach ban will be introduced for certain aircraft at certain aerodromes. At aerodromes that measure visibility electronically and the weather conditions relating to visibility for instrument approach operations are below the specified landing minima, aircraft will not be permitted to continue an approach to that aerodrome beyond a certain point.

The reasoning for imposing this approach ban is that where the aircraft has a very high probability of not being able to land in those weather conditions, continuing the instrument approach to the minima reduces safety by unnecessarily descending to a low altitude. The conduct of instrument approaches where there is a very high probability of conducting a missed approach also reduces the efficiency of air traffic movements at the high capacity aerodromes where the applicable electronic visibility measurement devices are available.

Cabin crew

Currently cabin crew are only required for charter or Regular Public Transport (RPT) flights carrying at least 15 passengers (or up to 22 passengers if the aircraft is operated by two pilots and the pilots perform certain functions). The requirement does not apply to private flights regardless of the size of the aircraft. The existing requirement will be extended to flights under Part 91 of CASR (previously categorised as private flights) and the minimum number of passengers increased to the carriage of at least 20 passengers.

Retention of flight data recordings

The ATSB, utilising the *Transport Safety Investigation Act 2003* (the TSI Act), has the ability to require the preservation of any evidence including recorders and recordings through a protection order. However, the TSI Act and its associated regulations do not specify how the ATSB will apply this power in relation to the retention of recordings and recorders.

Currently, high capacity regular public transport operators with a flight data recorder or cockpit voice recorder are required to retain the recordings for 30 days after an immediately reportable matter (an accident or serious incident, such as a 'near miss'), unless the Australian Transport Safety Bureau (ATSB) advises the operator that the recordings are not required.

Part 91 of CASR will apply this requirement to all aircraft with a flight data or cockpit voice recorder. However, the retention period will be reduced from 30 days to 72 hours. The requirement is expanded to specifically include the recorder itself, as well as the recordings, until either 72 hours has passed or, if the ATSB advises a different time period within the initial 72 hours, that specified time period.

Simulation of certain emergencies in flight

Currently, the simulation of certain emergencies is not specifically regulated. Part 91 of CASR will restrict the simulation of certain emergencies in-flight to a narrower band of operational circumstances and permitted persons on board. This will increase safety by reducing the likelihood of a mis-handled emergency leading to an accident and by reducing the scale of the consequences of an accident if one does occur during an emergency simulation.

Other minor changes

Part 91 of CASR will authorise low visibility take-offs and approaches via an approval, replacing the current system of issuing an exemption. This will only change the regulatory authority process, rather than the requirements for low visibility take-off and approaches.

Another change is to extend the ability of suitably qualified pilots to use NVIS under certain conditions, notably that they are not permitted to utilise NVIS as a primary terrain avoidance method below LSALT and they must still display external lights, when they are not operating under an AOC or other certificate. Whilst this change will permit a slightly wider range of activities outside an operator holding an AOC or certificate, pilots will still be required to be qualified to use NVIS.

Impact

The impact of introducing Part 91 of CASR will primarily be limited to the five areas in which a change to the requirements is proposed.

Journey log

The feedback to CASA is that all current charter and RPT (future air transport) operations, including the major airlines, already complete a journey log for international flights and so this requirement will have no impact on commercial operators.

For future non-air transport operators that do not currently complete a journey log for international flights, the journey log would require approximately ten minutes of an operators' time to complete for most flights involving a single departure and destination aerodrome. It is considered that this will not have a significant impact on individual pilots or operators because there is already a high proportion of operators that complete a journey log.

Approach ban

The approach ban should have no negative impact as aircraft would not be able to land during the weather conditions which trigger the approach ban requirement. The requirement will only impact aerodromes that measure visibility electronically, which are currently Sydney, Melbourne, Perth and Canberra airports. The requirement will not impact on aircraft operated under the Visual Flight Rules and the impact on aircraft operated under the Instrument Flight Rules is likely to be limited because the ban will not prevent aircraft from making a landing that could be made previously. In addition, the major airlines operating at these aerodromes already have the approach ban included in their operations manuals.

It is likely that an increased number of aircraft will elect to hold awaiting improved weather instead of descending to conduct the instrument approach from which they would be required to conduct a missed approach. This is likely to result in fuel (and therefore cost) savings due to the reduction in the number of missed approaches.

There will also be a small efficiency and safety improvement. The safety improvement will be less aircraft unnecessarily descending to instrument approach minima with the attendant possibility of a pilot inaccurately assessing the weather conditions which are measured accurately by the equipment. The efficiency benefit will arise from removing certain aircraft from the approach sequence at high capacity airports fitted with the necessary ground equipment which will reduce the time required for low visibility equipped aircraft to make approaches.

This amendment will, therefore, introduce both efficiency and safety improvement and will have negligible adverse financial impact. It may lead to fuel and hence financial savings by relevant operators.

Cabin crew

The extension of the cabin crew requirement to non-air transport operators is unlikely to have significant impact because the evidence indicates there are very few non-air transport operations that carry 20 or more passengers. For air transport operators there will be no change in requirements because Part 91 of CASR will only apply to these operators when they are undertaking non-air transport flights, which is rare and when they occur are unlikely to trigger the cabin crew requirement. Or if the flight was to have more than 20 passengers these operators have indicated that they would have a cabin crew member without regulatory compulsion, such as for customer service reasons. Therefore, this change will not have a significant impact on these types of operators.

Retention of flight data recordings

For high capacity regular public transport operators, the reduction in the ATSB advisory time from 30 days to 72 hours will have the potential to reduce the impact of the requirements. However, this potential benefit is likely to be small because based on industry feedback the ATSB responds within hours to an operator about the retention of recordings, without impacting on the operation of the aircraft. Current commercial operators have reported to CASA that the requirements do not cause them to deviate from their normal business practices.

CASA also notes that the ATSB is currently revising the definition of Immediately Reportable Matters and CASA anticipates that these changes will reduce the number of matters that would be defined as an immediately reportable matter for current RPT and Charter operators.

For commercial operators outside of RPT and Charter and for non-commercial operators, the introduction of a new requirement for the retention of recorders/records has the potential to be a cost burden, either through the aircraft being taken out of service or the cost associated with removing the recorders and fitting another recorder, such as a loan unit available through a speciality avionics business. However, the current definition of Immediately Reportable Matters for all operators outside of RPT and Charter is limited only to very serious incidents of which there are few. For the year 2017/18 the ATSB reported that there were 471 Immediately Reportable Matters for RPT or Charter and only 20 for other Commercial and Non-commercial operators, excluding Military (based on aircraft with a Maximum Take-Off Weight greater than 5700kg).

In addition, if a non-Air Transport operator was to report an incident the cost is likely to be low for the operator because the ATSB generally responds within hours of the report being made and it is unlikely to require retention of the recorder because the ATSB investigative priority is commercial transport operations, unless it was to be an accident when the aircraft is not operational in any case.

CASA will consider the outcome of the ATSB immediately reportable matter review prior to the commencement of Part 91 of CASR. Noting that Part 91 of CASR is not planned to commence until 25 March 2021 and the ATSB review will be finalised well in advance of this time. If the ATSB review does not result in the anticipated change, and this would materially impact industry in relation to this proposed rule, CASA will consult with industry further regarding whether this rule should be modified prior to commencement on 25 March 2021. This will ensure that any change does not have a significant negative impact on affected operators.

In-flight simulation of certain emergencies during all flights

For all pilots and operators, the simulation during actual flight of certain emergencies without the presence of a flight instructor will be restricted.

In-flight engine shutdowns

For single engine aeroplanes, the engine may be shut down during a VFR flight by day subject to conditions, including that the pilot in command be a flight instructor.

Engine shutdowns for any aeroplane will not be permitted during flights in IMC or at night, regardless of whether a flight instructor is present.

In-flight simulations of engine failures

Simulation of engine failures, for example by reducing engine power to idle, for all aeroplanes, will not be permitted at night or in IMC unless a number of conditions are met including that the pilot in command be a flight instructor. Simulation of engine failures for aeroplanes during day VFR flights

will continue to be permitted without an instructor.

Impact

Simulations of engine failures during actual flights not conducted for the purpose of flight training, testing or checking are beyond the mandatory pilot licensing requirements specified by CASR Part 61 and the mandatory check and training requirements for certain operators. Whilst they are likely to be beneficial in maintaining a pilot's skills, such in-flight simulations are optional and not required by regulation. The feedback to CASA is that such simulations of actual engine shutdowns in IMC or at night for non-commercial pilots would be very rare in practice and therefore CASA does not expect private pilots will be changing their use of flight instructors or incurring additional costs because of these requirements.

Current flight training activities

Part 91 of CASR will impose some limited requirements on flight training activities, with a limit on the type of passengers carried and an extension of the existing requirement for the use of simulators.

Flight training schools will be limited to carrying passengers directly related to the training flight if certain emergency exercises are to be performed. The feedback from the industry is that flight training schools will be unaffected by this requirement because they would not currently carry these types of passengers during training flights.

The simulation of engine failures in larger multi-engine aeroplanes beyond a certain maximum take-off weight or seating capacity will be required to be performed in a flight simulator if the aircraft carries more than 19 passengers or carries between 10 and 19 passengers and a simulator for that type of aircraft is available in Australia.

CASA's assessment is that this requirement will not have a significant impact based on the current registered aircraft and the availability of simulators in Australia. For 10 to 19 seat aircraft, CASA has identified that this may impact on aircraft such as the Metro III or King Air for which there is a simulator in Australia, however, based on aircraft register data there are no Metro III aircraft operated privately, and the number of King Air aircraft not operated by air transport operators is limited.

Simulating IMC conditions and failure of flight instruments

Part 91 of CASR will impose restrictions on simulating IMC to ensure that the safety pilot has adequate vision and occupies a seat with flight controls. For simulating flight instrument failures, this must be done during flights that are training flights, with a second pilot who is authorised to pilot the aircraft and, if the flight is in IMC or at night, then the second pilot must have a view of an operative instrument subject to the simulated failure.

For both the IMC condition and failure of flight instruments, the feedback to CASA is that this is consistent with the current practice of private pilots.

Pilots will be required to devote time to understanding the revised requirements

All pilots and operators are already required to observe changes to the Aeronautical Information Package (AIP) and remain aware of the regulatory requirements. Therefore, this regulatory change will be captured by the updating of the AIP and education campaigns run by CASA in advance of the new regulations and manuals of standards.

Consultation

A Notice of Proposed Rule Making (NPRM) was released for public comment in 2011 with CASA receiving over 40 responses. Overall, the comments received suggested that Part 91 of CASR would be acceptable to industry. In terms of the NPRM feedback, around 75% of respondents indicated that they supported or were indifferent to the proposals while 15% of respondents would support Part 91 of CASR if suggested changes were incorporated and 10% of respondents indicated that the proposal was not acceptable under any circumstances.

Based on the comments and suggestions provided to CASA, a significant number of changes have been made to the proposed Part 91 of CASR. For example, comments were made about a pilot in command having to report an in-flight emergency to air traffic services where the rule stated that it was an offence not to do so. The view was that this was not always possible and, as a result, the rule was redrafted to apply only if it was practical for this to occur. Another example was a requirement relating to landing, taking off and maneuvering at aerodromes where an operation is not restricted to runways, which was considered outdated and has been removed.

One of the largest affected parties, the Aircraft Owners and Pilots Association (AOPA) indicated they had concerns with the NPRM. AOPA's concerns related to drafting style with a number of amendments to the legal draft proposed. CASA has subsequently amended a number of provisions.

After the amendments to the regulations following the publication of the NPRM, CASA consulted with a revised draft regulation and summary document in 2015.

In terms of the feedback, the use of strict liability in relation to many of the requirements in the draft Part 91 of CASR generated several comments.

Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. They also arise in a context where a defendant can reasonably be expected to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

The rationale is that people who owe general safety duties should be expected to be aware of their duties and obligations.

For strict liability offences in this regulation, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made that conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

The inclusion of strict liability in certain offences in this regulation is consistent with the principles set out in the Attorney-General's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (September 2011) and the Sixth Report of 2002 of the Senate Standing Committee for the Scrutiny of Bills, *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (26 June 2002).

Implementation and review

Following public consultation in early 2018 the legislative instruments were revised based on consultation feedback. CASA's intent is to make Part 91 of CASR during 2018 and the Part 91 Manual of Standards during 2019. The proposed commencement date will be 25 March 2021 and

appropriate transition arrangements will be determined by early 2019 and will be communicated to industry as soon as possible.

To support the implementation of Part 91 of CASR, CASA will update the Aeronautical Information Package and the Visual Flight Rules Guide. CASA will also be providing comprehensive guidance material and plain-English information sheets where required, making it easier to understand the requirements. CASA will also be utilising the existing Aviation Safety Advisory sessions held in various locations to update pilots on the changes in Part 91 of CASR.

The monitoring and review of the regulations will be conducted on an ongoing basis during the implementation/transition phase. Thereafter, following the commencement of the regulations, monitoring and review will be conducted on an as required basis.

Conclusion

Part 91 of CASR has been designed to replace the various regulations and legislative instruments that relate to general and operating flight rules. It effectively consolidates and retains most of the existing rules with minimal change. The administration of the regulations will be improved by reducing the reliance on short-term legislative instruments and exemptions.

Whilst there are some relatively minor changes to some requirements, these will generally only impact on a small subset of pilots and operators and, even if they will be subject to change, the impact of this change will be minor. The most significant impact will be the time that operators will be required to devote to understanding the new rules, in particular the change to the format of the regulations and to terminology changes. Whilst this is a widely dispersed impact, operators are already required to observe changes to the Aeronautical Information Package (AIP) and be aware of regulatory changes. This regulatory change will be captured in their routine monitoring of AIP updates and education campaigns conducted by CASA during the implementation of the regulations.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Civil Aviation Safety Amendment (Part 91) Regulations 2018

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 Disallowable Legislative Instrument

The legislative instrument (the Regulations) amends the *Civil Aviation Safety Regulations 1998* (CASR) to substitute a new Part 91 which provides a regulatory framework for the general operation of aircraft and flight rules.

Subpart 91.A regulates the operator, pilot in command, flight crew and other persons on a flight of an Australian registered aircraft operating in Australia, foreign countries or over the high seas, as well as foreign registered aircraft and foreign state aircraft, but not aircraft to which Part 101, 103 or 131 of CASR apply.

Under Subpart 91.C, flight operations are regulated with respect to the conduct of people on board an aircraft, the documents carried on board, firearms, portable electronic devices, special flight operations and miscellaneous requirements including placarding inoperative items and manipulating flight controls.

Subpart 91.D holds the pilot in command and, in some instances, the operator of an aircraft accountable for the flight and ground operational procedures which are administered by the Civil Aviation Safety Authority (CASA) through the provision of strict liability offences for non-compliance with operational procedures and flight rules for the purpose of aviation safety.

Subpart 91.F provides the Manual of Standards may prescribe, for take-off and landing weights, the circumstances in which a weight for an aircraft for a flight must be determined and methods for determining that weight.

Subpart 91.J provides for the requirements for loading an aircraft. It further provides for operational requirements during the flight to ensure a flight is in accordance with the aircraft's weight and balance limits.

Under Subpart 91.K, the instruments, indicators, equipment and system requirements are prescribed. The pilot in command and operator of the aircraft are responsible for the majority of the compliance with these requirements.

The regulations in Subpart 91.P provide the requirements on cabin crew members. Offence provisions in this Subpart relate to the number of cabin crew members required and the required knowledge of emergency and safety equipment and procedures.

Subpart 91.T prescribes the requirements for operations under certain special certificates of airworthiness and special flight permits. The operator and pilot in command of an aircraft bear the responsibilities under this Subpart.

Under Subpart 91.Y, CASA must be notified in writing by the operator of an aircraft of extensions approved by a continuing airworthiness management organisation.

Subpart 91.Z provides for the requirements for flight operations by foreign registered aircraft, special flight authorisations and approvals to fly in Australian territory for these aircraft. CASA may issue a written direction to a person imposing conditions on the operation of the aircraft that are requested by the national aviation authority of a Contracting State, or CASA if satisfied they are necessary for the safety of air navigation.

Non-compliance with stated requirements in Subparts 91.C to 91.Z is an offence.

Human rights implications

The Regulations engage the following human rights:

- the right to a fair trial and fair hearing in Article 14 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to liberty and security of person in Article 9 of the ICCPR;
- equality and non-discrimination rights in Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD);
- the right to personal mobility in Article 20 of the CRPD.

The right to a fair trial and fair hearing: presumption of innocence

Article 14 of the ICCPR provides that in the determination of a criminal charge, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Further, in criminal proceedings, people are entitled to a range of protections including minimum guarantees as set out in Article 14(3) and following of the ICCPR.

The presumption of innocence in Article 14(2) imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proven beyond reasonable doubt. For the charge to be proven beyond reasonable doubt, the legal and evidential burden is on the prosecution.

Strict liability offence provisions

There are 148 offences of strict liability prescribed in the Regulations.

Strict liability offences engage the presumption of innocence through the imposition of liability without the need to prove fault. A strict liability offence will not impermissibly limit the right to the presumption of innocence if the offence pursues a legitimate aim and is reasonable, necessary and proportionate to that aim.

Nature of strict liability provisions

Subpart 91.C provides offence provisions regulating on-board flight requirements. There is a total of 27 strict liability offences in the Subpart. The offences relate to general flight limitations, including:

- not operating the aircraft so as to create a hazard;
- lawfully travelling on, or placing cargo on, an aircraft;

- operating the aircraft under the visual and instrument flight rules, visual meteorological conditions criteria, speed limits, airspace requirements, the use of night visibility equipment and compliance with the aircraft flight manual;
- requirements relating to the carriage of documents on board aircraft and the maintenance of journey logs;
- requirements relating to the laws of a foreign country, operation of aircraft outside Australian territory, and general requirements to be met before a flight;
- requirements relating to the marking of inoperative equipment and persons authorised to manipulate flight controls;
- requirements relating to firearms on aircraft, and the operation of portable electronic devices; and
- requirements about special flight operations, including air displays, aerobatic manoeuvres, dropping articles from aircraft, flying in formation or towing.

Subpart 91.D provides offence provisions regulating operational procedures. There is a total of 100 strict liability offences in the Subpart. The offences relate to a wide range of operational matters, including:

- adherence with actions and directions by the operator or pilot in command;
- requirements relating to flight preparation for weather assessments and alternate aerodromes;
- requirements for flight plans and associated notifications;
- requirements for visual and instrument flight rules;
- requirements for air traffic services, including unauthorised entry into prohibited or restricted areas;
- cruising levels and minimum heights for VFR and IFR flights;
- avoiding collisions in the air and on water, as well as at or in the vicinity of aerodromes;
- take-off, landing and ground operations requirements, including taxiing aircraft, parking requirements, and monitoring of communications media, so as to avoid the creation of a hazard;
- requirements for low visibility operations, and in icing conditions;
- aircraft performance requirements;
- requirements for fuel and the fuelling of aircraft, including fire hazards and the operation of equipment or electronic devices near aircraft during fuelling;
- fitness of crew members for duty;
- disorderly or dangerous conduct and smoking on aircraft;
- provision and use of safety equipment (for example seat belts) and information;
- safety requirements relating to cargo, such as restraint and stowage of various types of cargo, and animals including assistance animals;
- requirements for aircraft instruments, indicators, equipment and systems;
- reporting requirements for hazards and emergencies;
- preventing the causation or simulation of instrument failure, and engine failure for aeroplanes and rotorcraft; and
- requirements for passengers and crew with respect to the use and provision of alcohol.

Subpart 91.F provides offence provisions regulating take-off weight requirements and landing weight requirements which impact on aircraft performance. There is a total of two strict liability offences in the Subpart.

Subpart 91.J provides one offence provision for the loading requirements of an aircraft.

Subpart 91.K provides one offence provision for the requirements of instruments, indicators, equipment and systems on board an aircraft.

Subpart 91.P provides offence provisions regulating cabin crew on board an aircraft. There is a total of two strict liability offences in the Subpart. The offences relate to:

- the number of cabin crew required; and
- knowledge of emergency and safety equipment and procedures.

Subpart 91.T provides offence provisions regulating operations under certain special certificates of airworthiness and special flight permits. There is a total of 11 strict liability offences in the Subpart. The offences relate to additional operating requirements for certain aircraft, including:

- restricted category aircraft;
- provisionally certificated aircraft;
- experimental aircraft;
- primary category aircraft and intermediate category aircraft;
- light sport aircraft;
- special flight permits; and
- maintenance release requirements for aircraft having a special certificate of airworthiness.

Subpart 91.Z provides offence provisions regulating foreign registered aircraft. There is a total of four strict liability offences in the Subpart. The offences relate to the flight of foreign registered aircraft in Australian territory, including:

- non-compliance with the Chicago Convention relating to various aspects of the aircraft and its flight;
- non-compliance with a condition of a special flight authorisation for the flight;
- requirements for the operation of foreign state aircraft in Australian territory to be subject to CASA approval; and
- non-compliance with a direction for a foreign aircraft with a major defect.

Reasonableness, necessity and proportionality

The strict liability offences relate to administrative and safety requirements that must be adhered to by regulated individuals and operators involved in the aviation industry to ensure the integrity of the aviation safety system. The imposition of strict liability offences in the amendments limits the right to the presumption of innocence. However, the limitation is necessary to ensure that operators and pilots in command of aircraft, and other listed individuals, to whom functions are given under law to administer aviation activities, operate in accordance with the requirements of Part 91. The limitation also ensures that CASA retains oversight over such organisations as is necessary to ensure the safety of air navigation.

Further, the defence of honest and reasonable mistake, as set out in section 9.2 of the *Criminal Code Act 1995*, will be available to the defendant in all offence provisions. If relied upon, this is an evidential burden on the defence to prove, on the balance of probabilities, that the accused had an honest and reasonable mistaken belief of fact which, if those facts existed, would not have constituted an offence.

The strict liability offences in this instrument are considered reasonable, necessary and proportionate to the objective of ensuring aviation safety. The offences are regulatory in nature, in other words their aim is to insist on reasonable compliance with regulated safety standards by those conducting activities which are otherwise intrinsically or potentially unsafe unless such high standards of

compliance are met. Not having to prove fault in the relevant circumstances aims to provide a strong deterrent. To this extent, and in this context, they are consistent with other safety-focussed regulatory regimes and do not unreasonably or impermissibly limit the presumption of innocence. The offences are designed to achieve the legitimate objective of ensuring the safety and integrity of the aviation system for the benefit of the aviation industry and the public.

The offences are also proportionate in that they fall at the lower end of the penalty scale, not exceeding 50 penalty units, and are otherwise consistent with the guidance set out in *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011.

Reversal of burden of proof provisions

A total of 31 offence provisions impose a reversed evidential burden of proof on the accused in relation to defences. The fact elements that are the subject of the reversals of the burden of proof can be found in the table below. The reversed burden must pursue a legitimate aim and be reasonable, necessary and proportionate to that aim.

The burden of proof has been reversed to establish a defence to an offence provision, once prosecution discharges the legal and evidential burden of proof in establishing the offence. The burden of adducing or pointing to evidence must only suggest a reasonable possibility that the matter exists or does not exist. This is in accordance with subsection 13(3)(6) of the Criminal Code.

Aim

The aim of CASA and its regulatory framework, including Part 91 of CASR, is to uphold aviation safety by prescribing the conduct of individuals involved in civil aviation operations.

The provisions reversing the burden of proof pursue this aim as they are each attached to a defence to a strict liability offence in circumstances where the defence relates to a safe aviation practice.

Reasonableness, necessity and proportionality

The provisions imposing a reversed burden of proof are reasonable as they provide the defendant with the opportunity to adduce evidence of specific aviation practices, of a kind contemplated by the offence provisions, that are safe despite contravening the offence provision.

The provisions imposing a reversal of the evidential burden of proof are proportionate for either or both of the following reasons, depending on the particular provision:

- the relevant information or evidence is peculiarly within the knowledge of the defendant;
- it is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

The table below details each defence provision giving rise to a reversal of the evidential burden of proof, describes the factual matter that is the subject of the reversal of the burden, and sets out the justification for the reversal of the burden.

The factual matters are not the subject of documentary evidence, for example because they relate to matters of judgement by the defendant, or are matters that are subject to words and actions only.

For example, in item 1 of the table, the matter is that air traffic control has given an authorisation and the pilot has complied with the requirements for the operation. These matters are not documented

and CASA neither has visibility of them nor access to relevant documentary evidence. Further, they are matters that are within the knowledge of the defendant.

Similarly, item 2 of the table relates to a safety assessment by the pilot of the carriage of the documents, which assessment is within the knowledge of the defendant and in circumstances that requiring documentary evidence is considered unnecessarily onerous regulation.

Additional justification for some specific provisions is detailed in the table.

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
1	Subregulation 91.070(2) provides that subregulation 91.070(1) does not apply to a flight of an aircraft if air traffic control has authorised the pilot in command of the aircraft to conduct the flight under the special VFR and the pilot in command complies with the special VFR.	The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
2	Subregulation 91.105(3) provides that subregulation 91.105(1) does not apply if acrobatic manoeuvres will be conducted during the flight and carriage of the documents on the aircraft would present a risk to the safety of the aircraft or persons on board the aircraft.	The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
3	Subregulation 91.160(2) provides that subregulation 91.160(1) does not apply if the person is authorised under another provision of CASR or another law of the Commonwealth to carry or otherwise possess the firearm on the aircraft.	The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. Consistent with the general justification above, whether or not the person is authorised under another law is a matter within the knowledge of the defendant and not readily ascertainable by CASA having regard to the Commonwealth statute book.

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
4	Subregulation 91.165(2) provides that subregulation 91.165(1) does not apply if the person is authorised under another provision of CASR or another law of the Commonwealth to discharge the firearm on the aircraft.	<p>The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>Consistent with the general justification above, whether or not the person is authorised under another law is a matter within the knowledge of the defendant and not readily ascertainable by CASA having regard to the Commonwealth statute book.</p>
5	Subregulation 91.200(2) provides that subregulation 91.200(1) does not apply to the temporary carriage of a crew member in a part of the aircraft that is not designed to accommodate crew members or passengers if the carriage of the crew member in that part of the aircraft is for the purpose of doing anything for the safety of the aircraft or any person or cargo carried in it, or both the goods or stores are carried in that part of the aircraft and there is a proper means of access for crew members to the goods or stores.	<p>The matters to be established are peculiarly within the knowledge of the defendant or significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>Consistent with the general justification above, whether or not the person was for the purpose of doing something for the safety of the aircraft or its passengers or cargo is a matter within the knowledge of the defendant and not readily ascertainable by CASA in the absence of regulatory documentation.</p>

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
6	<p>Subregulation 91.265(2) provides that subregulation 91.265(1) does not apply if it is not practicable to seek authorisation for the non-compliance before it occurs, the non-compliance is necessary for the safety of the aircraft or the persons on the aircraft, and the pilot in command informs air traffic control about the non-compliance as soon as practicable after the pilot in command is unable to comply with the clearance or instructions.</p>	<p>The matter to be established is peculiarly within the knowledge of the defendant.</p>
7	<p>Subregulation 91.285(2) provides that subregulation 91.285(1) does not apply if the aircraft is in uncontrolled airspace and is below 3,000 ft above mean sea level, is at or above 3,000 ft above mean sea level but below 1,500 ft AGL, or it is not practicable for the pilot in command to fly the aircraft at a specified VFR cruising level for the track.</p> <p>Subregulation 91.285(3) provides that subregulation 91.285(1) does not apply if the aircraft is in controlled airspace and air traffic control has given the pilot in command clearance to fly the aircraft at that cruising level.</p>	<p>The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>Consistent with the general justification above, these matters are not the subject of regulatory documentation and are within the knowledge of the defendant.</p>
8	<p>Subregulation 91.290(2) provides that subregulation 91.290(1) does not apply if the aircraft is in uncontrolled airspace and it is not practicable for the pilot in command to fly the aircraft at a specified IFR cruising level for the track.</p> <p>Subregulation 91.290(3) provides that subregulation 91.290(1) does not apply if air traffic control has given the pilot in command an air traffic control instruction to fly the aircraft at the cruising level, or has given the pilot in command an air traffic control clearance to fly the aircraft at the cruising level.</p>	<p>The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p>

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
9	Subregulation 91.330(2) provides that subregulation 91.330(1) does not apply if it is necessary, in order to avoid a collision with an aircraft, not to comply with the right of way rule.	The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
10	Subregulation 91.335(5) provides that subregulation 91.335(1), (2), (3), or (4) does not apply if it is necessary, in order to avoid a collision with an aircraft, to not comply with the subregulation. Subregulation 91.335(6) provides that subregulation 91.335(4) does not apply if, as a result of a command of the aircraft's airborne collision avoidance system, the pilot was manoeuvring the aircraft to the extent necessary to ensure the safety of the aircraft.	The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
11	Subregulation 91.355(3) provides that subregulation 91.355(1) does not apply if it is necessary, in order to avoid a collision with an aircraft or vessel, to not comply with the requirement.	The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
12	Subregulation 91.365(4) provides that subregulation 91.365(1) does not apply if it is necessary, in order to avoid a collision with an aircraft and any tow vehicle, to not comply with the requirement. Subregulation 91.365(5) provides subregulation 91.365(1) does not apply if the aircraft and any tow vehicle are being operated in accordance with an air traffic control clearance or air traffic control instructions.	The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
13	Subregulation 91.370(7) provides that subregulation 91.370(2) or (4) does not apply if the aircraft is taking off from or landing at an aerodrome where gliders or glider tugs operate in a contra-circuit pattern on both a runway and a parallel strip outside the runway strip, and simultaneous operations on the runway and the parallel strip are permitted.	<p>The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>Consistent with the general justification above, operations at the time are not the subject of regulatory documentation. It is also within the knowledge of the defendant.</p>
14	Subregulation 91.380(2) provides that subregulation 91.380(1) does not apply if the aircraft flight manual instructions for the aircraft allow the aircraft to land or take off downwind or crosswind, and the pilot is satisfied that traffic conditions at the aerodrome enable such a landing or take-off to be carried out safely.	<p>The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>Consistent with the general justification above, the pilot's satisfaction is a matter of judgment that is not the subject of regulatory documentation, but is within the knowledge of the defendant.</p>
15	Subregulation 91.385(2) provides that subregulation 91.385(1) does not apply to the pilot in command of a seaplane or amphibian if the pilot in command contravenes the subregulation only to the extent necessary to avoid an obstacle, to avoid undue noise over a populated area without compromising the aircraft's safety or, for a single-engine seaplane or amphibian, to enable the aircraft to land on water if its engine fails.	<p>The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p>

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
16	<p>Subregulation 91.390(2) provides that subregulation 91.390(1) does not apply to the pilot in command of a seaplane or amphibian if the pilot in command contravenes the subregulation only to the extent necessary to avoid an obstacle, to avoid undue noise over a populated area without compromising the aircraft's safety or, for a single-engine seaplane or amphibian, to enable the aircraft to land on water if its engine fails.</p> <p>Subregulation 91.390(3) provides that subregulation 91.390(1) does not apply to the pilot in command of an aircraft if a change to the track is necessary to avoid the terrain.</p>	<p>The matters to be established are significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p>
17	<p>Subregulation 91.405(5) provides that subregulation 91.405(3) does not apply if Air Traffic Services for the aerodrome instructed or permitted the pilot to engage in the conduct that would otherwise result in the contravention of that subregulation or the aircraft is being flown in accordance with an authorised instrument departure procedure or an authorised instrument approach procedure.</p>	<p>The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p>
18	<p>Subregulation 91.425(3) provides that subregulation 91.425(1) does not apply if the person starting the engine of the aeroplane is hand-starting the propeller of the aeroplane, assistance is not readily available, adequate provision is made to prevent the aeroplane moving forward and no person is on board the aircraft.</p>	<p>The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p>
19	<p>Subregulation 91.485(3) provides that subregulation 91.485(1) and (2) do not apply if the equipment or electronic device being operated satisfies the criteria in paragraph 91.485(3)(a), (b), (c) or (d), which criteria relate to the characteristics of the particular equipment or device, or to the particular circumstances of the use of the equipment or device.</p>	<p>The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.</p> <p>In particular, the assessment of whether the equipment satisfies the stated criteria is a matter of judgement for the defendant.</p>

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
20	Subregulation 91.545(2) provides that subregulation 91.545(1) does not apply if circumstances prescribed by the Part 91 Manual of Standards apply in relation to the carriage of the person for the flight.	The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish, due to the absence of regulatory documents about the application of the prescribed circumstances (if any).
21	Subregulation 91.555(2) provides that subregulation 91.555(1) does not apply if a direction is given by the pilot in command during turbulence, the crew member occupies a seat other than their crew station and the crew member is wearing, securely fastened, the seatbelts and shoulder harnesses provided at that seat.	The matter to be established is peculiarly within the knowledge of the defendant.
22	Subregulation 91.565(2) provides that subregulation 91.565(1) does not apply if the passenger has been previously carried on the aircraft, the passenger has previously been given a safety briefing and instructions in accordance with this regulation, and in the circumstances that it is not reasonably necessary to give the same safety briefing and instructions.	The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
23	Subregulation 91.570(5) provides that subregulation 91.570(1)(a) does not apply to a person occupying a seat on an aircraft if the person's health may suffer a detriment by being restrained by a seatbelt and the pilot in command agrees that the person is otherwise safely restrained. Subregulation 91.570(6) provides that subregulation 91.570(1)(b) does not apply to a person occupying a seat on an aircraft if the person is ill or incapacitated, the pilot in command agrees to the passenger not adjusting their seat and the person is otherwise safely restrained and will not affect the safety of other passengers.	The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
24	Subregulation 91.650(3) provides that subregulation 91.650(1) does not apply if the recordings or recorders are not preserved, and the operator took reasonable steps in the circumstances to preserve the recordings or recorders.	The steps taken to preserve the recordings or recorders is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.
25	Subregulation 91.670(4) provides that subregulation 91.670(3) does not apply if the pilot reasonably believes that compliance with the signal is likely to endanger the safety of the aircraft or of any person or property.	The matter to be established is peculiarly within the knowledge of the defendant.
26	Subregulation 91.675(2) provides that subregulation 91.675(1) does not apply if the pilot believes that the hazard has previously been reported as required by subregulation (1) and the belief is reasonable in the circumstances.	The matter to be established is peculiarly within the knowledge of the defendant.
27	Subregulation 91.705(3) provides that subregulation 91.705(1) or (2) does not apply if the take-off for the flight is conducted in accordance with the aircraft flight manual instructions for the aircraft that relate to taking off under the conditions mentioned in that subregulation.	The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. While the flight manual is a regulatory document available for proceedings, whether or not the take-off was in accordance with the manual is not.
28	Subregulation 91.715(3) provides that subregulation 91.715(1) does not apply if the pilot in command is carrying out a maintenance test flight or a procedure to diagnose or isolate a failure of an instrument or system.	The matter to be established is peculiarly within the knowledge of the defendant.

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
29	Subregulation 91.795(3) provides that subregulation 91.795(1) does not apply if the aircraft is being operated in accordance with a special flight permit.	<p>The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>While the special flight permit is a regulatory document available for proceedings, whether or not the aircraft was operated in accordance with the permit is not.</p>
30	Subregulation 91.900(3) provides that paragraph 91.900(2)(e) or (f) does not apply if the operation of the aircraft in contravention of the instruction, direction or requirement has been approved by the aircraft's manufacturer.	<p>The matter to be established is peculiarly within the knowledge of the defendant or significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>In particular, the manufacturer's approval may not be a document within the Commonwealth's knowledge or control.</p>
31	Subregulation 91.965(3) provides that subparagraphs 91.965(1)(b)(iv), (v), and (vi) do not apply in relation to a requirement of the Chicago Convention to the extent that the requirement is inconsistent with a requirement under another provision of this Part.	<p>The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.</p> <p>In particular, it is costly and impracticable for the Commonwealth to establish in each prosecution, under the provision, that the Chicago Convention requirement is consistent with every provision of Part 91, in circumstances where the defendant is aware of, and may wish to raise, an inconsistency as a defence.</p>

Implication on right to presumption of innocence

The provisions reversing the evidential burden of proof are consistent with the presumption of innocence, as they are within reasonable limits which take into account the importance of the objective being sought while maintaining the defendant's right to a defence. In particular, the burden is reversed only in circumstances where the matter to be established is within the knowledge of the defendant, and/or the matter is significantly more costly for the prosecution to disprove than it is for the defendant to establish.

Minimum guarantees in criminal proceedings: right to protection against self-incrimination

Regulation 91.690 provides for the pilot in command and operator of an aircraft to give CASA notice of specified information relating to contraventions of the civil aviation legislation by the pilot that occur in the course of an aviation emergency. The regulation requires the pilot to give the notice even if the information might tend to incriminate the pilot. The provision is intended to ensure that CASA is provided with information about contraventions of the law in an emergency, so that CASA receives information about such emergencies that may have broader implications to the safety regulation of civil aviation.

The regulation engages with the right in paragraph 14 (3) (g) of the ICCPR that provides a minimum guarantee to persons defending criminal charges not to be compelled to testify against themselves, or to be compelled to confess guilt.

However, subregulation (3) of the regulation provides that any information provided under the regulation is not admissible in criminal proceedings against the pilot, except in relation to proceedings under the Criminal Code in relation to false and misleading statements in connection with Commonwealth matters. Accordingly, while the information could not be used in proceedings concerning contraventions of the civil aviation legislation, they may be admissible as evidence of a false statement to CASA. In the latter situation, the disclosure would not constitute self-incrimination of a false or misleading statement, although the disclosure would be evidence of such a statement.

CASA considers that, in these circumstances, the regulation is reasonable, necessary and proportionate to the legitimate safety objective of receiving information about safety-related emergencies that benefit the discharge of CASA's functions. In addition, the rights of the pilot remain protected by the terms of subregulation 91.690 (3),

The right to a fair trial and fair hearing: right to an effective remedy

A person affected by decisions under the Regulations have rights of merit review in accordance with regulation 201.004 of CASR, in addition to administrative law rights under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and general principles of Australian administrative law. As such, the rights of persons under the Regulations are linked to existing mechanisms that promote an individual's right to an effective remedy.

Right to liberty and security of person

Paragraph 9(1) of the ICCPR provides that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. Further, it provides that no one shall be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law. Paragraph 9(2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for their arrest and shall be promptly informed of any charges against him.

Regulation 91.220 empowers the operator of an aircraft and its pilot in command to take prescribed actions in the interests of the safety of: an aircraft, occupants of the aircraft, or persons or property on the ground. Those actions include removing a person from an aircraft, restraining a person during a flight, placing a person in custody for a flight and detaining a person on an aircraft until the person can be released into the control of an appropriate authority. The power is expressed to be exercisable “by the use of such force as is reasonable and necessary”.

Regulation 91.225 empowers a crew member of an aircraft for a flight to arrest a person without a warrant if the person is believed on reasonable grounds to be committing, or to have committed, an offence against the safety regulatory scheme under the Act. The regulation also permits such arrest for the purpose of ensuring the safety of the aircraft, or its occupants and cargo, or otherwise for the purposes of the safety scheme under the Act. The regulation requires an arrested person to be released into the custody of a constable, or equivalent officer in a foreign country, as soon as practicable after the flight. The powers of arrest are subject to the arrest provisions of the *Crimes Act 1914*.

Use of force

The right to security of the person in Article 9 of the ICCPR requires States to provide reasonable and appropriate measures, within the scope of those available to public authorities, to protect a person’s physical security. The use of reasonable and necessary force in restraining a person can engage the right to security of the person where force could be used against a person in circumstances where it is legally authorised and is reasonable and necessary.

Any use of force against a person in accordance with the abovementioned provisions of the Regulations is considered a permissible limitation on a person’s rights. Such use of force would be lawful in the sense that it is authorised by the Regulations. The use of force would not be arbitrary as it must be exercised in accordance with criteria that are reasonable and necessary in the particular circumstances linked to ensuring the safety of aviation and the enforcement of the safety regulatory scheme under the Act. The use of force is limited to force that is “reasonable and necessary”, either on the terms of the powers in regulation 91.220, or by application of relevant provisions of the *Crimes Act 1914* in relation to the powers in regulation 91.225. Accordingly, the use of force must be proportionate. Any use of force that is either unreasonable or unnecessary would be subject to the ordinary criminal law.

Detention

In addition to security of the person, Article 9 of the ICCPR also provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedures as are established by law. The United Nations Human Rights Committee has stated that “arbitrariness” includes the elements of inappropriateness, injustice and a lack of predictability.

The power to detain a person until the person can be released into the control of an appropriate authority under paragraph 91.220(2)(d) may only be exercised if the pilot in command of the relevant aircraft believes that the detention is necessary for the safety of: an aircraft, occupants of the aircraft, or persons or property on the ground. The limitation on the rights of a person is therefore directly linked to the safety of aircraft, other persons or property. In practical terms, the safety of aircraft is generally linked to the safety of persons on the aircraft and persons and property on the ground.

The power of a pilot in command or operator of an aircraft to detain a person in the prescribed interests of safety is considered reasonable, necessary and proportionate given the potentially severe

consequences of unsafe actions on aircraft and the absence of other authorities to detain persons either to prevent unsafe conduct.

The use of force in connection with the detention of a person is discussed above.

Rights relating to people with disabilities

Equality and non-discrimination

Article 3(b) of the CRPD provides that non-discrimination is a general principle in relation to all rights in the CRPD. Non-discrimination ensures that no-one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

Differential treatment will not constitute discrimination if the differences in treatment are aimed at achieving a legitimate purpose and are reasonable and proportionate to this purpose.

The Regulations limit access by people with disabilities to civil aviation, under regulation 91.620, by empowering the operator or pilot in command of an aircraft to refuse the carriage of an assistance animal, within the meaning of the *Disability Discrimination Act 1992*, if the operator or pilot in command reasonably believes that the carriage of the animal for the flight might have an adverse effect on the safety of air navigation. Such a situation could arise in the circumstances that the carriage of a particular animal on a particular flight or a particular aircraft presents a risk to the safety of the flight or aircraft that cannot be adequately mitigated other than by refusing carriage of the animal.

The refusal of carriage of an assistance animal does not amount to discrimination as it is aimed at the legitimate purpose of ensuring the safety of the flight. This is reasonable given the potentially severe consequences of unsafe aviation activities, necessary in the context of the objects of the safety regulatory scheme under the Act, and proportionate as it only applies to circumstances in which an operator or pilot in command reasonably believes that the safety of air navigation is at risk.

Right to personal mobility

Similarly, Article 20 of the CRPD provides that States shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice.

Allowing the refusal of carriage of an assistance animal does not limit the right to personal mobility, as it is reasonable, necessary and proportionate for the reasons given above in relation to the right to equality and non-discrimination.

Conclusion

This legislative instrument is compatible with human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

DETAILS OF THE PROPOSED *CIVIL AVIATION SAFETY AMENDMENT (PART 91) REGULATIONS 2018*

Section 1 – Name of Regulations

Section 1 provides that the title of this instrument is the *Civil Aviation Safety Amendment (Part 91) Regulations 2018*.

Section 2 – Commencement

Section 2 provides for the Regulations to commence on 25 March 2021.

Section 3 – Authority

Section 3 provides that the *Civil Aviation Safety Amendment (Part 91) Regulations 2018* is made under the *Civil Aviation Act 1988 (the Act)*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Civil Aviation Safety Regulations 1998 (CASR)

Item 1 – Part 91

This item repeals the existing Part 91 of CASR - General operating and flight rules - and substitutes a new Part 91 of CASR.

The new Part 91 of CASR applies to the operation of Australian civil aircraft and foreign registered civil aircraft operating in Australia. It sets out operational rules for those aircraft in relation to particular matters. It also includes several ‘place holder’ provisions reserving headings for future use.

Subpart 91.A – Preliminary

This Subpart inserts a new Subpart 91.A of CASR inclusive of regulations 91.005 to 91.050 that provides for the types of aircraft Part 91 of CASR applies to, the issue of a Part 91 Manual of Standards (MOS) and the issue of approvals for certain operations.

Regulation 91.005 provides that Part 91 of CASR applies to the operation of an Australian registered aircraft in Australian territory.

Regulation 91.010 – Application of Part 91—Australian aircraft in foreign countries

Subregulation 91.010(1) provides that Part 91 of CASR applies to the operation of an Australian aircraft in a foreign country

Subregulation 91.010(2) provides that when the operating and flight rules of a foreign country differ from those of Part 91 of CASR the rules of the foreign country apply.

Subregulation 91.010(3) provides that a provision of a law of a foreign country is taken not to be inconsistent with a provision of this Part to the extent that the provisions are capable of operating concurrently.

Regulation 91.015 – Application of Part 91—Australian aircraft over the high seas

Subregulation 91.015(1) provides that Part 91 of CASR applies to the operation of an Australian aircraft over the high seas.

Subregulation 91.015(2) provides that in addition to Part 91 of CASR, the rules of Annex 2 of the Chicago Convention (Rules of the Air) also apply to the operation of an Australian aircraft over the high seas.

Subregulation 91.015(3) provides that when the operating and flight rules of Annex 2 of the Chicago Convention differ from those of Part 91 of CASR the rules of Annex 2 apply.

Subregulation 91.015(4) provides that a provision of Annex 2 of the Chicago Convention is taken not to be inconsistent with a provision mentioned in subregulation (1) to the extent that the provisions are capable of operating concurrently.

The Chicago Convention was signed on 7 December 1944 by 52 States and is administered by the International Civil Aviation Organisation (ICAO). Of the 19 annexes, Annex 2 prescribes the general rules of the air. Australia is a signatory to the Convention.

Regulation 91.020 – Application of Part 91—foreign registered aircraft

Subregulation 91.020(1) provides that Part 91 of CASR applies to the operation of a foreign registered aircraft in Australian territory except Division 91.C.3—Flight related documents, Subpart 91.P—Cabin crew and Subpart 91.T—Operations under certain special certificates of airworthiness and special flight permits.

Subregulation 91.020(2) provides that Part 91 of CASR applies to the operation of foreign registered aircraft by foreign certificated operators or to New Zealand operators operating under ANZA privileges that are in force.

These provisions ensure that operations of foreign registered aircraft that *are not* air transport operations (for example, operation of a private aircraft) comply with Part 91 of CASR. The operations of foreign registered aircraft in operations that *are* air transport operations are regulated by Part 129 of CASR.

Regulation 91.025 provides the requirement that operation of a state aircraft of a foreign country in Australian territory comply with provisions of Part 91 of CASR if explicitly stated by a regulation.

Regulation 91.030 provides that Part 91 of CASR does not apply to the operation of an aircraft if a provision of Part 101 (Unmanned aircraft and rockets), Part 103 (Sport and recreational aviation operations) or Part 131 (Manned free balloon) applies to the operation.

Regulation 91.035 provides that certain provisions of this Part do not apply if provisions of Part 121, 133, 135 or 138 apply. The provisions are identified by the regulation in a table.

Regulation 91.040 provides that, for the purposes of subsection 98(5A) of the Act, CASA may issue a Manual of Standards (MOS) for Part 91 of CASR. The Part 91 MOS would be used to issue requirements of technical or detailed matters.

Regulation 91.045 – Approvals by CASA for Part 91

Subregulation 91.045(1) provides that if a provision of Part 91 refers to a person holding an approval under regulation 91.045, the person may apply, in writing, to CASA for the approval.

Subregulation 91.045(2) provides that CASA must grant the approval subject to regulation 11.055 of CASR.

Subregulation 91.045(3) provides that subregulation 11.055(1B) of CASR applies to the granting of the approval.

Subregulation 91.045(4) provides that the operator of an aircraft is deemed to be approved for certain activities if the activity is authorised under the operators AOC or another civil aviation authorisation held by the operator or the operator's exposition or operations manual (if any).

Subregulation 91.045(4) applies to the following provisions:

- Regulation 91.200 – persons not carried in certain parts of aircraft;
- Regulation 91.450 – specified aircraft categories;
- Regulation 91.600 – carriage of cargo—general;
- Regulation 91.655 – Reduced Vertical Separation Minimum (RVSM) airspace;
- Regulation 91.745 – simulating engine failure.

Subregulation 91.045(5) provides that the operator of an aircraft is deemed to be approved for certain activities if the activity is authorised under a civil aviation authorisation held by the operator. Subregulation 91.045(5) applies to the following provisions:

Regulation 91.860 – Provisionally certificated aircraft—operation for type certification or supplemental type certification;

Regulation 91.865 – Provisionally certificated aircraft—requirements for the carriage of people;

Regulation 91.870 – Provisionally certificated aircraft—additional requirements for operators;

Regulation 91.875 – Experimental aircraft—operating requirements;

Regulation 91.885 – Experimental aircraft—maximum number of persons to be carried;

Regulation 91.920 – Aircraft with special certificates of airworthiness—flight tests to be conducted in certain areas.

Regulation 91.050 – Approvals by authorised persons for Subpart 91.T

Subregulation 91.050(1) provides that if a provision of Subpart 91.T refers to a person holding an approval under regulation 91.050, the person may apply, in writing, to an authorised person for the approval.

Subregulation 91.050(2) provides that CASA must grant the approval subject to regulation 11.055 of CASR.

Subregulation 91.050(3) provides that subregulation 11.055(1B) of CASR applies to the granting of the approval.

An authorised person means a person who is appointed under regulation 201.001 to be an authorised person for these regulations or the provision. Refer to Part 1 of the CASR dictionary.

Subpart 91.C – General

This Subpart inserts a new Subpart 91.C of CASR, inclusive of Divisions 91.C.1 to 91.C.9, that prescribe general flight limitations, miscellaneous requirements and requirements for documents to be carried on a flight. Rules regarding carriage of firearms and portable electronic devices along with special flight operations are also prescribed by this Subpart.

Division 91.C.1 – General flight limitations

This Division inserts a new Division 91.C.1 of CASR, inclusive of regulations 91.055 to 91.090. It prescribes rules regarding creating hazards, unauthorised travel on an aircraft and operations using night vision imaging systems (NVIS). A large part of the Division prescribes rules for operation under either the Visual Flight Rules (VFR) or the Instrument Flight Rules (IFR).

Regulation 91.055 – Aircraft not to be operated in a manner that creates a hazard

Subregulation 91.055(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is operated in a manner that creates a hazard to another aircraft, a person or property.

Subregulation 91.055(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions place the onus for safe operation of an aircraft on the pilot in command and remove the need for overly prescriptive legislation.

Regulation 91.060 – Unauthorised travel or placing of cargo on aircraft

Subregulation 91.060(1) provides that a person contravenes this subregulation if they travel on an aircraft without the consent of the operator of the aircraft or the pilot in command of the aircraft.

Subregulation 91.060(2) provides that a person contravenes this subregulation if they place cargo on an aircraft and they do not have the consent of the operator of the aircraft or the pilot in command of the aircraft.

Subregulation 91.060(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.065 – Aircraft to be flown under VFR or IFR

Subregulation 91.065(1) provides that the pilot in command of an aircraft contravenes this subregulation if they do not fly an aircraft under either the VFR, or the IFR.

Subregulation 91.065(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.070 – VFR flights—compliance with VMC criteria

Subregulation 91.070(1) provides that the pilot in command of an aircraft contravenes this subregulation if they fly the aircraft under the VFR and do not operate in accordance with a requirement of the Visual Meteorological Condition criteria (VMC criteria).

Subregulation 91.070(2) provides that subregulation (1) applies if the aircraft is flown under the Special VFR and in accordance with the Special VFR authorisation.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.070(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mirror those previously prescribed by the CAR, and reflect the global basis for flight under the VFR. VMC criteria include the minimum distance between an aircraft and cloud along with the minimum visibility. VMC criteria and Special VFR would be defined in the CASR dictionary.

Regulation 91.075 – VFR flights—aircraft not to exceed certain speeds

Subregulation 91.075(1) provides that the pilot in command of an aircraft operated under the VFR contravenes this subregulation if the aircraft is flown at a transonic or supersonic speed.

Subregulation 91.075(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.080 – VFR flights in class A airspace

Subregulation 91.080(1) provides that the pilot in command of an aircraft for a VFR flight contravenes this subregulation if they fly an aircraft in Class A airspace and do not hold approval to do so under regulation 91.045.

Subregulation 91.080(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.085 – NVIS flight

This regulation does not apply to the operation of an aircraft if regulation 133.265 or 138.350 applies to the operation in accordance with regulation 91.035.

Subregulation 91.085(1) provides a head of power for the Part 91 MOS to prescribe requirements for flights where the pilot in command is using a NVIS.

Subregulation 91.085(2) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement of the Part 91 MOS, relating to flights using NVIS, is not adhered to.

Subregulation 91.085(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.090 – All flights—airspeed limits

Subregulation 91.090(1) provides a head of power for the Part 91 MOS to prescribe requirements relating to aircraft airspeed limits and provides that the pilot in command of an aircraft contravenes this subregulation if those limits are not adhered to.

Subregulation 91.090(2) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

Division 91.C.2 – Operational documents

This Division inserts a new Division 91.C.2 of CASR, comprising regulation 91.095, that prescribes rules regarding operational documents. This Division does not apply to the operation of an aircraft if Division 121.C.2, 133.C.2 or 135.C.2 applies to the operation in accordance with regulation 91.035.

Regulation 91.095 – Compliance with flight manual

Subregulation 91.095(1) provides that regulation 91.095 applies in relation to the operation of an aircraft from the time the aircraft doors are closed, or the flight begins (whichever occurs first), to the time the aircraft comes to rest after being airborne or the aircraft doors are opened (whichever occurs last).

Subregulation 91.095(2) provides that the pilot in command of an aircraft contravenes this subregulation if they do not comply with the aircraft flight manual instructions and any conditions specified in the aircraft's certificate of airworthiness or any special flight permit conditions.

Subregulation 91.095(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.C.3 – Flight related documents

This Division inserts a new Division 91.C.3 of CASR, inclusive of regulations 91.100 to 91.120, that prescribes a requirement for all flights to carry a default set of documents, along with additional documents according to the operation type. It also prescribes rules for the carriage of documents in an electronic format.

Regulation 91.100 provides confirmation that where a document is required to be carried by this Division, it could be carried in an electronic format.

Regulation 91.105 – Carriage of documents

Subregulation 91.105(1) provides that the pilot in command of an aircraft contravenes this subregulation if the documents mentioned in subregulation (2) were not carried for a flight.

Subregulation 91.105(2) provides that the documents that must be carried on board the aircraft include the following:

- (a) licence documentation and medical certificate for each flight crew member;
- (b) photographic identification document issued by a Commonwealth, State or Territory authority or agency, or the passport, for each flight crew member;
- (c) the aircraft flight manual instructions for the aircraft;
- (d) operating instructions for any computerised navigation systems fitted to the aircraft;
- (e) any minimum equipment list for the aircraft.

Subregulation 91.105(3) provides that documents are not required if aerobatic manoeuvres will be conducted and the carriage of documents creates a hazard.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.105(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 25 penalty units.

Regulation 91.110 – Carriage of documents for certain flights

Subregulation 91.110(1) provides that this regulation applies to flights other than the following:

- (a) a VFR flight conducted by day and within 50 nautical miles of the aircraft's point of departure, or
- (b) flights conducted to, within and from the flying training area for an aerodrome.

Subregulation 91.110(2) provides that the pilot in command of an aircraft contravenes this subregulation if the documents mentioned in subregulation (3) are not carried on the aircraft.

Subregulation 91.110(3) provides that the documents that must be carried on board the aircraft are the following:

- (a) the authorised aeronautical information for the flight;
- (b) the flight technical log or maintenance release for the aircraft.

Subregulation 91.110(4) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 25 penalty units.

These provisions minimise the requirement for the carriage of documents for those flights that are conducted with the local area of an aerodrome during daylight hours. They also minimise the requirement for the carriage of documents for those flights that are considered routine training flights.

All flights conducted under the IFR and all night flights are required to carry the documents listed.

Regulation 91.115 – Carriage of documents for flights that begin or end outside Australian territory

Subregulation 91.115(1) provides that this regulation applies to flights that begin or end outside Australian territory.

Subregulation 91.115(2) provides that the pilot in command of an aircraft contravenes this subregulation if the documents mentioned in subregulation (3) were not carried on the aircraft.

Subregulation 91.115(3) provides that the documents that must be carried on board the aircraft are the following:

- (a) the aircraft's certificate of airworthiness;
- (b) the aircraft's certificate of registration;
- (c) the journey log for the flight mentioned in regulation 91.120;
- (d) a list including the name, place of embarkation and place of destination for each passenger on the aircraft;
- (e) if the aircraft is carrying cargo (other than passenger baggage), a manifest and detailed declaration of the cargo;
- (f) if the aircraft has a radio station licence that is an apparatus licence or a class licence- a copy of the licence;
- (g) if the operator or pilot in command holds and approval under regulation 91.045 or another civil aviation authorisation that is relevant to the flight, a copy of the approval or authorisation.

Subregulation 91.115(4) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 25 penalty units.

Regulation 91.120 – Journey logs for flights that begin or end outside Australian territory

Subregulation 91.120(1) provides that this regulation applies to flights that begin or end outside Australian territory.

Subregulation 91.120(2) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the Part 91 MOS prescribes requirements relating to maintaining a journey log for a flight and the requirements are not met for the flight.

Subregulation 91.120(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 25 penalty units.

Division 91.C.4 – Reporting and recording defects and incidents

This Division is reserved for future use.

Division 91.C.5—Search and rescue services and emergency and survival equipment

This Division is reserved for future use.

Division 91.C.6 – Miscellaneous requirements for aircraft

This Division inserts a new Division 91.C.6 of CASR, inclusive of regulations 91.140 to 91.155, that prescribes several miscellaneous requirements for aircraft.

Regulation 91.140 – Operating an Australian aircraft outside Australia

Subregulation 91.140 (1) provides that the operator and pilot in command of an aircraft operating in a foreign country each contravene this subregulation if a requirement of a law of a foreign country applies and the requirement is not met.

Subregulation 91.140 (2) provides that the operator and pilot in command of an aircraft operating over the high seas each contravene this subregulation if a requirement of Annex 2 of the Chicago Convention applies and the requirement is not met.

Subregulation 91.140 (3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.145 – Conditions to be met before Australian aircraft may fly

Subregulation 91.145(1) provides that a pilot in command of an Australian aircraft contravenes this subregulation if a requirement of subregulation (2) is not met and the flight begins.

Subregulation 91.145(2) provides the following requirements for subregulation (1):

- (a) registration of the aircraft;
- (b) display of nationality and registration mark in accordance with Part 45 of CASR;
- (c) certificate of airworthiness or special flight permit (if required);
- (d) the number of flight crew required under CAR and CASR.

In addition, the flight must comply with any conditions of the maintenance release or approved alternative maintenance release.

Subregulation 91.145(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Part 45 of CASR regulates the display of nationality and registration marks and aircraft registration identification plates.

Regulation 91.150 – Operating aircraft with inoperative instruments, indicators, equipment or systems—placarding

Subregulation 91.150(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft begins a flight with an inoperative instrument, indicator, item of equipment or system, and the following apply:

- (a) the instrument, indicator, item of equipment or system is required to be fitted to, or carried on an aircraft; and
- (b) the instrument, indicator, item of equipment or system is, and is likely to be, used during flight, and
- (c) the instrument, indicator, item of equipment or system is not placarded as inoperative.

Subregulation 91.150(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions ensure that equipment, fittings and other items that are deemed as required by the aircraft certification or other regulations are serviceable or are obviously marked as inoperative.

Regulation 91.155 – Manipulating flight controls

Subregulation 91.155(1) provides that a person contravenes this subregulation if they manipulate the flight controls of an Australian aircraft during flight without being appropriately licensed under Part 61 of CASR. Similarly, a person contravenes this regulation if they manipulate the controls of a foreign aircraft during flight and they were not appropriately licensed under the law of the aircraft's State of registry or the law of the aircraft operator's State.

Subregulation 91.155(2) provides that the pilot in command of an aircraft contravenes this subregulation if they permit a person to manipulate the flight controls of an Australian aircraft during flight and the person is not appropriately licensed under Part 61 of CASR. Similarly, the pilot in command contravenes this subregulation if they permit a person to manipulate the controls of a foreign aircraft during flight and the person is not appropriately licensed under the law of the aircraft's State of registry or the law of aircraft operator's State.

Subregulation 91.155(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.C.7 – Firearms on aircraft

This Division inserts a new Division 91.C.7 of CASR, inclusive of regulations 91.160 to 91.165, that prescribes matters relating to the carriage and discharge of firearms during flight.

Regulation 91.160 – Possessing firearm on aircraft

Subregulation 91.160(1) provides that a person contravenes this subregulation if they carry or possess a firearm on an aircraft that is not a prescribed aircraft within the meaning of the *Aviation Transport Security Act 2004* (the ATSA) and neither the operator nor the pilot in command of the aircraft had consented to the person carrying or otherwise possessing the firearm on the aircraft.

Subregulation 91.160(2) provides that subregulation (1) applies if the person is authorised by a law of the Commonwealth to carry or possess the firearm.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. Consistent with the general justification above, whether or not the person is authorised under another law is a matter within the knowledge of the defendant and not readily ascertainable by CASA having regard to the Commonwealth statute book.

Subregulation 91.160(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions regulate the carriage of firearms on board an aircraft where carriage is not regulated by the ATSA. The ATSA regulates the carriage or possession of firearms on a prescribed aircraft; being regular public transport operations, any services on jet powered aircraft and any services on aircraft with a maximum take-off weight of greater than 5,700 kg. These provisions therefore

prescribe requirements for the carriage or possession of firearms during private operations and air transport operations using smaller aircraft.

Regulation 91.165 – Discharging a firearm on aircraft

Subregulation 91.165(1) provides that a person contravenes this subregulation if they discharge a firearm while on an aircraft.

Subregulation 91.165(2) provides that subregulation (1) does not apply if the person is authorised under CAR or CASR, or another law of the Commonwealth, to discharge the firearm on board the aircraft.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. Consistent with the general justification above, whether or not the person is authorised under another law is a matter within the knowledge of the defendant and not readily ascertainable by CASA having regard to the Commonwealth statute book.

These provisions provide regulations that are more outcomes-based than the current rules. The current rules, in regulation 143 of CAR, require CASA approval to carry or possess firearms on board an aircraft.

Other laws of the Commonwealth that deal with firearms and aircraft are, Division 3 of Part 4 of the ATSA, section 23 of the *Crimes (Aviation) Act 1991* and the proposed Part 138 of CASR (Aerial work operations). The proposed Part 138 of CASR would permit the discharge of firearms under a number of conditions for the purposes of animal culling.

Subregulation 91.165(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.C.8 – Portable electronic devices

This Division inserts a new Division 91.C.8 of CASR, inclusive of regulations 91.170 to 91.175, that prescribes requirements for the operation of a portable electronic device (PED) by passengers and crew.

Regulation 91.170 – Operation of portable electronic devices

Subregulation 91.170(1) provides that the pilot in command of an aircraft must not permit a person to operate a PED during the flight unless the pilot determines that the operation of the PED will not affect the safety of the aircraft.

Subregulation 91.170(2) provides that a person contravenes this subregulation if they are given an instruction or direction by a crew member not to operate a PED and they continue to operate the device.

Subregulation 91.170(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.175 – Operation of portable electronic devices by crew members

Subregulation 91.175(1) provides that a crew member for a flight contravenes this subregulation if they operate a PED during the flight and doing so is likely to distract them from the performance of their duties.

Subregulation 91.175(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.C.9 – Special flight operations

This Division inserts a new Division 91.C.9 of CASR, inclusive of regulations 91.180 to 91.210, that prescribes requirements for air displays, flying in formation, conducting aerobatic manoeuvres and carriage of persons in certain parts of an aircraft. Rules for operations with things outside an aircraft such as dropping, picking up and setting down, and towing are also prescribed.

Regulation 91.180 – Air displays in Australian territory

Subregulation 91.180(1) provides that a person contravenes this subregulation if they conduct an air display in Australian territory and do not hold CASA approval under regulation 91.045.

Subregulation 91.180(2) provides that the operator and pilot in command of an aircraft each contravene this subregulation if they conduct a flight that is part of an air display in Australian territory and the person conducting the air display does not hold CASA approval as required by subregulation (1).

Subregulation 91.180(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions ensure that air displays are conducted only following discussions with, and the approval of, CASA. A person will be required to obtain approval to conduct an air display and the operator/pilot in command of an aircraft will be prohibited from taking part in an air display that has not been so approved. The provisions place an onus on operators and pilots of aircraft to check that CASA approval has been given for an air display.

Regulation 91.185 – Conducting aerobatic manoeuvres

Subregulation 91.185(1) provides that a person contravenes this subregulation if they conduct aerobatic manoeuvres in Instrument Meteorological Conditions (IMC).

Subregulation 91.185(2) provides that the pilot in command of an aircraft contravenes this subregulation if they conduct aerobatic manoeuvres over a populous area, at an air display or at night and they do not hold approval under regulation 91.045 for the flight.

Subregulation 91.185(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.190 – Dropping of things from aircraft

This regulation does not apply to the operation of an aircraft if regulation 138.425 applies to the operation in accordance with regulation 91.035.

Subregulation 91.190(1) provides that the pilot in command of an aircraft for a flight contravenes this subregulation if a thing is dropped from the aircraft and the safety of the aircraft, or of any person or property, is likely to be endangered as a result.

Subregulation 91.190(2) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.195 – Picking up or setting down people or things during flight

This regulation does not apply to the operation of an aircraft if regulation 138.390 applies to the operation in accordance with regulation 91.035.

Subregulation 91.195(1) provides that the pilot in command of an aircraft contravenes this subregulation if a person or thing is picked up or set down by the aircraft during the flight and the requirement mentioned in subregulation (2) is not met.

Subregulation 91.195(2) provides that the requirement mentioned in subregulation (1) is that the pilot in command must hold a CASA approval under regulation 91.045 for the activity, or be permitted to carry out the activity under another provision of CAR or CASR.

Subregulation 91.195(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.200 – Persons not to be carried in certain parts of aircraft

This regulation does not apply to the operation of an aircraft if regulation 138.390 applied to the operation in accordance with regulation 91.035.

Subregulation 91.200(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if a person is carried on or in a part of the aircraft that is not designed to carry people, or in something attached to the aircraft, if neither the operator nor the pilot in command hold CASA approval under regulation 91.045 to do so.

Subregulation 91.200(2) provides that subregulation (1) does not apply to the temporary carriage of a crew member in a part of the aircraft that is not designed to accommodate people if:

- (a) doing so is required to ensure the safety of the aircraft, person or cargo on board, or
- (b) goods or stores are carried in that part of the aircraft and there is a proper means of access for crew members.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant or significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. Consistent with the general justification above, whether or not the person was for the purpose of doing something for the safety of the aircraft or its passengers or cargo is a matter within the knowledge of the defendant and not readily ascertainable by CASA in the absence of regulatory documentation.

Subregulation 91.200(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.205 – Flying in formation

Subregulation 91.205(1) provides that the pilot in command of an aircraft contravenes this subregulation if they conduct a flight as part of a formation and the flight has not been pre-arranged as a formation flight with each pilot in command of the other aircraft making up the formation.

Subregulation 91.205(2) provides that the pilot in command of an aircraft contravenes this subregulation if they conduct a flight as part of a formation at night and they do not hold an approval under regulation 91.045 for the flight.

Subregulation 91.205(3) provides that the pilot in command of an aircraft contravenes this subregulation if they conduct a flight as part of a formation in IMC and they do not hold approval under regulation 91.045 for the flight.

Subregulation 91.205(4) provides that a contravention of subregulation (1), (2) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions contribute to the safety of air navigation by ensuring that the risks associated with aircraft flying in close proximity are adequately managed. All pilots must be aware of formation plans and operations in circumstances of difficult visual reference will require consultation with, and the approval of, CASA.

These provisions complement regulation 61.380 of CASR which requires a pilot in command to hold a formation flying flight (aeroplane) activity endorsement or a formation flying flight (helicopter) activity endorsement.

Regulation 91.210 – Towing things by aircraft

Subregulation 91.210(1) provides that the pilot in command of an aircraft contravenes this subregulation if they tow something from an aircraft and the requirements mentioned in subregulation (2) are not met.

Subregulation 91.210(2) provides that the requirements are that the towing of the object is approved by regulation 91.045 of CASR or is permitted by another provision of CAR or CASR.

Subregulation 91.210(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions contribute to the safety of air navigation by ensuring that the towing of objects is conducted only by a pilot in command who has been assessed as competent in the safe conduct of towing operations.

Subpart 91.D – Operational procedures

This Subpart repeals the existing Subpart 91.D of CASR and substitutes a new Subpart of the same title. The provisions of the existing Subpart 91.D are incorporated as necessary.

This new Subpart 91.D, inclusive of Divisions 91.D.1 to 91.D.12, forms the bulk of Part 91 of CASR. It prescribes regulations pertaining to the operation of aircraft.

The vast majority of the provisions in the Subpart mirror the requirements of the existing CAR.

Division 91.D.1. – Operational control

This Division inserts a new Division 91.D.1 of CASR, inclusive of regulations 91.215 to 91.225, that provide for the authority and responsibilities of the operator and pilot in command of an aircraft along with providing a power of arrest.

Regulation 91.215 – Authority and responsibilities of pilot in command

Subregulation 91.215 (1) provides that the pilot in command would be responsible for the operation of an aircraft between the following times:

- (a) the time the aircraft doors are closed, or it moves under its own power for take-off (whichever occurs first)
- (b) the time the aircraft comes to rest after being airborne or the aircraft doors are opened (whichever occurs later).

Subregulation 91.215(2) provides that the pilot in command of the aircraft has final authority over the aircraft and persons on board during the times mentioned in subregulation (1). Additionally, the pilot in command would be responsible for ensuring safety of persons and property on board the aircraft and the safe operation of the aircraft.

Regulation 91.220 – Actions and directions by operator or pilot in command

Subregulation 91.220(1) provides that the operator or pilot in command may do certain things necessary for the safety of the aircraft, a person on the aircraft or a person or property on the ground or water.

Subregulation 91.220(2) provides that the things mentioned in subregulation (1) are the following:

- (a) direct a person to do something, limit the doing of something, not do something or leave the aircraft;
- (b) by the use of force considered reasonable and necessary, remove a person or thing from the aircraft, restrain a person, seize a thing, place a person in custody or detain a person or thing until release to an appropriate authority.

Subregulation 91.220 (3) provides that a person on an aircraft contravenes this subregulation if they do not comply with a direction given by the pilot in command under subregulation (2).

Subregulation 91.220(4) provides that a contravention of subregulation (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.225 – Crew members—power of arrest

Subregulation 91.225(1) provides that a crew member may, without warrant, arrest a person on the aircraft if all of the following apply:

- (a) the crew member believes on reasonable grounds that the person is committing, attempting to commit, about to commit or has committed or has attempted to commit an offence against the Act, CAR or CASR in relation to the aircraft;
- (b) the purpose of the arrest is to ensure the safety of the aircraft or its passengers, crew, or cargo or otherwise for the purposes of the Act, CAR or CASR;
- (c) if the crew member is not the pilot in command, the pilot in command has authorised the crew member to make the arrest without a warrant.

Subregulation 91.225(2) provides that the pilot in command must ensure that, as soon as practicable after the end of the flight, a person arrested under subregulation (1) is delivered to the custody of a constable (or the equivalent if in a foreign country).

These provisions provide for the crew of an aircraft to arrest a person if it is deemed necessary to ensure the safe operation of the aircraft. See also sections 3ZC (use of force in making arrest) and 3ZD (persons to be informed of grounds of arrest) of the *Crimes Act 1914*.

Division 91.D.2. – Flight preparation

This Division inserts a new Division 91.D.2 of CASR, inclusive of regulations 91.230 to 91.235, that prescribes requirements for flight preparation, weather assessment and aerodrome assessment.

Regulation 91.230 – Flight preparation (weather assessments) requirements

Subregulation 91.230(1) provides a head of power for the Part 91 MOS to prescribe requirements relating to flight preparation and weather assessment.

Subregulation 91.230(2) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement prescribed in the Part 91 MOS under subregulation (1) is not met for the flight.

Subregulation 91.230(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.235—Flight preparation (alternate aerodromes) requirements

This regulation does not apply to the operation of an aircraft if regulation 121.170 applies to the operation in accordance with regulation 91.035.

Subregulation 91.235(1) provides a head of power for the Part 91 MOS to prescribe requirements relating to flight preparation and alternate aerodromes.

Subregulation 91.235(2) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement prescribed by the Part 91 MOS under subregulation (1) is not met for the flight.

Subregulation 91.235(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.D.3 – Flight planning and pre-flight checks

This Division inserts a new Division 91.D.3 of CASR, inclusive of regulations 91.240 to 91.245, that prescribes requirements for flight planning, the submission of flight notifications and matters to be checked before take-off.

Regulation 91.240 – Flight plans and notifications

Subregulation 91.240(1) provides a head of power for the Part 91 MOS to prescribe requirements relating to flight plans and flight notifications.

Subregulation 91.240(2) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement prescribed in the Part 91 MOS under subregulation (1) is not met for the flight.

Subregulation 91.240(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.245 – Matters to be checked before take-off

Subregulation 91.245(1) provides that the pilot in command of an aircraft contravenes this subregulation if, when the aircraft takes off, a check prescribed by the Part 91 MOS for the flight has not been carried out. The subregulation also provides a head of power for the Part 91 MOS to prescribe requirements for matters to be checked before take-off. pilot in command

Subregulation 91.245(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.D.4 – Flight rules

This Division inserts a new Division 91.D.4 of CASR, inclusive of Subdivisions 91.D.4.1 to 91.D.4.6, that prescribes requirements for air traffic services (ATS) in different types of airspace, cruising levels and the avoidance of collisions.

Subdivision 91.D.4.1 – General

This subdivision inserts a new Subdivision 91.D.4.1 of CASR, inclusive of regulations 91.250 to 91.255, that prescribes requirements for operations under the VFR and the IFR.

Regulation 91.250 – VFR flights

Subregulation 91.250(1) provides a head of power for the Part 91 MOS to prescribe requirements for the operation of an aircraft under the VFR.

Subregulation 91.250(2) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement mentioned in subregulation (1) is not met during a flight.

Subregulation 91.250(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.255 – IFR flights

Subregulation 91.255(1) provides a head of power for the Part 91 MOS to prescribe requirements for the operation of an aircraft under the IFR.

Subregulation 91.255(2) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement mentioned in subregulation (1) is not met during a flight.

Subregulation 91.255(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Subdivision 91.D.4.2—Air traffic services

This subdivision inserts a new Subdivision 91.D.4.2 of CASR, inclusive of regulations 91.260 to 91.275, that prescribes operational requirements for aircraft subject to air traffic control (ATC), in prohibited or restricted areas, and in air defence identification zones (ADIZ).

Regulation 91.260 – Air traffic services—prescribed requirements

Subregulation 91.260(1) provides a head of power for the Part 91 MOS to prescribe requirements for the use of aircraft in certain classes, areas and zones of airspace.

Subregulation 91.260(2) provides that the pilot in command of an aircraft contravenes this subregulation if an applicable requirement of subregulation (1) is not met during a flight.

Subregulation 91.260(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.265 – Air traffic control clearances and instructions

Subregulation 91.265(1) provides that the pilot in command of an aircraft contravenes this subregulation if during the flight they are given an instruction or clearance by ATC and they do not comply with the instruction or clearance.

Subregulation 91.265(2) provides that subregulation (1) does not apply if it is not practicable to seek authorisation for the non-compliance before it occurs, the non-compliance is necessary for the safety of the aircraft or persons on the aircraft and the pilot in command informs ATC about the non-compliance as soon as practicable.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant.

Subregulation 91.265(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.270 – Unauthorised entry into prohibited or restricted areas

Subregulation 91.270(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is flown in a prohibited area or in contravention of the requirements for a restricted area and the pilot does not comply with the requirements of subregulation (2) as soon as they become aware of their situation.

Subregulation 91.270(2) provides that the requirements would be:

- (a) the pilot in command must communicate to ATS or the controlling authority that the aircraft is in the area (if fitted with a means to communicate);
- (b) in any case fly the aircraft out of the area.

Subregulation 91.270(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.275 – Air defence identification zone flights

Subregulation 91.275(1) provides that the pilot in command of an aircraft contravenes this subregulation if, during a flight, they do not comply with a procedure published in the authorised aeronautical information for a flight in an ADIZ if the aircraft enters such a zone.

Subregulation 91.275(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

An ADIZ is airspace in which all aircraft must be identified and in which aircraft may be intercepted in the interest of national security. In Australia, an ADIZ might be established during large events. The Commonwealth Games is an example of when an ADIZ might be established.

Subdivision 91.D.4.3 – Cruising levels and minimum heights

This subdivision inserts a new Subdivision 91.D.4.3 of CASR, inclusive of regulations 91.280 to 91.320, that prescribes requirements for cruising levels and minimum heights for flight.

Regulation 91.280 provides definitions of specified IFR and specified VFR cruising levels by reference to levels prescribed in the Part 91 MOS.

Regulation 91.285 – Specified VFR cruising levels

Subregulation 91.285(1) provides that the pilot in command of an aircraft for a VFR flight contravenes this subregulation if, during the flight on a track, the aircraft is not flown on a specified VFR cruising level for the track.

Subregulation 91.285(2) provides that subregulation (1) does not apply if the aircraft is in uncontrolled airspace and one of the following apply:

- (a) the aircraft is below 3,000 ft Above Mean Sea Level (AMSL);
- (b) the aircraft is at or above 3,000 ft AMSL but below 1,500 ft Above Ground Level (AGL);
- (c) it is not practicable for the pilot in command to fly the aircraft at a specified VFR cruising level for the track.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. Consistent with the general justification above, these matters are not the subject of regulatory documentation and are within the knowledge of the defendant.

Subregulation 91.285(3) provides that subregulation (1) does not apply if both of the following apply:

- (a) the aircraft is in controlled airspace; and
- (b) air traffic control has given the pilot in command clearance to fly the aircraft at the cruising level.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. Consistent with the general justification above, these matters are not the subject of regulatory documentation and are within the knowledge of the defendant.

Subregulation 91.285(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.290 – Specified IFR cruising levels

Subregulation 91.290(1) provides that the pilot in command of an aircraft for an IFR flight contravenes this subregulation if, during the flight on a track, the aircraft is not flown on a specified IFR cruising level for the track.

Subregulation 91.290(2) provides that subregulation (1) does not apply if the aircraft is in uncontrolled airspace and it is not practicable for the pilot in command to fly the aircraft at a specified IFR cruising level for the track.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.290(3) provides that subregulation (1) does not apply if either of the following apply:

- (a) ATC has given the pilot in command an instruction to fly the aircraft at the cruising level;
- (b) ATC has given the pilot in command a clearance to fly the aircraft at the cruising level.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Regulation 91.295 – IFR flights at non-specified cruising levels—notifying Air Traffic Services

Subregulation 91.295(1) provides that the pilot in command of an aircraft for an IFR flight contravenes this subregulation if the IFR flight is not flown at an IFR cruising level for the track and they do not notify ATS before the aircraft is flown at that cruising level.

Subregulation 91.295(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.300 – IFR flights at non-specified cruising levels—avoiding collisions with aircraft conducting VFR flights

Subregulation 91.300(1) provides that the pilot in command of an aircraft for an IFR flight contravenes this subregulation if, during the flight, the aircraft is flown at a cruising level that is not a specified IFR cruising level for the track and they do not give way to an aircraft conducting a VFR flight on a track that is flying at a specified VFR cruising level for its track.

Subregulation 91.300(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.305 – Minimum heights—IFR flights

Subregulation 91.305(1) provides that the pilot in command of an aircraft for an IFR flight contravenes this subregulation if the aircraft is flown along a route or route segment at a height lower than the minimum heights mentioned in subregulation (2) and none of the circumstances mentioned in subregulation (3) apply.

Subregulation 91.305(2) provides that the minimum height is the lowest of the following for the route or route segment:

- (a) the published lowest safe altitude for the route or route segment (if any);
- (b) the minimum sector altitude published in the authorised aeronautical information for the flight (if any);
- (c) the lowest safe altitude for the route or route segment.

Subregulation 91.305(3) provides that the circumstances are the following:

- (a) the aircraft is taking off or landing;
- (b) the aircraft is being flown in accordance with the requirements of one of the following:
 - (i) a published visual approach or departure procedure;
 - (ii) an authorised instrument departure procedure or an authorised instrument approach procedure;
 - (iii) an air traffic control clearance;
- (c) the aircraft is being flown in VMC by day.

Subregulation 91.305(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

An explanatory note mentions that, pursuant to regulations 133.300 and 138.275 of CASR, subregulation 91.305(1) does not apply to certain medical transport operations in a rotorcraft and certain aerial work operations.

Regulation 91.310 – Minimum heights—VFR flights at night

Subregulation 91.310(1) provides that the pilot in command of an aircraft on a VFR flight at night contravenes this subregulation if the aircraft is flown along a route or route segment at a height lower than the minimum height mentioned in subregulation (2) and none of the circumstances mentioned in subregulation (3) apply.

Subregulation 91.310(2) provides that the minimum height is the lowest of the following for the route or route segment:

- (a) the published lowest safe altitude for the route or route segment (if any);
- (b) the minimum sector altitude published in the authorised aeronautical information for the flight (if any);
- (c) the lowest safe altitude for the route or route segment;
- (d) 1,000 ft above the highest obstacle on the ground or water within 10 nautical miles ahead of, and to either side of, the aircraft at that point on the route or route segment;
- (e) the lowest altitude for the route or route segment calculated in accordance with a method prescribed by the Part 91 Manual of Standards for the purposes of this paragraph.

Subregulation 91.310(3) provides that the circumstances are the following:

- (a) the aircraft is taking off or landing;
- (b) the aircraft is within 3 nautical miles of the aerodrome from which the aircraft has taken off, or at which the aircraft will land;
- (c) the aircraft is being flown in accordance with air traffic control clearance.

Subregulation 91.310(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

An explanatory note mentions that, pursuant to regulations 133.300 and 138.275 of CASR, subregulation (1) does not apply to certain medical transport operations in a rotorcraft and certain aerial work operations.

Regulation 91.315 – Minimum height rules—populous areas and public gatherings

Subregulation 91.315(1) provides that this regulation applies if an aircraft is flown over a populous area or a public gathering.

Subregulation 91.315(2) provides that the pilot in command of an aeroplane contravenes this subregulation if they fly the aircraft below the height outlined in this subregulation and none of the circumstances mentioned in subregulation (4) apply.

Subregulation 91.315(3) provides that the pilot in command of a helicopter contravenes this subregulation if they fly the aircraft below the height outlined in this subregulation and none of the circumstances mentioned in subregulation (4) apply.

Subregulation 91.315(4) provides that the circumstances mentioned under subregulations (2) and (3) are the circumstances outlined in this subregulation.

Subregulation 91.315(5) provides that a contravention of subregulation (2) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

An explanatory note mentions that, pursuant to regulations 133.300 and 138.275 of CASR, subregulation (1) does not apply to certain medical transport operations in a rotorcraft and certain aerial work operations.

These provisions mitigate the risks to people and property that are associated with the low flying of aircraft.

Regulation 91.320 – Minimum height rules—other areas

Subregulation 91.320(1) provides that this regulation applies if an aircraft is flown in an area that is not over a populous area or a public gathering.

Subregulation 91.320(2) provides that the pilot in command of an aircraft contravenes this subregulation if they fly the aircraft below the heights outlined in this subregulation and none of the circumstances mentioned in subregulation (3) exist.

Subregulation 91.320(3) provides that the circumstances are the circumstances outlined in this subregulation.

An explanatory note mentions that, pursuant to regulations 133.300 and 138.275 of CASR, subregulation (1) does not apply to certain external load operations or medical transport operations in a rotorcraft and certain aerial work operations.

These provisions mitigate the risks to people and property that are associated with the low flying of aircraft.

Subdivision 91.D.4.4 – Avoiding collisions in the air

This subdivision inserts a new Subdivision 91.D.4.4 of CASR, inclusive of regulations 91.325 to 91.340, that prescribes the basic rule for avoiding collisions and right of way rules.

Regulation 91.325 provides that a flight crew member must, during a flight, maintain vigilance, so far as weather conditions permit, to see and avoid other aircraft.

Regulation 91.330 – Right of way rules

Subregulation 91.330(1) provides that the pilot in command of an aircraft contravenes this subregulation if, during the flight, a risk of collision between the aircraft and another aircraft exists and, in a circumstance mentioned column 1 of an item of the table to the subregulation, the pilot contravenes the right of way rule mentioned in column 2 of the table for the item. The table itemises flight circumstances in which particular right of way rules apply for the purpose of the subregulation.

Subregulation 91.330(2) provides that subregulation (1) does not apply if it is necessary, to avoid a collision, to contravene a rule outlined by that subregulation.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.330(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions state which aircraft are required to give way in prescribed circumstances.

Regulation 91.335 – Additional right of way rules

This regulation would extend regulation 91.330 by stating actions to be taken when being yielded to, when overtaking and when being approached head on.

Aircraft with right of way to maintain heading and speed

Subregulation 91.335(1) provides that the pilot in command of an aircraft contravenes this subregulation if they have right of way and do not maintain heading and speed until the risk of collision has passed.

Overtaking aircraft to clear and to right

Subregulation 91.335(2) provides that the pilot in command of an aircraft contravenes this subregulation if, while overtaking another aircraft, they do not pass to the right of that aircraft and stay clear of that aircraft.

Aircraft approaching head on to alter heading to right

Subregulation 91.335(3) provides that the pilot in command of an aircraft contravenes this subregulation if, when approaching another aircraft head on where a collision risk exists, they do not alter heading to the right.

Aircraft giving way not to create collision risk

Subregulation 91.335(4) provides that the pilot in command of an aircraft contravenes this subregulation if, when required to give way to an aircraft by this regulation, or regulation 91.330 or 91.340, they fly so close to the other aircraft as to create a collision hazard.

Exceptions

Subregulation 91.335(5) provides that subregulations (1), (2), (3) or (4) do not apply if it is necessary, to avoid a collision with an aircraft, to not comply with that subregulation.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.335(6) provides that subregulation (4) does not apply if, because of a command of the aircraft's airborne collision avoidance system, the pilot was manoeuvring the aircraft to the extent necessary to ensure the safety of the aircraft.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Offence

Subregulation 91.335(7) provides that a contravention of subregulation (1), (2), (3) or (4) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate hazards associated with aeroplanes operating in close proximity such as when approaching or departing aerodromes.

Regulation 91.340 – Right of way rules for take-off and landing

Subregulation 91.340(1) provides that the pilot in command of an aircraft contravenes this subregulation if, during take-off or landing, the aircraft is flown in a manner that creates a risk of collision with:

- (a) another aircraft, or
- (b) person, vessel, vehicle or structure.

Subregulation 91.340(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Subdivision 91.D.4.5 – Avoiding collisions on water

This subdivision inserts a new Subdivision 91.D.4.5 of CASR, inclusive of regulations 91.345 to 91.355, that prescribes requirements for avoiding collisions on water.

Regulation 91.345 – Compliance with International Regulations

Subregulation 91.345(1) prescribes that this regulation applies in relation to a requirement of the International Regulations to the extent that the requirement is not inconsistent with a requirement of regulation 91.355.

The International Regulations are the *International Regulations for Preventing Collisions at Sea, 1972* in the *Convention on the International Regulations for Preventing Collisions at Sea*, done at London on 20 October 1972, as amended and in force for Australia from time to time.

Subregulation 91.345(2) provides that the pilot in command of an aircraft contravenes this subregulation if, during the flight, the aircraft is operating on water and it is not operated in accordance with the International Regulations.

Subregulation 91.345(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.350 – Giving way to vessels

Subregulation 91.350(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is in level flight, or is manoeuvring near the surface of water, and the aircraft does not, as far as possible, keep clear of a vessel or avoid impeding the navigation of a vessel.

Subregulation 91.350(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.355 – Giving way on water

Subregulation 91.355(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is on water and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.355(2) provides that the requirements that must be met to avoid a contravention of subregulation (1) are:

- (a) the aircraft must give way to, and keep well clear of, an aircraft or vessel converging on its right;
- (b) the aircraft must alter its heading to the right, and keep well clear of, an aircraft or vessel that is approaching head-on or approximately head-on;
- (c) the aircraft, if overtaking a vessel or another aircraft, must:
 - (i) give way to the vessel or aircraft being overtaken; and
 - (ii) alter its heading to keep well clear of the vessel or aircraft being overtaken.

Subregulation 91.355(3) provides that subregulation (1) does not apply if it is necessary, to avoid a collision with an aircraft or vessel, to not comply with the requirement.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.355(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Subdivision 91.D.4.6 – Avoiding collisions at or in the vicinity of aerodromes

This subdivision inserts a new Subdivision 91.D.4.6 of CASR, inclusive of regulations 91.360 to 91.405, that prescribes requirements for operations in the vicinity of non-controlled aerodromes including requirements for taxiing, taking off, landing and communications.

Regulation 91.360 – Meaning of in vicinity of a non-controlled aerodrome

Subregulation 91.360(1) defines that an aircraft is in the vicinity of a non-controlled aerodrome if it is:

- (a) in uncontrolled airspace; and
- (b) within 10 nautical miles of the aerodrome; and
- (c) at a height above the aerodrome that could result in conflict with operations at the aerodrome.

Subregulation 91.360(2) provides that if an aerodrome reference point for the aerodrome is published in the authorised aeronautical information for the flight, the distance referred to in subregulation (1) must be measured from that point.

Regulation 91.365 – Taxiing or towing on movement area of aerodrome

Subregulation 91.365(1) provides that a person contravenes this subregulation if the person is taxiing or towing an aircraft on the movement area of an aerodrome and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.365(2) provides that the requirements that must be met to avoid a contravention of subregulation (1) are the following:

- (a) the aircraft and any tow vehicle must give way in accordance with subregulation (3) to any aircraft that is landing or on its final approach to land;
- (b) the aircraft and any tow vehicle must give way in accordance with subregulation (3) to an aircraft that is taking off or preparing for take-off;
- (c) the aircraft and any tow vehicle must keep well clear of an aircraft it is overtaking;
- (d) the aircraft and any tow vehicle must give way to an aircraft on the right if both aircraft are converging on a course;
- (e) the aircraft and any tow vehicle must stop, or alter course to the right, so as to remain clear of an aircraft approaching head on, or approximately so.

Subregulation 91.365(3) provides that for paragraphs 91.365(2)(a) or (b):

- (a) for a runway that has a marked runway hold position for the aircraft, the aircraft giving way and any tow vehicle must hold at that position; and
- (b) for a runway that does not have a marked runway hold position, the aircraft giving way and tow vehicle must not encroach upon a graded runway strip.

Subregulation 91.365(4) provides that subregulation (1) does not apply if it is necessary to not comply with the requirement in order to avoid a collision with an aircraft and any tow vehicle.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.365(5) provides that subregulation (1) does not apply if the aircraft and any tow vehicle are being operated in accordance with an air traffic control clearance or air traffic control instructions.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.365(6) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.370 – Take-off or landing at non-controlled aerodrome—all aircraft

Subregulation 91.370(1) provides that this regulation applies to an aircraft (the subject aircraft) at a non-controlled aerodrome at which a take-off or landing of the aircraft can only occur from or to a runway.

Rules for take-off

Subregulation 91.370(2) provides that the pilot in command of a subject aircraft contravenes this subregulation if the aircraft commences a take-off from a runway and, before taking off, a requirement mentioned in subregulation (3) is not met.

Subregulation 91.370(3) provides that the requirements are the following:

- (a) if another aircraft is taking off before the subject aircraft on the same runway:
 - (i) the other aircraft must have crossed the upwind end of the runway; or
 - (ii) the other aircraft must have commenced a turn; or
 - (iii) the runway must be longer than 1800 m and the other aircraft must have become airborne and be at least 1800 m beyond the proposed point of lift off of the subject aircraft; or
 - (iv) the other aircraft and the subject aircraft must both have a maximum take-off weight below 2,000 kg, and the other aircraft must be airborne and at least 600 m beyond the proposed point of lift-off of the subject aircraft;
- (b) if another aircraft is landing on the same runway before the subject aircraft, the other aircraft must have vacated the runway;
- (c) if another aircraft is landing before the subject aircraft and is using a crossing runway, the other aircraft must have crossed or stopped short of, the runway the aircraft is taking off from.

Rules for landing

Subregulation 91.370(4) provides that the pilot in command of the subject aircraft contravenes this subregulation if they continue an approach to land at an aerodrome past the threshold of the runway and a requirement mentioned in subregulation (5) is not met.

Subregulation 91.370(5) provides that the requirements are the following:

- (a) if another aircraft is taking off using the same runway before the subject aircraft, the other aircraft must be airborne and have commenced a turn or the other aircraft must be beyond the point on the runway at which the aircraft could be expected to complete its landing roll and there must be sufficient distance for the subject aircraft to manoeuvre safely in the event of a missed approach;
- (b) if another aircraft is landing on the runway before the subject aircraft, the other aircraft must have vacated the runway or must be taxiing away from the runway;
- (c) if another aircraft is landing before the subject aircraft and is using a crossing runway, the other aircraft must have crossed, or must have stopped short of, the runway the subject aircraft is landing on.

Application of rules where gliders or glider tugs operate

Subregulation 91.370(6) provides that at an aerodrome where glider or glider tugs operate to a common circuit pattern from a parallel strip outside the runway strip, subregulations (2) and (4) apply to an aircraft taking off or landing on either the runway or the parallel strip as if the runway and strip were a single runway, but aircraft taxiing or stationary on either the runway or the parallel strip are taken not to affect operations on the other.

Exception

Subregulation 91.370(7) provides that subregulations (2) or (4) do not apply if the aircraft is taking off or landing at an aerodrome where gliders or glider tugs operate to a contra-circuit pattern on both

a runway or parallel strip, and simultaneous operations on the runway and parallel strip are permitted.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. Consistent with the general justification above, operations at the time are not the subject of regulatory documentation. It is also within the knowledge of the defendant.

Offence

Subregulation 91.370(8) provides that a contravention of subregulations (2) or (4) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.375 – Operating on the manoeuvring area, or in vicinity, of non-controlled aerodrome—general requirements

Subregulation 91.375(1) provides that the pilot in command of an aircraft contravenes this subregulation if they operate an aircraft on the manoeuvring area of, or in the vicinity of, a non-controlled aerodrome and the requirements mentioned in subregulation (2) are not met.

Subregulation 91.375(2) provides that the requirements are the following:

- (a) the pilot must keep a lookout for the other aircraft operated on the manoeuvring area, or in the vicinity of, the aerodrome to avoid collision;
- (b) the pilot must ensure that the aircraft does not cause a danger to other aircraft on the manoeuvring area, or in the vicinity of, the aerodrome;
- (c) if the pilot is flying the aircraft in the vicinity of the aerodrome, the pilot must join or avoid the circuit pattern for the aerodrome;
- (d) if the aircraft is an aeroplane, the pilot must not:
 - (i) take-off from a part of the aerodrome that is outside the aerodrome landing area; or
 - (ii) land the aircraft on a part of the aerodrome that is outside the aerodrome landing area.

Subregulation 91.375(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.380 – Operating on manoeuvring area, or in the vicinity, of non-controlled aerodrome—landing and taking off into the wind

Subregulation 91.380(1) provides that the pilot in command of an aircraft contravenes this subregulation if they operate the aircraft on the manoeuvring area of, or in the vicinity of, a non-controlled aerodrome and they do not, to the extent practicable, land and take off into the wind.

Subregulation 91.380(2) provides that that subregulation (1) does not apply if the aircraft flight manual instructions for the aircraft allow the aircraft to land or take off downwind or in a crosswind, and the pilot is satisfied that traffic conditions at the aerodrome enable such a landing or take-off to be carried out safely.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. Consistent with the general justification above, the pilot's satisfaction is a matter of judgment that is not the subject of regulatory documentation, but is within the knowledge of the defendant.

Subregulation 91.380(3) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

Regulation 91.385 – Operating on manoeuvring area, or in vicinity, of non-controlled aerodrome—requirements that apply after joining the circuit pattern

Subregulation 91.385(1) provides that the pilot in command of an aircraft (other than a rotorcraft) contravenes this subregulation if, when operating in the circuit pattern of a non-controlled aerodrome, they do not comply with instructions published in authorised aeronautical information with respect to direction of turns, or where those instructions are not published, make all turns to the left.

Subregulation 91.385(2) provides that subregulation (1) does not apply to the pilot in command of a seaplane or amphibian aircraft if the pilot in command contravenes the subregulation only to the extent necessary to avoid an obstacle; or to avoid undue noise over a populated area without compromising the aircraft's safety; or for a single-engine seaplane or amphibian, to enable the aircraft to land on water if its engine fails.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.385(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.390 – Operating in manoeuvring area, or in vicinity, of non-controlled aerodrome—requirements related to maintaining the same track after take-off

Subregulation 91.390(1) provides that the pilot in command of an aircraft (other than a rotorcraft) contravenes this subregulation if they do not maintain the same track from take-off until the aircraft is above 500 ft AGL.

Subregulation 91.390(2) provides that subregulation (1) does not apply to the pilot in command of a seaplane or amphibian aircraft if they contravene that subregulation only to the extent necessary to avoid an obstacle or to avoid undue noise over a populated area without compromising the aircraft's safety, or for a single-engine seaplane or amphibian, to enable the aircraft to land on water if its engine fails.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.390(3) provides that subregulation (1) does not apply to the pilot in command if a change of track is necessary to avoid terrain.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.390(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.395 – Straight-in approaches at non-controlled aerodromes

Subregulation 91.395(1) provides that the pilot in command of an aircraft contravenes this subregulation if they perform a straight-in approach to a non-controlled aerodrome and the requirements of subregulation (2) are not met.

Subregulation 91.395(2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) before starting the approach, the pilot in command must determine the wind direction and the runways in use at the aerodrome;
- (b) the aircraft must give way to other aircraft flying in the circuit pattern; and
- (c) for an approach other than an approach carried out in IMC using an instrument approach procedure, all manoeuvring must be carried out to establish the aircraft on the final approach, at least 3 nautical miles from the threshold intended to be used for the landing.

Subregulation 91.395(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.400 – Communicating at certified, registered, military or designated non-controlled aerodromes

Subregulation 91.400(1) provides that the pilot in command of an aircraft contravenes this subregulation if they operate in the vicinity of non-controlled aerodrome (that is certified, registered, military or other as specified in the Part 91 MOS) and, if they are not carrying an operative radio, the requirement of subregulation (2) is not met.

Subregulation 91.400(2) provides that the requirement mentioned in subregulation (1) is that the requirements of either subregulation (3) or (4) be satisfied.

Subregulation 91.400(3) provides that this subregulation is satisfied if:

- (a) the flight is conducted during the day in VMC; and
- (b) the flight is conducted in company with another aircraft; and
- (c) the other aircraft is carrying the operative radio; and
- (d) the pilot in command of the other aircraft is authorised to use that radio (under Part 61 of CASR or an applicable foreign equivalent).

Subregulation 91.400(4) provides that this subregulation is satisfied if:

- (a) the radio fails during the flight or the flight is for the purpose of flying to a place the radio can be repaired; and
- (b) if the aircraft is flying in the vicinity of an aerodrome any landing lights, anti-collision lights and secondary surveillance radar transponder are switched on; and
- (c) if the aircraft is arriving at the aerodrome, the aircraft joins the circuit pattern for the aerodrome on the cross-wind or down-wind leg of the circuit pattern.

Subregulation 91.400(5) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.405 – Aircraft in aerodrome traffic at controlled aerodromes

Subregulation 91.405(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is part of aerodrome traffic at a controlled aerodrome and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.405(2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) a continuous watch for instructions given visually by ATS for the aerodrome must be maintained;
- (b) if a continuous listening watch on the applicable ATS frequency can be maintained, the continuous listening watch must be maintained;
- (c) authorisation to conduct a manoeuvre associated with, taxiing, landing or take-off must be obtained from ATS for the aerodrome before the manoeuvre is conducted.

Subregulation 91.405(3) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is part of aerodrome traffic at a controlled aerodrome and a requirement mentioned in subregulation (4) is not met.

Subregulation 91.405(4) provides that the requirements mentioned in subregulation (3) are the following:

- (a) the aircraft must maintain the same track from take-off until the aircraft is above 500 ft AGL unless it is necessary to change track to avoid terrain; and
- (b) the aircraft must make all turns in the direction of the circuit pattern when the aircraft is in that circuit pattern (whether taking off or landing).

Subregulation 91.405(5) provides that subregulation (3) does not apply if ATS for the aerodrome instructed or permitted the pilot to engage in the conduct that would otherwise result in contravention of subregulation (4), or the aircraft is being flown in accordance with an authorised instrument departure procedure or an authorised instrument approach procedure.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.405(6) provides that a contravention of subregulation (1) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.D.5 – Taking off, landing and ground operations

This Division inserts a new Division 91.D.6 of CASR, inclusive of regulations 91.410 to 91.450, that prescribes requirements for ensuring the safe operation aeroplanes and rotorcraft when on the ground and when operating in marginal weather conditions.

Regulation 91.410 – Use of aerodromes

This regulation does not apply to the operation of an aircraft if regulation 121.205 of CASR applies to the operation in accordance with regulation 91.035.

Subregulation 91.410(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft take-off or lands from a place that does not meet the requirement of subregulation (2).

Subregulation 91.410(2) provides that the requirement is that:

- (a) the place is:
 - (i) a certified aerodrome;
 - (ii) a registered aerodrome;
 - (iii) an aerodrome for which an arrangement under section 20 of the Act is in force;
 - (iv) a place that is suitable for landing and take-off of an aircraft; and
- (b) the aircraft can land or take-off from the place safely having regard to all the circumstances of the proposed landing or take-off (including the prevailing weather conditions).

Subregulation 91.410(3) provides that for the purposes of the definition of aerodrome in the Act, a 'place that is suitable for landing and take-off of aircraft' is authorised to be used as an aerodrome.

Subregulation 91.410(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.415 – Taxiing aircraft

Subregulation 91.415(1) provides that a person contravenes this subregulation if they taxi an aircraft and the person is not authorised to do so under the laws mentioned in the subregulation (Part 61 or Part 64 of CASR or an applicable foreign equivalent).

Subregulation 91.415(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.420 – Parked aircraft not to create hazard

Subregulation 91.420(1) provides that a person contravenes this subregulation if the person parks an aircraft in a place where the aircraft is a hazard to the movement of other aircraft.

Subregulation 91.420(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 25 penalty units.

Regulation 91.425 – Safety when aeroplane operating on ground

Subregulation 91.425(1) provides that a person contravenes this subregulation if they start the engine of an aeroplane, or cause the engine to be started, while the aeroplane is on the ground and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.425(2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) the person who starts the engine, or causes it to be started must be authorised to do so under Part 61 or Part 64 of CASR or under an applicable foreign equivalent or be a person of a kind mentioned in the Part 91 MOS; and
- (b) if the person starting the engine is of a kind prescribed by the Part 91 MOS, the aeroplane must be secured from moving.

Subregulation 91.425(3) provides that subregulation (1) does not apply if the person is starting the engine by manipulating the propeller of the aeroplane, assistance is not readily available, the aeroplane is secured from moving and no person is on board the aircraft.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.425(4) provides that a person contravenes this subregulation if the person operates an aeroplane on the ground (or causes an aeroplane to be operated on the ground) and they permit another person to board the aeroplane (or to remain on board) while a pilot seat of the aeroplane is not occupied by a person who is competent to apply the brakes and control the engine.

Subregulation 91.425(5) provides that a person is competent to apply the brakes and control the engine of an aeroplane (including how to shut the engine down) if they have been given instructions on how to do so and been assessed as competent by another person, or the person is authorised to do so under Part 61 or Part 64 of CASR or an applicable foreign equivalent.

Subregulation 91.425(6) provides that a contravention of subregulation (1) or (4) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

This regulation ensures that risks associated with starting aeroplane engines are mitigated by requiring a person to be an authorised pilot (under Part 61 of CASR), another authorised person such as an aviation maintenance engineer (under Part 64 of CASR) or a person authorised by the State of registry of the aircraft or the State of the operator of the aircraft.

Regulation 91.430 – Safety when rotorcraft operating on ground

Subregulation 91.430(1) provides that a person contravenes this subregulation if they operate a rotorcraft on the ground and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.430(2) provides that the requirement mentioned in subregulation (1) is that the person must be authorised to do so (under Part 61 of CASR to pilot the aircraft, or an applicable foreign equivalent).

Subregulation 91.430(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.435 – IFR take-off and landing minima

Subregulation 91.435(1) provides a head of power for the Part 91 MOS to prescribe requirements for take-off and landing minima for an aerodrome.

Subregulation 91.435(2) provides that the operator and pilot in command of an aircraft for an IFR flight each contravene this subregulation if the aircraft conducts a take-off from an aerodrome and a requirement relating to take-off minima for the aerodrome is not met.

Subregulation 91.435(3) provides that the operator and pilot in command of an aircraft for an IFR flight each contravene this subregulation if the aircraft conducts a landing at an aerodrome and a requirement relating to landing minima for the aerodrome is not met.

Subregulation 91.435(4) provides that a contravention of subregulation (2) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions ensure that aircraft do not take-off or land in meteorological conditions that unduly prejudice the safe operation of the aircraft.

Regulation 91.440 – Approach ban for IFR flights

Subregulation 91.440(1) provides a head of power for the Part 91 MOS to prescribe circumstances in which an aircraft flown under the IFR must not make an approach to land at an aerodrome.

Subregulation 91.440(2) provides that the operator and pilot in command of an aircraft on an IFR flight each contravene this subregulation if the aircraft makes an approach in the circumstances mentioned in subregulation (1).

Subregulation 91.440(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Certain risks are associated with an aircraft descending to a runway in non-visual conditions. This regulation contributes to the safety of air navigation by ensuring that an aircraft is not flown to a low altitude when known weather conditions will unduly prejudice the safety of an approach and landing.

Regulation 91.445 – Taking off and landing in low visibility

Subregulation 91.445(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft takes-off or lands in low visibility and either the operator or pilot in command do not hold CASA approval under regulation 91.045 for the conduct of low visibility operations. When an operator is required to maintain an exposition or operations manual they must hold the necessary approval. When an operator is not required to maintain an exposition or operations manual, the pilot in command must hold the necessary approval.

Subregulation 91.445(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions ensure that aircraft are not operated in low-visibility meteorological conditions, which may affect the safe operation of the aircraft, when the pilot in command and operator are not approved to do so.

Regulation 91.450 – Specified aircraft performance categories

Subregulation 91.450(1) provides that the operator of an aircraft contravenes this subregulation if the aircraft is operated at an aerodrome in a performance category lower than that required for the aircraft at the aerodrome and the operator does not hold a CASA approval under regulation 91.045. If such an approval is held, the operator is required to comply with subregulation (3).

Subregulation 91.450 (2) provides that the operator of an aircraft contravenes this subregulation if they hold a CASA approval under regulation 91.045 to operate in a lower performance category and the aircraft is not operated in that category.

Subregulation 91.450(3) requires the operator to provide the flight crew with the approval and the conditions of the approval.

Subregulation 91.450(4) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions ensure that, when conducting instrument approach procedures, aircraft are operated at a speed that ensures they remain within the boundaries established for such an approach.

Division 91.D.6 – Fuel requirements

This Division inserts a new Division 91.D.6 of CASR, inclusive of regulations 91.455 to 91.515, that prescribes requirements for ensuring the safety of aircraft operations, people and property during fuelling operations.

Regulation 91.455 – Fuel requirements

This regulation does not apply to the operation of an aircraft if Division 121.D.6, 133.D.6 or 135.D.6 or 138.D.6 applies to the operation in accordance with regulation 91.035.

Subregulation 91.455(1) provides a head of power for the Part 91 MOS to prescribe requirements relating to the amount of fuel to be carried and its management. The subregulation states that the requirements may relate to, but are not limited to, the following:

- (a) the matters that must be considered when determining whether an aircraft has sufficient fuel to complete a flight safely;
- (b) the amounts of fuel that must be carried on board an aircraft for a flight;
- (c) procedures for monitoring amounts of fuel during a flight;
- (d) procedures to be followed if fuel reaches specified amounts during a flight.

Subregulation 91.455(2) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement mentioned in subregulation (1) is not met for the flight.

Subregulation 91.455(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.460 – Oil requirements

Subregulation 91.460(1) provides that the pilot in command of an aircraft contravenes this subregulation if when the flight begins, the aircraft is not carrying sufficient oil to complete the flight safely.

Subregulation 91.460(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.465 – Contaminated, degraded or inappropriate fuels

Subregulation 91.465(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if before the flight begins, they do not ensure that the aircraft has been fuelled with fuel that is not contaminated, degraded or inappropriate.

Subregulation 91.465(2) provides that a person contravenes this subregulation if they supply fuel for fuelling an aircraft that is contaminated, degraded or inappropriate fuel for the aircraft.

Subregulation 91.465(3) provides that a person contravenes this subregulation if they fuel an aircraft with fuel that is contaminated, degraded or inappropriate for the aircraft.

Subregulation 91.465(4) provides that a contravention of subregulation (1), (2) or (3) is an offence. The penalty for the offence has been established as 50 penalty units.

These provisions contribute to the safety of air navigation by holding persons accountable for ensuring the use of the appropriate quality and type of fuel in an aircraft.

Regulation 91.470 – Fire hazards

Subregulation 91.470(1) provides that a person contravenes this subregulation if, while an aircraft is being fuelled, they create a fire hazard within 15 m of an aircraft or the equipment being used.

Subregulation 91.470(2) provides that a person contravenes this subregulation if a fire hazard exists within 15 m of an aircraft or the equipment being used, and they fuel the aircraft.

Subregulation 91.470(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.475 – Fuelling aircraft – fire fighting equipment

Subregulation 91.475(1) provides that a person contravenes this subregulation if a requirement mentioned in subregulation (2) is not met.

Subregulation 91.475(2) provides the fire fighting equipment requirements that have to be met to avoid a contravention of subregulation (1).

Subregulation 91.475(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.480 – Fuelling aircraft – electrical bonding

Subregulation 91.480(1) provides that a person contravenes this subregulation if they fuel an aircraft and the aircraft is not electrically bonded to the fuelling equipment.

Subregulation 91.480(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Electrical bonding is the act of connecting a cable between the aircraft and the fuelling equipment. Its purpose is to avoid the build-up of static electricity which can create a spark hazard.

Regulation 91.485 – Equipment or electronic devices operating near aircraft

Operation of equipment or electronic device near aircraft during fuelling

Subregulation 91.485(1) provides that a person contravenes this subregulation if, while an aircraft is being fuelled, they operate equipment or an electronic device within 15 m of a critical fuelling point for the aircraft.

Fuelling aircraft while equipment or electronic device is operated near aircraft

Subregulation 91.485(2) provides that a person contravenes this subregulation if equipment or an electronic device is operated within 15 m of an aircraft and they fuel the aircraft.

Exceptions

Subregulation 91.485(3) provides that subregulations (1) and (2) do not apply if:

- (a) the equipment or electronic device is part of the aircraft or aircraft's fuelling equipment, or is designed for use during fuelling operations, or performs an aircraft servicing function and is safe for use within 15 m of a critical fuelling point; or complies with an industry standard about the safe use of equipment or electronic devices within 15 m of a critical fuelling point; or

- (b) the equipment is an auxiliary power unit for the aircraft and the operation of the power unit starts before the fuelling of the aircraft and the aircraft flight manual instructions for the aircraft permit the auxiliary power unit to be operated during fuelling
- (c) the electronic device is hazardous to the process of fuelling the aircraft only because it was designed to produce radio emissions, within the meaning of the Radiocommunications Act 1992, and is operated at least 6 m from each critical fuelling point for the fuelling of the aircraft; or
- (d) for turbine-engine aircraft; the electronic device is a low-risk electronic device and is operated in accordance with regulation 91.490 of CASR.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. In particular, the assessment of whether the equipment satisfies the stated criteria is a matter of judgement for the defendant.

Offence

Subregulation 91.485(4) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.490 – Fuelling turbine-engine aircraft—low-risk electronic devices

Use of device inside cabin of aircraft

Subregulation 91.490(1) provides that a person on a turbine-engine aircraft contravenes this subregulation if they operate a low-risk electronic device inside the cabin of the aircraft when the aircraft is being fuelled without the permission of the pilot in command of the aircraft.

Subregulation 91.490(2) provides that the pilot in command of a turbine engine aircraft contravenes this subregulation if they permit a person to operate a low-risk electronic device inside the cabin of the aircraft while the aircraft is being fuelled and the requirement of subregulation (3) is not met.

Subregulation 91.490(3) provides that the requirement mentioned in subregulation (2) is that during fuelling, each cabin door within 3 m of a critical fuelling point for the fuelling of the aircraft must be closed.

Use of device outside cabin of aircraft

Subregulation 91.490(4) provides that a person contravenes this subregulation if they operate a low-risk electronic device outside the cabin of a turbine-engine aircraft when the aircraft is being fuelled and a requirement of subregulation (5) is not met.

Subregulation 91.490(5) provides that the requirements mentioned in subregulation (4) are that the device must be operated at a distance of greater than 3 m from each critical fuelling point unless the person is employed or engaged by the operator and is assessed as having the competency mentioned in subparagraph 91.490(5)(b)(ii).

Subregulation 91.490(6) provides that a contravention of subregulation (1), (2), or (4) is an offence. The penalty for the offence has been established as 50 penalty units.

Regulation 91.495 – Only turbine-engine aircraft to be hot fuelled

Subregulation 91.495(1) provides that the pilot in command of an aircraft contravenes this subregulation if their aircraft is hot fuelled and the aircraft is not a turbine-engine aircraft.

Subregulation 91.495(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

An aircraft is hot fuelled when it was fuelled while an engine is running. These provisions would contribute to the safety of persons and property by ensuring that piston engine aircraft (which have a more volatile fuel than turbine engine aircraft) were not fuelled while an engine is running.

Regulation 91.500 – Hot fuelling aircraft—general

Subregulation 91.500(1) provides that the pilot in command of an aircraft contravenes this subregulation if their aircraft is hot fuelled and a requirement in subregulation (2) is not met. By operation of regulation 91.495, the regulation only applies in relation to the fuelling of turbine-engine aircraft.

Subregulation 91.500(2) provides the hot fuelling requirements that have to be met to avoid contravening subregulation (1).

Subregulation 91.500(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate against any adverse impact on the safety of air navigation by ensuring suitable safety measures are in place to manage the control of fuel, vapour and other fire related risks.

Regulation 91.505 – Hot fuelling aircraft—procedures etc.

This regulation does not apply to the operation of an aircraft if Division 138.D.6 applies to the operation in accordance with regulation 91.035.

Subregulation 91.505(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is hot fuelled and matters prescribed in the subregulation hot fuelling are not all set out in the aircraft flight manual instructions.

Subregulation 91.505(2) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is fuelled in a circumstance not mentioned in the aircraft flight manual, the flight manual procedures are not followed, or the flight manual emergency procedures are not followed.

Subregulation 91.505(3) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is hot fuelled and persons directly involved in the hot fuelling have not been briefed on compliance with the procedures and circumstances mentioned in subregulation (1).

Subregulation 91.505(4) provides that a contravention of subregulation (1), (2) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate against any adverse impact on the safety of aircraft, and persons around aircraft, during hot fuelling air navigation by reinforcing the requirement for flight crew to operate in accordance with the aircraft flight manual instructions at all times.

Regulation 91.510 – Fuelling aircraft—persons on aircraft, boarding or disembarking

This regulation does not apply to the operation of an aircraft if regulation 121.240, 133.195 or 133.220 applies to the operation in accordance with regulation 91.035.

Subregulation 91.510(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is being fuelled with a highly volatile fuel and a person, other than a crew member, is on the aircraft, boarding the aircraft or disembarking the aircraft.

Subregulation 91.510(2) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is being fuelled with a fuel other than a highly volatile fuel and a person, other than a crew member, is on the aircraft, boarding the aircraft or disembarking the aircraft; and the pilot in command does not hold an approval under regulation 91.045 to fuel the aircraft in those circumstances.

Subregulation 91.510(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate against any adverse impact on the safety of aircraft, and persons around aircraft, by minimising the number of people present when an aircraft is being fuelled. Air transport operators will be permitted to operate in contravention of this regulation under Parts 121, 133 or 135 of CASR.

Aviation fuel is often classified according to its volatility. Fuel required for piston-engine aircraft is considered highly volatile. Fuel required for turbine-engine aeroplanes is classified as a non-highly volatile fuel.

Regulation 91.515 – Fuelling aircraft if fuel vapour detected

Subregulation 91.515(1) provides that the operator of an aircraft contravenes this subregulation if fuel vapour is detected while the aircraft is being fuelled and a person, other than a crew member, is on the aircraft, boarding the aircraft or disembarking the aircraft and the fuelling is continued.

Subregulation 91.515(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate against any adverse impact on the safety of aircraft, and person around aircraft, during fuelling by ensuring that fuelling is immediately stopped should vapour be detected (indicating the possibility of a malfunction and the potential for an emergency).

Division 91.D.7 – Safety of persons on aircraft and cargo requirements

This Division inserts a new Division 91.D.7 of CASR, inclusive of regulations 91.520 to 91.620, that prescribes requirements for conduct of persons on board, seating, and the briefing of passengers. Additionally, it prescribes requirements for the loading of cargo in cargo compartments and inside the aircraft cabin, along with requirements for restraint of cargo.

Cargo is defined by Part 1 of the CASR dictionary as “... things other than persons carried in an aircraft”.

Regulation 91.520 – Crew members to be fit for duty

Subregulation 91.520(1) provides that a crew member for a flight contravenes this subregulation if they begin a duty necessary to the safe operations of the flight when they are, or are likely to be, unfit to perform as required.

Subregulation 91.520(2) provides that a crew member for a flight contravenes this subregulation if they carry out a duty necessary to the safe operations of the flight if they consume alcohol during the 8 hour period before the flight begins or if they return a positive alcohol test result (within the meaning of Part 99 of CASR).

Subregulation 91.520(3) provides that the crew member of an aircraft contravenes this subregulation if they consume alcohol while on board the aircraft.

Subregulation 91.520(4) provides that the operator of an aircraft for a flight contravenes this subregulation if:

- (a) the operator reasonably believes that a crew member is, or is likely to be, unfit to perform as required; and
- (b) the duty relates to the safety of the aircraft of the persons on the cargo on the aircraft; and
- (c) the operator assigns the crew member to duty for the flight.

Subregulation 91.520(5) provides that a contravention of subregulation (1), (2) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Subregulation 91.520(6) provides that a contravention of subregulation (4) is an offence. The penalty for the offence has been established as 50 penalty units.

Subregulation 91.520(7) provides that strict liability only applies to paragraphs (4)(b) and (c).

Subregulation 91.520(8) provides, without limiting subregulation (1) or (4), that a crew member is considered unfit for duty if either of the following apply:

- (a) the crew member is fatigued to the extent that his or her ability to safely perform the duty is reduced or likely to be reduced; or
- (b) the crew member is under the influence of one or more psychoactive substances to the extent that the crew member's ability to safely perform the duty is reduced or likely to be reduced.

These provisions provide for the control of flight crew fatigue and crew member impairment which has been a factor in many aviation accidents.

Regulation 91.525 – Offensive and disorderly behaviour on aircraft

Subregulation 91.525(1) provides that a person on an aircraft contravenes this subregulation if they behave in an offensive or disorderly manner and, as a result of that behaviour, the safety of the aircraft or persons on the aircraft is endangered.

Subregulation 91.525(2) provides that the operator or a crew member of an aircraft may refuse to allow a person to board the aircraft if there are reasonable grounds to believe that the person is likely to behave in an offensive or disorderly manner that is likely to endanger the safety of the aircraft or persons on the aircraft.

Subregulation 91.525(3) provides that, without limiting subregulations (1) or (2), a person is taken to behave in an offensive or disorderly manner if they assault, intimidate or threaten another person (whether the assault, intimidation or threat is verbal or physical and irrespective of whether or not a weapon or object is used) or if they intentionally damage or destroy property.

Subregulation 91.525(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.530 – Smoking not permitted during certain periods of flight

Subregulation 91.530(1) provides that a person on an aircraft contravenes this subregulation if they smoke during take-off, landing or when the pilot in command has directed they not do so. A note mentions further prohibitions on smoking on an aircraft in the *Air Navigation Regulation 2016*.

Subregulation 91.530(2) provides that a person on an aircraft contravenes this subregulation if they smoke in the aircraft's toilet.

Subregulation 91.530(3) provides that a direction under subregulation (1) may be given by way of a permanent 'no smoking' sign, or the switching on of an illuminated 'no smoking' sign, in the aircraft's cabin.

Subregulation 91.530(4) provides that for the purposes of this regulation, smoking is taken to include the use of electronic cigarettes.

Subregulation 91.530(5) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate against any adverse effect on the safety of air navigation by elaborating on section 37 of the *Air Navigation Regulation 2016* (the ANR). Whereas the ANR prohibits smoking on passenger air transport operations, these provisions provide the pilot in command of any aircraft (whether engaged in private operations or cargo air transport operations) with the authority to direct a person not to smoke on board, in the interests of safety.

Regulation 91.535 – Crew safety during turbulence

Subregulation 91.535(1) provides that the pilot in command of an aircraft contravenes this subregulation if:

- (a) a crew member (other than a flight crew member) is carried on the flight, and
- (b) before the flight begins, the pilot in command has not implemented procedures for:
 - (i) the protection of such crew members during turbulence or during a period when turbulence is expected; or
 - (ii) the limiting or ceasing of crew member duties during turbulence or during a period when turbulence is expected.

Subregulation 91.535(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.540 – Means of passenger communication

This regulation does not apply to the operation of an aircraft if regulation 138.375 applies to the operation in accordance with regulation 91.035.

Subregulation 91.540(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the pilot in command is unable to see all seats on the aircraft from the pilot in command's seat and, before the aircraft begins the flight, the aircraft is not fitted with a means to communicate with all the passengers during all phases of the flight (including emergencies).

Subregulation 91.540(2) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

Regulation 91.545 – Seating for persons on aircraft

Subregulation 91.545(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if a person is assigned a seat or berth on the aircraft and the seat or berth is not fitted with a seatbelt or shoulder harness and the aircraft begins the flight.

Subregulation 91.545(2) provides that subregulation (1) does not apply if circumstances prescribed by the Part 91 MOS in relation to the carriage of the person apply to the flight.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish, due to the absence of regulatory documents about the application of the prescribed circumstances (if any).

Subregulation 91.545(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.550 – Seating for flight crew members

This regulation does not apply to the operation of an aircraft if regulation 138.375 applies to the operation in accordance with regulation 91.035.

Subregulation 91.550(1) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement mentioned in subregulation (2) is not met during the flight.

Subregulation 91.550 (2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) the flight must be conducted by at least 1 pilot who is authorised to fly the aircraft (under Part 61 of CASR or an applicable foreign equivalent);
- (b) at all times during a flight, at least 1 pilot must be seated in a pilot seat with their seatbelt securely fastened;
- (c) during take-off or landing or any other period that the pilot in command directs, each flight crew member required for the flight must occupy their crew station with seatbelt and shoulder harness securely fastened;
- (d) when occupying a crew station, a flight crew member must keep their seatbelt securely fastened.

Subregulation 91.550(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.555 – Seating for crew members other than flight crew members

This regulation does not apply to the operation of an aircraft if regulation 138.375 applies to the operation in accordance with regulation 91.035.

Subregulation 91.555(1) provides that a crew member (other than a flight crew member) of an aircraft contravenes this subregulation if they are occupying their crew station and do not have their seatbelt or harness fastened. The requirements apply during take-off, landing and any other period the pilot in command directs.

Subregulation 91.555(2) provides that subregulation (1) does not apply if:

- (a) a direction is given by the pilot in command during turbulence; and
- (b) the crew member occupies a seat other than their crew station; and
- (c) the crew member is wearing, securely fastened, the seatbelts and harnesses provided at that seat.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant.

Subregulation 91.555(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

This regulation mitigates against any adverse effect on the safety of air navigation by ensuring that all persons on board are seated with their safety restraints fastened during critical certain phases of flight. Crew member will be defined in Part 1 of the CASR dictionary and is summarised as: any person authorised to conduct a specified function on an aircraft, including, a person being trained or tested in a function or an inspector authorised by CASA. A crew member could therefore be cabin crew, a cargo controller, or an engineer etc. with duties on the aircraft.

The provisions also permit crew to occupy the nearest seat during turbulence rather than their specified crew station.

Regulation 91.560 – Restraint of infants and children

This regulation does not apply to the operation of an aircraft if regulation 138.375 applies to the operation in accordance with regulation 91.035.

Subregulation 91.560(1) provides that a passenger on an aircraft contravenes this subregulation if they are given a direction to fasten their seatbelt and they do not ensure infants or children they are responsible for are restrained in accordance with the Part 91 MOS.

Subregulation 91.560(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate against any adverse effect on the safety of air navigation by ensuring that infants are in an adult's lap and restrained by an approved restraint system.

They would also ensure that a passenger responsible for a child ensures the child is appropriately secured.

Regulation 91.565 – Passengers—safety briefings and instructions

This regulation does not apply to the operation of an aircraft if regulation 121.285, 133.240 or 135.280 applies to the operation in accordance with regulation 91.035.

Subregulation 91.565(1) provides that the pilot in command of an aircraft contravenes this subregulation if a passenger is not given a safety briefing and instructions in accordance with the requirements of the Part 91 Manual of Standards and the aircraft takes off for the flight.

Subregulation 91.565(2) provides that subregulation (1) does not apply if the passenger has previously been carried on the aircraft, been given a safety briefing and instructions that complied with this regulation and, in the circumstances, it was not reasonably necessary to give the passenger the same briefing and instructions.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.565(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

This regulation mitigates against risk to the safety of air navigation by ensuring that passengers are adequately briefed on adequately briefed on safety related matters, for example seating requirements, smoking restrictions and emergency equipment and procedures. The regulations permit the giving of briefings and instructions at any time up to take-off, including while the aircraft is taxiing.

The regulation recognises that when a passenger has previously been carried on an aircraft (note that this refers to an individual aircraft, not a type of aircraft) it is not always necessary for them to be given a full briefing.

Regulation 91.570 – Passengers—safety directions by pilot in command

This regulation does not apply to the operation of an aircraft if regulation 138.375 applies to the operation in accordance with regulation 91.035.

Subregulation 91.570(1) provides that the pilot in command of an aircraft contravenes this subregulation if passengers are not directed to do prescribed tasks before the pilot does a thing outlined in subregulation (2): The prescribed tasks are the following

- (a) to fasten their seatbelt or shoulder harness;
- (b) if the seat back of the seat (or berth) in which the passenger is sitting is adjustable—to ensure that the seat back is in an upright position or other position permitted by the aircraft flight manual instructions for the aircraft during the event mentioned in subregulation (2);
- (c) if there are attachments to or for the seat (including a tray table or footrest)—to stow the attachments or to position them as permitted by the aircraft flight manual instructions for the aircraft during an event mentioned in subregulation (2).

Subregulation 91.570(2) prescribes that the things to be done by the pilot mentioned in subregulation (1) are taxiing, take-off and landing.

Subregulation 91.570(3) provides that the pilot in command of an aircraft contravenes this subregulation if they believe it is necessary for a passenger's seatbelt to be fastened and they do not direct them to do so.

Subregulation 91.570(4) prescribes that for subregulations (1) and (3) the direction may be given by operation of an illuminated sign.

Subregulation 91.570(5) prescribes that a person does not need to fasten his or her seatbelt or harness if doing so would unduly affect the person's health and, if the pilot in command considers it safe, not to fasten the belt or harness.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.570(6) prescribes that if a person is ill or incapacitated and is restrained, and the pilot in command agrees that the safety of the passenger and of other passengers will not be affected, the seatback of the ill or incapacitated passenger does not need to be raised.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matters to be established are peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 91.570(7) provides that a contravention of subregulation (1) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.575 – Passengers—compliance with safety directions

Subregulation 91.575(1) provides that a passenger on an aircraft contravenes this subregulation if they are given a direction in accordance with regulation 91.570 and they do not comply with the direction.

Subregulation 91.575 (2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.580 – Passengers—compliance with safety instructions by cabin crew

Subregulation 91.580(1) provides that a cabin crew member may give an instruction to a passenger that relates to the safety of the aircraft or of a person on it.

Subregulation 91.580(2) provides that a person on an aircraft contravenes this subregulation if they are given an instruction by a cabin crew member and they do not comply with that instruction.

Subregulation 91.580(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.585 – Restraint and stowage of cargo

Subregulation 91.585(1) provides that this regulation does not apply to the following kinds of cargo:

- (a) an assistance animal in a passenger cabin;
- (b) carry-on baggage;
- (c) equipment required or permitted under CAR or CASR to be carried on the aircraft without being restrained or stowed;
- (d) cargo to be dropped from the aircraft during a dropping operation.

Subregulation 91.585(2) provides that the operator and the pilot in command of an aircraft for a flight each contravene this regulation if cargo is carried on the flight and is not securely stowed in a place designed and approved for that purpose and restrained using approved equipment in accordance with specified provisions of Part 21 of CASR.

It also provides that the operator and the pilot in command of a foreign registered aircraft operating in Australian territory each contravene this subregulation if cargo is carried on the flight and is not

restrained or stowed in accordance with any requirements under the law of the aircraft's State of registry or the law of the aircraft operator's State.

Subregulation 91.585(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Cargo shifting in flight has the potential to severely affect the controllability of the aircraft. These provisions mitigate against any relevant risks to the safety of air navigation by ensuring cargo is secured in a way that will prevent it from shifting in flight.

Regulation 91.590 – Restraint and stowage of carry-on baggage

This regulation does not apply to the operation of an aircraft if regulation 121.265 applies to the operation in accordance with regulation 91.035.

Subregulation 91.590(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is taking off or landing, or the pilot in command has directed that carry-on baggage be securely stowed and an item of carry-on baggage is not securely stowed in a place designed and approved for that purpose under Part 21 of CASR or applicable foreign law, or unless the baggage is otherwise safely restrained.

Subregulation 91.590(2) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

Regulation 91.595 – Restraint and stowage of certain aircraft equipment

This regulation does not apply to the operation of an aircraft if regulation 121.265 applies to the operation in accordance with regulation 91.035.

Subregulation 91.595(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft is taking off or landing, or the pilot in command has directed that passenger service or galley equipment be securely stowed, and passenger service or galley equipment is not securely stowed in a place designed and approved for that purpose.

Subregulation 91.595(2) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

Regulation 91.600 – Carriage of cargo—general

Subregulation 91.600(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if a requirement mentioned in subregulation (2), relating to the carriage of cargo, is not met.

Subregulation 91.600(2) provides the requirements that must be met to avoid a contravention of subregulation (1).

Subregulation 91.600(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

This regulation provides the requirements relating to the places where cargo may be carried on the aircraft, including restrictions on cargo being an obstruction to passenger exits. However, CASA may grant an approval under regulation 91.045 for cargo to be carried in a manner that obstructs, or restricts access to, an emergency exit. Such an approval is intended to be granted only where the

approval does not constitute an inappropriate risk to safety, for example because there are other exits that are sufficient for the number of people carried on a particular flight.

Regulation 91.605 – Carriage of cargo—cargo compartments

Subregulation 91.605(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if more than one flight crew member is required for the flight; and cargo is carried in a cargo compartment; and the cargo is loaded in a way that stops a crew member from entering the compartment if required to extinguish a fire.

Subregulation 91.605(2) provides that a flight crew member is required for a flight if they are part of the crew required for the flight by the aircraft flight manual instructions, or under CAR or CASR if CAR or CASR requires a number of flight crew members more than is required by the aircraft flight manual instructions.

Subregulation 91.605(3) provides that a contravention of subregulation 91.605(1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

The regulation does not apply if there was only 1 crew member, since such a crew member is required to remain at the flight controls.

This regulation mitigates against any adverse impact on the safety of air navigation by ensuring that appropriate firefighting options are available, should they be needed. Cargo compartments on aircraft are often sealed and have integrated fire extinguishing systems. In other situations, fire control within cargo compartments may require a person to access the compartment with a portable fire extinguisher. These provisions ensure the required access is always available.

Regulation 91.610 – Carriage of cargo—unoccupied seats

Subregulation 91.610(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if cargo is carried on an unoccupied seat and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.610(2) provides that the requirements mentioned in subregulation (1) are that: the cargo must not weigh more than 77 kg or the maximum weight permitted by the seat manufacturer; and the cargo, or its restraint, must not interfere with the safe operation of the aircraft.

Subregulation 91.610(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.615 – Carriage of cargo—loading instructions

Subregulation 91.615(1) provides that this regulation applies in relation to cargo other than cargo that is carried on an unoccupied seat under regulation 91.610, or is carry-on baggage weighing less than 9kg that is stowed in an appropriate place.

Subregulation 91.615(2) provides that the operator and pilot in command of an aircraft each contravene this subregulation if cargo is not stowed in a place placarded with instructions.

Subregulation 91.615(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

The regulation ensures that cargo to which the regulation applies is only stowed at a place placarded with instructions.

Regulation 91.620 – Carriage of animals

Subregulation 91.620(1) provides that a person contravenes this subregulation if they bring an animal onto an aircraft for a flight and they do not have permission to do so from the pilot in command.

Subregulation 91.620(2) provides that before giving permission for a person to carry an animal on board, the pilot in command must take reasonable steps to ensure that the carriage of the animal would not adversely affect the safety of air navigation.

Subregulation 91.620(3) provides that the operator or pilot in command of an aircraft may refuse to carry an assistance animal if they believe that the carriage of the animal may adversely affect the safety of air navigation.

Subregulation 91.620(4) provides that subregulation (3) applies despite anything in the *Disability Discrimination Act 1992*.

Subregulation 91.620(5) provides a head of power for the Part 91 MOS to prescribe requirements for carriage of animals on aircraft for a flight.

Subregulation 91.620(6) provides that the pilot in command of an aircraft contravenes this subregulation if a requirement for the pilot prescribed in the Part 91 MOS under subregulation (5) is not met.

Subregulation 91.620(7) provides that the operator of an aircraft contravenes this subregulation if a requirement for the operator prescribed in the Part 91 MOS under subregulation (5) is not met.

Subregulation 91.620(8) provides that a contravention of subregulation (1), (2), (6) or (7) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate against risks to aviation safety occasioned by the carriage of animals and operate despite the provisions of the *Disability Discrimination Act 1992*.

Division 91.D.8 – Instruments, indicators, equipment and systems

This Division inserts a new Division 91.D.8 of CASR, inclusive of regulations 91.625 to 91.660, that prescribes requirements relating to the use of aircraft radios, flight recorders and equipment requirements for certain types of flights.

Regulation 91.625 – Use of radio—qualifications

Subregulation 91.625(1) provides that a person contravenes this subregulation if they transmit on a radio frequency published in the AIP or NOTAMs that is used by ATS, aeronautical emergencies or another frequency prescribed by the Part 91 MOS (including, but not limited to, aerodrome frequencies) and they are not authorised to do so under Part 61, 64 or 65 of CASR or an applicable foreign equivalent.

Subregulation 91.625(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.630 – Use of radio—broadcasts and reports

Subregulation 91.630(1) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is fitted with, or carries, a radio during the flight and the pilot in command does not make a broadcast or a report prescribed by the Part 91 MOS.

Subregulation 91.630(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

This regulation would provide the head of power for the prescription of broadcasts and reports in the MOS.

This regulation mitigates against risks to the safety of air navigation by ensuring that transmissions necessary to ensure safe operations are made. Among other things, transmissions are required in order to provide information that will enable pilots to maintain situational awareness, enable ATS to have up to date knowledge on the safe operation of an aircraft and assists the use of the ‘alerted see and avoid’ collision avoidance technique.

Regulation 91.635 – Communication monitoring in controlled airspaces

Subregulation 91.635(1) provides that the pilot in command of an aircraft contravenes this subregulation if they fly in controlled airspace and they do not whilst flying in that airspace, continuously monitor the primary communications medium used by ATC.

Subregulation 91.635(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.640 – Use of radio outside controlled airspaces—listening watch of radio transmissions

Subregulation 91.640(1) provides that the pilot in command of an aircraft contravenes this subregulation if:

- (a) the aircraft is fitted with or carries a radio; and
- (b) it is flown by a pilot who is authorised to use the radio under Part 61 or 64 of CASR for an Australian aircraft, or an applicable foreign equivalent for a foreign registered aircraft; and
- (c) the aircraft is outside controlled airspace; and
- (d) radio transmissions are not continuously monitored by the pilot in command or another pilot who occupies a pilot seat.

Subregulation 91.640(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.645 – Availability of instructions for flight data and combination recorders

Subregulation 91.645(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft is required to be fitted with a flight data recorder or combination recorder and the operator does not have the instructions for the recorder available for immediate provision to the ATSB.

Subregulation 91.645(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.650 – Flight recorders—preserving recordings of immediately reportable matters

Subregulation 91.650(1) provides that the operator of an aircraft contravenes this subregulation if the aircraft is fitted with an operative flight data recorder, operative cockpit voice recorder or operative combination recorder, an immediately reportable matter occurs in relation to the aircraft and the requirement mentioned in subregulation (2) is not met.

Subregulation 91.650(2) provides that the requirement mentioned in subregulation (1) are the requirements for the preservation of data prescribed in this subregulation.

Subregulation 91.650(3) provides that subregulation (1) does not apply if the recordings or recorders are not preserved and the operator took reasonable steps in the circumstances to preserve the recordings or recorders.

A defendant bears an evidential burden in relation to the matters in this subregulation. The steps taken to preserve the recordings or recorders is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

Subregulation 91.650(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These provisions mitigate risks to the safety of air navigation by ensuring that the ATSB is alerted to, and receives data on, certain events. The term “immediately reportable matter” is defined by the *Transport Safety Investigation Act 2003* and the definition is published in the AIP.

Regulation 91.655 – RVSM airspace

Subregulation 91.655(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft is flown in RVSM airspace and the requirement mentioned in subregulation (2) is not met.

Subregulation 91.655(2) provides that the requirements mentioned in subregulation (1) are that the operator is approved to do so (under regulation 91.045 of CASR or an applicable foreign equivalent) and that the pilot in command has been issued with ATC clearance or instruction to do so.

Subregulation 91.655(3) provides that the pilot in command of an aircraft contravenes this subregulation if the aircraft is in RVSM airspace, the aircraft becomes unable to operate with RVSM separation and the pilot does not inform ATC as soon as practicable after the aircraft becomes unable to operate with RVSM separation.

Subregulation 91.655(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Subregulation 91.655(5) provides that a contravention of subregulation (3) is an offence. The penalty for the offence has been established as 50 penalty units.

Regulation 91.660 – PBN flights

Subregulation 91.660(1) provides a head of power for the Part 91 MOS to prescribe requirements for the operation of an aircraft for a performance based navigation (PBN) flight.

Subregulation 91.660(2) provides that the pilot in command of an aircraft contravenes this subregulation if they are subject to a requirement mentioned in subregulation (1) the pilot does not comply with the requirement.

Subregulation 91.660(3) provides that the operator of an aircraft contravenes this subregulation if they are subject to a requirement mentioned in subregulation (1) and the operator does not comply with the requirement.

Subregulation 91.660(4) provides that the pilot in command of an aircraft for a PBN flight contravenes this subregulation if part or all of the flight is conducted under the “RNP AR”, “RNP 0.3” or “NTA-HLA” PBN navigation specifications and neither the pilot nor the operator holds a CASA approval under regulation 91.045 to use that specification.

Subregulation 91.660(5) provides that a contravention of subregulation (2), (3) or (4) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Subregulation 91.660(5) provides that the technical terms used in this regulation have the meaning given by the Part 91 MOS.

Division 91.D.9 – Miscellaneous

This Division is reserved for future use

Division 91.D.10 – Signals, emergencies and hazards

This Division inserts a new Division 91.D.10 of CASR, inclusive of regulations 91.670 to 91.710, that prescribes requirements for standard signals, pilot in command reporting requirements and actions with regard to hazards and emergencies. It also prescribes requirements for the interception of aircraft and flight in icing conditions.

Regulation 91.670 – Standard visual signals

Subregulation 91.670(1) provides that a person contravenes this subregulation if they display a signal to an aircraft for the purposes of marshalling, and it is not a standard visual signal.

Subregulation 91.670(2) provides that a person contravenes this subregulation if they display a standard visual signal to an aircraft and the display of the signal is likely to endanger the safety of the aircraft, or of any person or property.

Subregulation 91.670(3) provides that the pilot in command of an aircraft contravenes this subregulation if they are shown a standard visual signal and they do not comply with it.

Subregulation 91.670(4) provides that subregulation (3) does not apply if the pilot in command reasonably believes that compliance would endanger the safety of the aircraft, or of people or property.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant.

Subregulation 91.670(5) provides that a contravention of subregulation (1), (2) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Generically, standard visual signals are signals conveyed to a pilot via light signals, hand signals, signals using wands similar to a road traffic controller or via a symbol laid out on the ground.

This regulation mitigates risks to the safety of air navigation by ensuring that a person uses only visual signals that are recognised globally. Standard visual signals have been prescribed by ICAO and are available by way of the AIP.

Regulation 91.675 – Pilot in command to report hazards to air navigation

Subregulation 91.675(1) provides that the pilot in command of an aircraft contravenes this subregulation if they become aware of a hazard to air navigation which is not published in the authorised aeronautical information and they do not report it to ATS, or if the hazard is on an aerodrome, to the aerodrome operator.

Subregulation 91.675(2) provides that subregulation (1) does not apply if the pilot reasonably believes the hazard has previously been reported for the purpose of subregulation (1).

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant.

Subregulation 91.675(3) provides that a contravention of subregulation(1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.680 – Pilot in command to report emergencies

Subregulation 91.680(1) provides that the pilot in command of an aircraft contravenes this subregulation if an emergency occurs that threatens the safety of the aircraft or the persons on board, the pilot is able to communicate with ATS; it is practicable to inform ATS of the emergency; and the pilot does not inform ATS of the emergency (along with the nature and status of any dangerous goods on board).

Subregulation 91.680(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

These regulations mitigate risks to the safety of air navigation by ensuring that timely assistance can be given to an aircraft in distress. In an emergency, a flight crew must prioritise maintaining control of the aircraft, navigating the aircraft and thirdly, communicating with ATS. These provisions make it a requirement for flight crew to communicate with ATS during an emergency, but only when it is practicable to do so.

Regulation 91.685 – Multi-engine aircraft—pilot in command to land at nearest suitable aerodrome if emergency occurs

Subregulation 91.685(1) provides that the pilot in command of a multi-engine aircraft contravenes this subregulation if an emergency occurs that threatens the safety of the aircraft or the persons on board and the pilot does not land the aircraft at the nearest suitable aerodrome.

Subregulation 91.685(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.690 – Pilot in command to report contraventions relating to emergencies

Subregulation 91.690(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if, during the flight, an emergency occurs that threatens the safety of the aircraft or the persons on the aircraft, and that requires them to contravene a provision of CAR or CASR and neither the pilot nor operator give CASA written notice of the contravention and the surrounding circumstances within 2 business days after the emergency occurred.

Subregulation 91.690(2) provides that the pilot in command is not excused from giving notice under subregulation (1) on the grounds that the giving of the notice, or the information in the notice, might tend to incriminate them or expose them to a penalty.

Subregulation 91.690(3) provides the following were not admissible in evidence against the pilot in command in criminal proceedings other than proceedings for an offence against subsections 136.1(1) or (4), 137.1(1) or 137.2(1) of the Criminal Code:

- (a) the information in the notice;
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the notice.

Subregulation 91.690(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

The prescribed Criminal Code provisions relate to the giving of false and misleading statements in relation to matters administered by the Commonwealth or under Commonwealth law.

This regulation mitigates against any adverse impact on the safety of air navigation by ensuring that CASA is able to collect data to assist with maintaining accurate oversight of the aviation industry. Having obtained information relevant to the integrity of the safety regulatory scheme, the regulation precludes the use of the information in criminal proceedings for the contravention.

The regulation provides for a limitation on the right of a person not to incriminate him or herself. The limitation is important in the context of this provision because aviation emergency situations involve accidents or near-accidents and are therefore likely to yield information that can be used to identify weaknesses in the safety regulatory scheme that can be remediated for the benefit of the community as a whole. Further, such situations may not result in the creation of relevant and useful information other than the information held by the pilot. Accordingly, being able to access the pilot's information about an emergency is key to learning from aviation emergencies.

The limitation of the right is subject to the "use" and "derivative use" immunities, so that the disclosed information cannot be used in criminal proceedings, or as the basis for gathering other evidence for criminal proceedings.

Regulation 91.695 – Interception of aircraft

Subregulation 91.695(1) provides a head of power for the Part 91 MOS to prescribe requirements relating to the interception of aircraft in flight.

Subregulation 91.695(2) provides that the pilot in command of an aircraft contravenes this subregulation if their aircraft is intercepted by another aircraft and a requirement mentioned in subregulation (1) is not met for the flight.

Subregulation 91.695(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

This regulation mitigates against any adverse risks to the safety of air navigation by ensuring that intercepted aircraft follow globally recognised procedures and limitations. The procedures reflect those set out in Annex 2 to the Chicago Convention. The procedures will be published in the AIP, carriage of portions of which are mandatory for most flights.

Regulation 91.700 – Aviation distress signals

Subregulation 91.700(1) provides that a person on an aircraft contravenes this subregulation if the person has made an aviation distress signal; and the reason for making the signal no longer exists; and the distress signal is able to be cancelled; and the person does not cancel the signal as soon as circumstances permit.

Subregulation 91.700(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 25 penalty units.

Regulation 91.705 – Flight in icing conditions—adherence or frost, ice or snow

Subregulation 91.705(1) provides that the pilot in command of an aircraft contravenes this subregulation if they begin a flight with frost, ice or snow adhering to any of the aircraft's wings, flaps, control surfaces, rotors, propellers, horizontal stabilisers or vertical stabilisers.

Subregulation 91.705(2) provides that the pilot in command of an aircraft contravenes this subregulation if they begin a flight with frost, ice or snow adhering to the top of the aircraft fuselage in prescribed circumstances. The circumstances are: the aircraft has rear-mounted engines, or the presence of the frost, ice or snow is a hazard to the safe operation of the aircraft for the flight.

Subregulation 91.705(3) provides that subregulation (1) or (2) do not apply if the take-off for the flight is conducted in accordance with the aircraft flight manual instructions for the aircraft that relate to taking off under the icing conditions covered by, as applicable, subregulation (1) or (2).

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. While the flight manual is a regulatory document available for proceedings, whether or not the take-off was in accordance with the manual is not.

Subregulation 91.705(4) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

The presence of ice, frost or snow on an aircraft can critically degrade its performance. These provisions mitigate risk to the safety of air navigation by ensuring that a flight is not conducted when an aircraft might be affected by frost, ice or snow. The regulation permits the flight to be conducted in such conditions only in accordance with the aircraft flight manual instructions for the aircraft, which are instructions subject to regulatory approval as part of the certification of the aircraft.

Regulation 91.710 – Flight in icing conditions—requirements for flight

Subregulation 91.710(1) provides that this regulation applies to the flight of an aircraft in the following circumstances:

- (a) icing conditions are known or suspected along the route for the aircraft; or
- (b) the aircraft flies into icing conditions and the pilot in command does not change the flight path to exit the icing conditions.

Subregulation 91.710(2) provides that the pilot in command of an aircraft contravenes this subregulation if, when the flight began, the aircraft is not type certificated as complying with the airworthiness standards relating to flight in icing conditions.

Subregulation 91.710(3) provides that a contravention of subregulation (2) is an offence. The penalty for the offence has been established as 50 penalty units.

Division 91.D.11 – Causing or simulating failures etc.

This Division inserts a new Division 91.D.11 of CASR, inclusive of Subdivisions 91.D.11.1 to 91.D.11.3, that prescribes requirements for managing the risks associated with simulating the failure of flight instruments and engines. It also prescribes requirements for managing the risks associated with the actual shutting down of an engine.

Subdivision 91.D.11.1 Causing or simulating failure of flight instruments

This Subdivision inserts a new Subdivision 91.D.11.1 of CASR, inclusive of regulations 91.715 to 91.725, that prescribes requirements for the management of simulated instrument failures on aircraft in flight.

Regulation 91.715 – Causing or simulating failure of flight instruments.

Subregulation 91.715(1) provides that the pilot in command of an aircraft contravenes this subregulation if they cause the failure of, or simulate the failure of, the following flight instruments and a requirement of subregulation (2) is not met:

- (a) an attitude indicator;
- (b) a gyrocompass or an equivalent instrument;
- (c) an airspeed indicator; and
- (d) an altimeter.

Subregulation 91.715(2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) the flight must be for pilot training, checking, or testing;
- (b) only crew members required for the training, checking or testing are carried on board; and
- (c) a pilot authorised under Part 61 of CASR or an applicable foreign equivalent must occupy a pilot seat with fully functioning controls and, if the flight is in IMC or at night, they must have a clear view of an instrument like the one that is subjected to failure or simulated failure.

Subregulation 91.715(3) provides that subregulation (1) does not apply if the pilot in command is carrying out a maintenance test flight or a procedure to diagnose or isolate a failure of an instrument or system.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant.

Subregulation 91.715(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Except in the case of flights for maintenance-related purposes, this regulation ensures that the simulation of a primary flight instrument failure is conducted only when a qualified pilot on the aircraft is able to maintain a reference to information that is vital for safe flight.

Regulation 91.720 – Simulating IMC flying

Subregulation 91.720(1) provides that the pilot in command of an aircraft contravenes this subregulation if they simulate IMC and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.720(2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) a pilot (the safety pilot) must occupy a pilot seat fitted with fully functioning flight controls and have adequate vision forward and to each side of the aircraft;
- (b) a pilot (the second pilot) flying the aircraft must occupy a pilot seat fitted with fully functioning flight controls; and
- (c) the safety pilot must be authorised to fly the aircraft under Part 61 of CASR or an applicable foreign equivalent.

Subregulation 91.720(3) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

Regulation 91.725 – Training flight limitations etc.

Subregulation 91.725(1) defines a permitted person for the purpose of this regulation as a person carried on the aircraft for the purpose of giving or receiving flight training or flight engineer training, practising for the grant of an authorisation or being assessed for an authorisation. The term permitted person also includes a person conducting or supervising an audit and an authorised CASA officer conducting an examination, inspection or test under CAR or CASR.

Subregulation 91.725(2) provides that the pilot in command of an aircraft contravenes this subregulation if a person other than a permitted person is carried on board and any of the following are conducted:

- (a) flight training for a person who does not hold a class or type rating for the aircraft;
- (b) simulation of non-normal situations that might affect aircraft handling characteristics, but not including a simulation that is only expressed verbally and that does not involve manipulation of aircraft systems;
- (c) training below 500 ft AGL other than training for take-off and landing; and
- (d) training, mentioned in Part 61 of CASR, for authorisations relating to low-level, aerial application, aerobatic or spinning operations.

Subregulation 91.725(3) provides that the pilot in command of an aircraft contravenes this subregulation if they permit a test of the aircraft or systems and a person who is not a permitted person, or a required member of maintenance personnel, is carried on board.

Subregulation 91.725(4) provides that the pilot in command of an aircraft contravenes this subregulation if:

- (a) during the flight training for a person who does not hold a class or type rating for the aircraft (subparagraph (2)(b)(i)), more than 4 permitted persons are on board (including the pilot); or

(b) during the simulation of non-normal situations (subparagraph (2)(b)(ii)), or training for authorisations relating to low-level, aerial application, aerobatics or spinning operations (subparagraph (b)(b)(iv)), more than 3 permitted persons are on board (including the pilot).

Subregulation 91.725(5) provides that a contravention of subregulation (2), (3), or (4) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

For clarification of subregulation 91.725(2)(a), a person undergoing initial flight training for a particular aircraft (or class of aircraft) is not yet considered qualified to fly the aircraft (or class). Once qualified, further training might be conducted for additional qualifications. This subregulation allows a permitted person to be carried during the conduct of that further training (other than low-level, aerial application aerobatics or spinning training or engine failure simulation).

This regulation mitigates risks to persons on board aircraft during flight activities of increased risk by ensuring only limited classes of persons are on board an aircraft during these activities. They also limit the number of permitted persons on board and when their carriage is acceptable in accordance with this regulation.

Subdivision 91.D.11.2 Causing or simulating engine failure etc. for aeroplanes

This subdivision inserts a new Subdivision 91.D.11.2 of CASR, inclusive of regulations 91.730 to 91.750, that prescribes requirements for the shutting down of aeroplane engines in certain circumstances and simulating engine failure in certain circumstances.

For single-engine aeroplanes, the subdivision:

- prohibits the shutting down of the engine in IMC or at night;
- does not prohibit the shutting down of the engine during flights conducted under the VFR by day, although conditions apply;
- does not prohibit the simulation of an engine failure in IMC or at night, although conditions apply;
- and
- does not prohibit the simulation of an engine failure during flights during the day.

For multi-engine aeroplanes, the subdivision:

- prohibits the shutting down of an engine in IMC or at night;
- does not prohibit the shutting down of an engine during flights conducted under the VFR by day;
- does not prohibit the simulation of an engine failure in IMC or at night, although conditions apply;
- and
- does not prohibit the simulation of an engine failure during the day.

Regulation 91.730 – Aeroplane flights in IMC or at night – engine not to be shut down

Subregulation 91.730(1) provides that the pilot in command of an aircraft contravenes this subregulation if they shut down an engine while they are in IMC or during a night flight.

Subregulation 91.730(2) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

These provisions provide that the engine of any aeroplane, whether it was a single engine or multi engine aeroplane, must not be shut down during flight in IMC or at night.

This regulation deals specifically with the shutting down of an engine. Rules regarding the simulation of an engine failure are prescribed by regulations 91.740 and 91.750 of CASR.

Regulation 91.735 – Single-engine aeroplane—VFR flights by day—engine not to be shut down

Subregulation 91.735(1) provides that the pilot in command of a single engine aircraft contravenes this subregulation if they shut down the engine during a flight that is under the VFR by day and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.735(2) provides the requirements to be met in order to avoid a contravention of subregulation (1).

Subregulation 91.735(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Whilst regulation 91.730 of CASR prohibits the shutting down of an engine during operations conducted under the IFR or the VFR at night, this regulation permits the shutting down of the engine of a single-engine aeroplane during the day. The requirements that must be met to lawfully shut down an engine provide adequate safeguards that the engine shut down will not unduly prejudice safety.

Regulation 91.740 – Single-engine aeroplane—simulating engine failure in IMC or at night

Subregulation 91.740(1) provides that the pilot in command of a single engine aeroplane contravenes this subregulation if they simulate an engine failure during a flight that is in IMC or at night and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.740(2) provides the requirements to be met to avoid a contravention of subregulation (1).

Subregulation 91.740(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Whilst regulation 91.730 of CASR prohibits the shutting down of an engine during operations in IMC or at night, this regulation permits the simulation of an engine failure in a single engine aeroplane at those times, if prescribed requirements are met. The requirements that must be met to lawfully shut down an engine provide adequate safeguards that the engine shut down will not unduly prejudice safety.

The requirement for an engine failure to be initiated above the relevant lowest safe altitude ensures terrain clearance can be maintained visually once below that altitude.

Regulation 91.745 – Multi-engine aeroplane—simulating engine failure—general

Subregulation 91.745(1) provides that the pilot in command of an aircraft contravenes this subregulation if, during a flight, an engine failure is simulated, and the requirement mentioned in subregulation (2) is not met.

Subregulation 91.745(2) provides the requirement to be met to avoid a contravention of subregulation (1).

Subregulation 91.745(3) provides that an application for CASA approval mentioned in subparagraph (2)(b)(ii) or (2)(c)(iii) must include a safety risk management plan.

Subregulation 91.745(4) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

This regulation mitigates the risks associated with simulated engine failure operations in larger, and more complex, multi-engine aircraft. Simulating engine failure in larger aircraft will generally only be permitted when no approved flight simulator is available or where the aircraft operator holds a CASA approval for the engine failure simulation.

Regulation 91.750 – Multi-engine aeroplane—simulating engine failure in IMC or at night

Subregulation 91.750(1) provides that the pilot in command of a multi-engine aeroplane contravenes this subregulation if they simulate an engine failure during a flight that is in IMC or at night and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.750(2) provides the requirements to be met in order to avoid a contravention of subregulation (1).

Subregulation 91.750(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Whilst regulation 91.730 of CASR prohibits the shutting down of an engine during operations in IMC or at night, this regulation permits the simulation of an engine failure in a multi engine aeroplane in those conditions. The requirements that must be met to lawfully shut down an engine provide adequate safeguards that the engine shut down will not unduly prejudice safety.

The height requirements mentioned in the regulation have the effect of reducing the risks associated with operating on one engine while in cloud or at night when visual reference to ground features is difficult to maintain, and situational awareness can be difficult to manage.

Subdivision 91.D.11.3—Causing or simulating engine failure etc. for rotorcraft

This subdivision inserts a new Subdivision 91.D.11.3 of CASR, inclusive of regulations 91.755 to 91.775, that prescribes requirements for the shutting down of helicopter engines in certain circumstances and simulating engine failure in certain circumstances.

For single-engine rotorcraft the subdivision:

- prohibits the shutting down of the engine;
- prohibits the simulation of an engine failure in IMC;
- does not prohibit the simulation of an engine failure at night, although conditions apply; and
- does not prohibit the simulation of an engine failure during flight by day.

Reference to ‘simulation of an engine failure’ includes the initiation of an autorotation. An autorotation is a manoeuvre in which the loss of lift is simulated.

For multi-engine rotorcraft the subdivision:

- does not prohibit the shutting down of an engine in IMC or at night, although conditions apply;
- does not prohibit the shutting down of an engine during flight by day;
- does not prohibit the simulation of an engine failure in IMC or at night, although conditions apply;
- and
- does not prohibit the simulation of an engine failure during flight by day.

Regulation 91.755 – Single-engine rotorcraft—engine not to be shut down

Subregulation 91.755(1) provides that the pilot in command of a single-engine rotorcraft contravenes this subregulation if the engine is shut down in flight.

Subregulation 91.755(2) provides that a contravention of subregulation (1) is an offence. The penalty for the offence has been established as 50 penalty units.

Regulation 91.760 – Single-engine rotorcraft—engine failure not to be simulated and autorotation of main rotor system not to be initiated in IMC

Subregulation 91.760(1) provides that the pilot in command of a single-engine rotorcraft contravenes this subregulation if, during a flight in IMC, an engine failure is simulated or an autorotation of the main rotor system is initiated.

Subregulation 91.760(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.765 – Single-engine rotorcraft—simulating engine failure or initiating autorotation of main rotor system at night

Subregulation 91.765(1) provides that the pilot in command of a single-engine rotorcraft contravenes this subregulation if, during a flight at night, an engine failure is simulated or an autorotation of the main rotor system is initiated, and the rotorcraft is not below hover height or above 1,000 ft AGL, and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.765(2) provides the requirements that must be met to avoid a contravention of subregulation (1).

Subregulation 91.765(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.770 – Multi-engine rotorcraft—engine not to be shut down at certain altitudes in IMC or at night

Subregulation 91.770(1) provides that the pilot in command of a multi-engine rotorcraft contravenes this subregulation if, during a flight in IMC or at night, an engine is shut down and the rotorcraft is below the lowest safe altitude for the route or route segment of the flight.

Subregulation 91.770(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.775 – Multi-engine rotorcraft—simulating engine failure in IMC or at night

Subregulation 91.775(1) provides that the pilot in command of a multi-engine rotorcraft contravenes this subregulation if an engine failure is simulated during a flight that is in IMC or at night and a requirement mentioned in subregulation (2) is not met.

Subregulation 91.775(2) provides the requirements that must be met to avoid a contravention of mentioned in subregulation 91.775(1).

Subregulation 91.775(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.D.12 – Psychoactive substances

This Division inserts a new Division 91.D.12 of CASR, inclusive of regulations 91.780 to 91.790, that prescribes requirements for the control of alcohol on board and the control persons under the effect of psychoactive substances.

Regulation 91.780 - Passengers—alcohol

Subregulation 91.780(1) provides that a passenger on an aircraft contravenes this subregulation if the passenger consumes alcohol that has not been provided by a crew member, or, if there is no crew other than the pilot in command, the pilot has not permitted the passenger to consume the alcohol.

Subregulation 91.780(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

There are significant safety risks associated with the presence of persons impaired by the consumption of alcohol on board aircraft. Controlling the risk to an acceptable level requires controls on alcohol consumption and these controls are implemented by crew members.

Regulation 91.785 - Crew—provision of alcohol

Subregulation 91.785(1) provides that a crew member of an aircraft contravenes this subregulation if the crew member provides alcohol to a passenger and there are reasonable grounds to believe the passenger is affected by one or more psychoactive substances to the extent that their behaviour may present a hazard to the aircraft or to a person on the aircraft.

Subregulation 91.785(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.790 permits the operator or crew member of an aircraft to prohibit a person from boarding an aircraft if there are reasonable grounds to believe that the person is affected by a psychoactive substance to the extent that it might provide a hazard to the aircraft or a person on the aircraft.

Subpart 91.F – Performance

This Subpart inserts a new Subpart 91.F of CASR, inclusive of regulations 91.795 to 91.800, that prescribes requirements for calculating the take-off and landing weights of aircraft.

This Subpart does not apply to the operation of an aircraft if Subpart 121.F, 133.F, 135.F or 138.F applies to the operation in accordance with regulation 91.035.

Regulation 91.795 – Take-off weights

Subregulation 91.795(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft take-off weight is greater than its maximum take-off weight or, if the circumstances in paragraph 91.795(2)(a) apply, the weight calculated in accordance with the requirements method prescribed under paragraph 91.795(2)(b).

Subregulation 91.795(2) provides a head of power for the Part 91 MOS to prescribe requirements for calculating the take-off weight of an aircraft for the purposes of subregulation (1).

Subregulation 91.795(3) provides that subregulation (1) does not apply if the aircraft is being operated in accordance with a special flight permit.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. While the special flight permit is a regulatory document available for proceedings, whether or not the aircraft was operated in accordance with the permit is not.

Subregulation 91.795(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Maximum take-off weight for an aircraft, is defined in Part 1 of the CASR dictionary as the maximum take-off weight for the aircraft permitted by the aircraft flight manual, or a manufacturer published document or by the airworthiness certificate for the aircraft (as applicable).

Regulation 91.800 – Landing weights

Subregulation 91.800(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft landing weight is greater than its maximum landing weight or, if the circumstances in paragraph 91.800(2)(a) apply, the weight calculated in accordance with the method prescribed under paragraph 91.800(2)(b).

Subregulation 91.800(2) provides a head of power for the Part 91 MOS to prescribe requirements for calculating the landing weight of an aircraft for the purposes of subregulation (1).

Subregulation 91.800(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Maximum landing weight for an aircraft, is defined in Part 1 of the CASR dictionary as the maximum landing weight for the aircraft permitted by the aircraft flight manual, permitted by a manufacturer published document or permitted by the airworthiness certificate for the aircraft (as applicable).

Subpart 91.J – Weight and balance

This Subpart inserts a new Subpart 91.J of CASR in relation to aircraft weight and balance comprising regulation 91.805. This Subpart does not apply to the operation of an aircraft if Subpart 121.J, 133.J, 135.J or 138.J applies to the operation in accordance with regulation 91.035.

Regulation 91.805 – Loading of aircraft

Subregulation 91.805(1) provides that the pilot in command of an aircraft contravenes this subregulation if, when the flight begins, the aircraft is loaded in a way that contravenes the aircraft's weight and balance limits.

Subregulation 91.805(2) provides that the pilot in command of an aircraft contravenes this subregulation if, during the flight, the aircraft weight moves outside its weight and balance limits.

Subregulation 91.805(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

The term “weight and balance limits” for an aircraft is defined in Part 1 of the CASR dictionary to mean the weight and balance limits set out in the aircraft flight manual instructions for the aircraft.

An aircraft that is loaded in such a way that excess weight is to the front or rear of the aircraft can be severely affected in its performance. These provisions mitigate risks to the safety of air navigation by ensuring an aircraft is not loaded in such a way, and emphasises the requirement for the pilot in command to adhere to limitations of the aircraft flight manual.

Subpart 91.K – Instruments, indicators, equipment and systems

This Subpart inserts a new Subpart 91.K of CASR in relation to aircraft instruments, equipment and systems inclusive of regulations 91.810 to 91.815. The Subpart does not apply to the operation of an aircraft if Subpart 121.K, 133.K, 135.K or 138.K applies to the operation in accordance with regulation 91.035.

Regulation 91.810 – Instruments, indicators, equipment and systems—requirements

Subregulation 91.810(1) provides a head of power for the Part 91 MOS to prescribe requirements for the following:

- (a) instruments, indicators, items of equipment or systems that must be fitted to, or carried on, an aircraft for a flight;
- (b) instruments, indicators, items of equipment or systems that must not be fitted to, or carried on, an aircraft for a flight; and
- (c) requirements in relation to an instrument, indicator, item of equipment or system fitted to, or carried on a flight, whether the instrument, indicator, item of equipment or system was prescribed by the Part 91 MOS or not.

Subregulation 91.810(2) provides that the operator and pilot in command of an aircraft each contravene this subregulation if, when the flight begins, a requirement mentioned in paragraphs 91.810(1)(a) or (b) is not met.

Subregulation 91.810(3) provides that a crew member contravenes this subregulation if a requirement mentioned in paragraph 91.810(1)(c) is not met for a flight.

Subregulation 91.810(4) provides that a contravention of subregulation (2) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.815 provides a head of power for the Part 91 MOS to prescribe circumstances in which a flight may, despite regulation 91.810, begin if a required instrument, indicator, item of equipment or system were inoperative.

Subpart 91.P – Cabin crew

This Subpart inserts a new Subpart 91.P of CASR, inclusive of regulations 91.820 to 91.830, that prescribes requirements for when cabin crew must be carried, the number of cabin crew to be carried and requirements for their training.

This Subpart does not apply to the operation of an aircraft if Subpart 121.P, 133.P or 135.P applies to the operations in accordance with regulation 91.035.

Regulation 91.820 – Cabin crew—when required

Subregulation 91.820(1) provides that, subject to subregulations (2) and (3), a cabin crew member must be carried on a flight of an aircraft if 20 or more passengers are carried on the flight.

Subregulation 91.820(2) provides that subregulation (1) does not apply if the flight involves a parachuting activity to which Part 105 of CASR applies.

Subregulation 91.820(3) provides that up to 22 passengers may be carried without a cabin crew member on board if the flight crew includes at least 2 pilots and no more than 19 passengers are adults or children. This means that 22 passengers can be carried only if 3 of those passengers are infants.

Regulation 91.825 – Cabin crew—number

Subregulation 91.825(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if, when cabin crew are required to be carried, the number of cabin crew on board is less than 1 cabin crew per 50 passengers (or part thereof). This requirement replaces the previous ratio of 1 cabin crew member per 36 passenger seats on the aircraft (or part thereof). The new requirement aligns Australian rules with accepted international practice and removes the need for ongoing instruments granted to individual operators to permit operation in accordance with the international standard.

Subregulation 91.825(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.830 – Cabin crew—knowledge of emergency and safety equipment and procedures

Subregulation 91.830(1) provides that this regulation applies in relation to a flight on which cabin crew are required to be carried under regulation 91.820.

Subregulation 91.830(2) provides that the operator, pilot in command and cabin crew member of an aircraft each contravene this subregulation if the cabin crew member begins to carry out cabin crew duties for a flight and the cabin crew member is not competent to operate and use the emergency and safety equipment relevant to the cabin crew member's duties and implement emergency evacuation procedures for the aircraft.

Subregulation 91.830(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Subpart 91.T – Operations under certain special certificates of airworthiness and special flight permits

This Subpart inserts a new Subpart 91.T of CASR, inclusive of divisions 91.T.1 to 91.T.8, that prescribes requirements for operational requirements for the following:

- (a) restricted category aircraft;
- (b) provisionally certificated aircraft;
- (c) experimental aircraft;
- (d) primary and intermediate category aircraft light sport aircraft; and
- (e) operations under special flight permits.

The operating requirements prescribed apply in addition to those prescribed by the other subparts of Part 91 of CASR.

Division 91.T.1 – Preliminary

This Division inserts a new Division 91.T.1 of CASR, inclusive of regulation 91.835 that prescribe matters in relation to operations of aircraft issued with a certificate of airworthiness in more than one category.

Regulation 91.835 provides that if a certificate of airworthiness has been issued in more than one category for an aircraft, a Division of this Subpart applies only if the Division relates to the category of certificate of airworthiness in which the aircraft is being operated. For example, if an aircraft has a restricted category certificate of airworthiness and another kind of certificate of airworthiness, and is being operated in the restricted category, only Division 91.T.2 of this Subpart applies to the aircraft for that operation.

Division 91.T.2 – Restricted category aircraft—operating requirements

This Division inserts a new Division 91.T.2 of CASR, inclusive of regulations 91.840 and 91.845, that prescribes requirements for the operation of aircraft certificated in the restricted category. A restricted category aircraft is one that is used for special purposes that include water bombing, agricultural spraying and aerial surveying etc.

Regulation 91.840 – Restricted category aircraft—general operating requirements

Subregulation 91.840(1) provides that the operator and pilot in command of an aircraft certificated in the restricted category each contravene this subregulation if the aircraft begins a flight and a requirement mentioned in subregulation (2) is not met for the flight.

Subregulation 91.840(2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) the aircraft's certificate of airworthiness must be in force;
- (b) any condition or requirement placed on the certificate must be complied with;
- (c) the flight must not be an air transport operation;
- (d) the flight must be an operation of a kind mentioned in regulation 91.845; and
- (e) only prescribed classes of persons may be carried on the flight, namely a crew member, a person required to accomplish a special purpose operation and a person carried for the purposes of demonstration or test of an aircraft for sale as mentioned by paragraph 91.845(1)(j).

Subregulation 91.840(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.845 – Restricted category aircraft—kinds of operations permitted

Subregulation 91.845(1) provides that for paragraph 91.840(2)(d), the kinds of operations are the following:

- (a) a special purpose operation for which the special certificate of airworthiness for the aircraft was issued;
- (b) participation in an air display;
- (c) taking the aircraft to or from a place where a demonstration or display of the aircraft is to take place;
- (d) practice in flying the aircraft for participation in an air display;
- (e) taking the aircraft to a place where maintenance on the aircraft is to be done;
- (f) taking the aircraft from a place where maintenance on the aircraft has been done;

- (g) testing the aircraft after maintenance;
- (h) flying training, including for ratings and endorsements but not for the issue of a pilot licence;
- (i) pilot proficiency training or practice in flying the aircraft;
- (j) carrying out a demonstration or test of the aircraft for sale; and
- (k) delivering the aircraft to a person under a contract of sale.

Subregulation 91.845(2) provides that for paragraph 91.845(1)(a), a reference to a special purpose operation includes a reference to the following:

- (a) training in the special purpose operation;
- (b) taking the aircraft to a place where the special purpose operation is to start;
- (c) taking the aircraft from a place where the special purpose operation has ended; and
- (d) any other operation necessary to accomplish the special purpose operation.

Division 91.T.3 – Provisionally certificated aircraft—operating requirements

This Division inserts a new Division 91.T.3 of CASR, inclusive of regulations 91.850 to 91.870, that prescribes requirements for the operation of provisionally certificated aircraft. Provisional type certificates can be issued to permit the types of operations mentioned in subregulation 91.855 of CASR.

Regulation 91.850 – Provisionally certificated aircraft—operating requirements

Subregulation 91.850(1) provides that the operator and pilot in command of an aircraft that is provisionally certificated each contravene this subregulation if the aircraft begins a flight and a requirement mentioned in subregulation (2) is not met for the flight.

Subregulation 91.850(2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) the aircraft's certificate of airworthiness must be in force;
- (b) any condition or requirement placed on the certificate must be complied with;
- (c) the flight must not be an air transport operation;
- (d) the flight must be an operation of the kind mentioned in regulation 91.855;
- (e) if the aircraft is being flown to obtain type certification or supplemental type certification for the aircraft—the requirements in regulation 91.860 are met;
- (f) if the aircraft is being flown other than to obtain type certification or supplemental type certification, the aircraft must be flown within the limitations stated in the aircraft flight manual instructions for the aircraft;
- (g) the requirements for the carriage of people mentioned in regulation 91.865 must be complied with; and
- (h) the pilot must comply with the procedures mentioned in subregulation 91.870(1).

Subregulation 91.850(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.855 provides that paragraph 91.850(2)(d), the kinds of operation are as follows:

- (a) an operation that is required to obtain type certification or supplemental type certification for the aircraft;
- (b) training flight crew members, including by means of simulated air transport operations;
- (c) a demonstration flight by the aircraft's manufacturer for prospective purchasers;
- (d) an operation by the aircraft's manufacturer for the purpose of conducting a market survey;

- (e) an operation conducted for the purpose of flight checking of instruments, accessories, and items of equipment that do not affect the airworthiness of the aircraft; and
- (f) service testing of the aircraft.

Regulation 91.860 – Provisionally certificated aircraft—operation for type certification or supplemental type certification

Subregulation 91.860(1) prescribes that for paragraph 91.850(2)(e), the requirements to be met if the aircraft is being flown to obtain type certification or supplemental type certification for the aircraft are as follows:

- (a) the flight must not take place outside, or partly outside, any area to which operations under the provisional certificate of airworthiness are limited, unless the holder of the provisional certificate of airworthiness for the aircraft holds an approval under regulation 91.045 or 91.050 for the purposes of this paragraph;
- (b) if the flight is over a populous area—the holder of the provisional certificate of airworthiness for the aircraft must hold an approval under regulation 91.045 or 91.050 for the purposes of this paragraph; and
- (c) either the flight must take place by day and under the VFR or the holder of the provisional certificate of airworthiness for the aircraft must hold an approval under regulation 91.045 or 91.050 for the purposes of subparagraph 91.860(1)(c)(ii).

Subregulation 91.860(2) prescribes a requirement for the grant of an approval mentioned in paragraphs 91.860(1)(a) and (b) that CASA or an authorised person be satisfied that the aircraft:

- (a) is controllable throughout its normal range of speeds and throughout all the manoeuvres to be executed; and
- (b) has no hazardous operating characteristics or design features.

Regulation 91.865 – Provisionally certificated aircraft—requirements for the carriage of people

Subregulation 91.865(1) provides that for paragraph 91.850(2) (g), the requirements for the carriage of people are as follows:

- (a) each person carried on the aircraft must be notified before boarding the aircraft that the aircraft is provisionally certificated; and
- (b) a person must not be carried on the aircraft unless subregulation (2) applies to the person.

Subregulation 91.865(2) provides that, for subregulation (1), this subregulation applies to a person if they have a function in the aircraft's operations or both of the following apply:

- (a) carriage of the person is authorised by the manufacturer; and
- (b) the holder of the provisional certificate of airworthiness for the aircraft holds an approval under regulation 91.045 or 91.050 for the carriage of the person.

Regulation 91.870 – Provisionally certificated aircraft—additional requirements for operators

Subregulation 91.870(1) provides that the operator of a provisionally certificated aircraft must hold an approval under regulation 91.045 or 91.050 for procedures used by flight crew and ground support staff in both:

- (a) operating the aircraft in accordance with this Division; and

(b) landing at and taking off from an aerodrome if take-off or approach over a populous area is necessary.

Subregulation 91.870(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.T.4 – Experimental aircraft—operating requirements

This Division inserts a new Division 91.T.4 of CASR, inclusive of regulations 91.875 to 91.885, that prescribes requirements for the operation of aircraft certificated in the experimental category. An experimental category aircraft is an aircraft for which an experimental certificate has been issued for a purpose mentioned in regulation 21.191 of CASR.

Regulation 91.875 – Experimental aircraft—operating requirements

Subregulation 91.875(1) provides that the operator and pilot in command of an aircraft that is certificated in the experimental category each contravene this subregulation if the aircraft begins a flight and a requirement mentioned in subregulation (2) is not met for the flight.

Subregulation 91.875(2) provides the requirements to be met to avoid a contravention of subregulation (1).

Subregulation 91.875(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.880 provides that, for subparagraph 91.875(2)(d)(ii), the kinds of operations permitted by experimental aircraft are the following:

- (a) taking the aircraft to a place where maintenance on the aircraft is to be done;
- (b) taking the aircraft from a place where maintenance on the aircraft has been done;
- (c) testing the aircraft after maintenance;
- (d) flying training (other than for the issue of a pilot licence);
- (e) practice in flying the aircraft;
- (f) carrying out a demonstration or test of the aircraft for sale;
- (g) delivering the aircraft to a person under a contract of sale; and
- (h) for an amateur-built aircraft or a kit-built aircraft—flying training given to the aircraft's owner.

Regulation 91.885 provides that, for subparagraph 91.875(2)(i)(i), the number of persons allowed on board the aircraft is the number specified in the approval granted under regulation 91.045 (if applicable) or the lesser of the following: 6 or the number of persons the aircraft was designed to carry

Division 91.T.5 – Primary category aircraft and intermediate category aircraft—operating requirements

This Division inserts a new Division 91.T.5 of CASR, comprising regulation 91.890, that prescribes requirements for the operation of aircraft certificated in the primary and intermediate categories. Such an aircraft is one that is of simple design and is intended for recreational, sporting or personal use. Such aircraft can be in any form, including an aeroplane, glider, powered glider, rotorcraft and manned free balloon.

Regulation 91.890 – Primary category aircraft and intermediate category aircraft—operating requirements

Subregulation 91.890(1) provides that the operator and pilot in command of an aircraft certificated in the primary or intermediate category each contravene this subregulation if the aircraft begins a flight and a requirement mentioned in subregulation (2) is not met for the flight.

Subregulation 91.890(2) provides that the requirements mentioned in subregulation (1) are that a certificate of airworthiness in the primary or intermediate category, as relevant for the aircraft, must be in force for the aircraft and the flight must not be an air transport operation.

Subregulation 91.890(3) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.T.6 – Light sport aircraft—operating requirements

This Division inserts a new Division 91.T.6 of CASR, inclusive of regulations 91.895 to 91.900, that prescribes requirements for the operation of aircraft certificated as Light Sport Aircraft.

Regulation 91.895 – Light sport aircraft—operators

Subregulation 91.895(1) provides that the operator, for a flight of an aircraft certificated in the light sport category, contravenes this subregulation if a special certificate of airworthiness for a light sport aircraft has been issued for the aircraft and the certificate of airworthiness is not in force for the flight.

Subregulation 91.895(2) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.900 – Light sport aircraft—pilots

Subregulation 91.900(1) provides that the pilot in command of an aircraft certificated in the light sport category contravenes this subregulation if the pilot begins a flight in the aircraft and a requirement mentioned in subregulation (2) is not met for the flight.

Subregulation 91.900(2) provides that the requirements mentioned in subregulation (1) are the following:

- (a) the certificate of airworthiness must be in force;
- (b) the aircraft must be operated either solely under Part 91 of CASR or for flying training;
- (c) a placard that complies with the requirements prescribed by the Part 91 Manual of Standards must be displayed inside the aircraft;
- (d) each person who boards the aircraft must be notified of the contents of the that placard;
- (e) the aircraft operating instructions issued for the aircraft and equipment must be complied with;
and
- (f) any safety direction or requirement issued by the aircraft’s manufacturer must be complied with.

Subregulation 91.900(3) provides that, for paragraphs 91.900(2)(e) or (f), operation of the aircraft in contravention of the aircraft or equipment operating instructions or a safety direction or requirement of the manufacturer, is permitted provided such operation has been approved by the aircraft’s manufacturer.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant or significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. In particular, the manufacturer's approval may not be a document within the Commonwealth's knowledge or control.

Subregulation 91.900(4) provides that, for subregulations (2) and (3), references to the manufacturer of the aircraft includes references to a person appointed by CASA to perform the functions of the manufacturer if the manufacturer of the aircraft no longer exists or can no longer provide instructions for the continuing airworthiness of the aircraft.

Subregulation 91.900(5) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.T.7 – Special flight permits—operating requirements

This Division inserts a new Division 91.T.7 of CASR, comprising regulation 91.905, that prescribes requirements for restrictions on operating under a special flight permit.

A special flight permit may be issued in circumstances such as when:

- (a) a certificate of airworthiness is temporarily invalid, for example as the result of a damage or lack of maintenance;
- (b) a certificate of airworthiness cannot be issued, for example because the aircraft does not comply with the essential requirements for airworthiness; or
- (c) compliance with airworthiness requirements has not yet been fully demonstrated, but the aircraft has been determined as capable of undertaking a safe flight.

Regulation 91.905 – Flights under special flight permits

Subregulation 91.905(1) provides that the pilot in command of an aircraft for a flight contravenes this subregulation if a special flight permit is in force for the aircraft, the aircraft begins the flight and the flight is not authorised by the permit.

Subregulation 91.905(2) provides that the pilot in command of an aircraft for a flight contravenes this subregulation if a special flight permit is in force for the aircraft, the aircraft begins the flight and a condition imposed on the special flight permit is not complied with.

Subregulation 91.905(3) provides that the operator and pilot in command of an aircraft for a flight each contravene this subregulation if a special flight permit is in force for the aircraft and the aircraft begins the flight and, if the pilot in command is the only person on board, a copy of the flight permit is not carried on the aircraft. Additionally, if anyone other than the pilot in command is on board, the requirements mentioned in subregulation (4) must be met.

Subregulation 91.905(4) provides that the requirements mentioned in subregulation (3) are that a copy of the special flight permit must be displayed in the aircraft in a place where a person on board the aircraft, other than the pilot in command, will see it and, before boarding the aircraft, the operator or the pilot in command must tell the person that the aircraft is operated under a special flight permit, the reasons for the issue of the permit and what the permit authorises.

Subregulation 91.905(5) provides that a contravention of subregulation (1), (2) or (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Division 91.T.8 – Miscellaneous

This Division inserts a new Division 91.T.8 of CASR, inclusive of regulations 91.910 to 91.920, that prescribes miscellaneous requirements for the operation of aircraft types mentioned in this Subpart 91.T of CASR.

Regulation 91.910 provides that this Division applies to the operation of an aircraft for which a special certificate of airworthiness is in force.

Regulation 91.915 – Aircraft with special certificates of airworthiness—maintenance release etc.

Subregulation 91.915(1) provides that this regulation does not apply to an aircraft for which a special flight permit is in force.

Subregulation 91.915(2) provides that the operator and pilot in command of an aircraft, to which the Division applies, each contravene this subregulation if the aircraft begins the flight and a maintenance release or a certificate of release to service is not in force for the aircraft.

Subregulation 91.915(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.920 – Aircraft with special certificates of airworthiness—flight tests to be conducted in certain areas

Subregulation 91.920(1) provides that the pilot in command of an aircraft, to which this Division applies, contravenes this subregulation if the pilot conducts a flight test of the aircraft and the flight test is not conducted over open water, a sparsely populated area or an unpopulated area or, for an amateur-built aircraft, over an area for which an approval has been issued under regulation 91.045 or 91.050 to the holder of the certificate of airworthiness for the purpose of paragraph 91.920(2)(b)(ii)..

Subregulation 91.920(2) provides that the pilot in command of an aircraft, to which this Division applies, contravenes this subregulation if the pilot conducts a flight test of the aircraft and the flight test is not conducted in an area where, in the event of a loss of control of the aircraft, there would be minimal risk to other air traffic or, for an amateur-built aircraft, over an area for which an approval has been issued under regulation 91.045 or 91.050 to the holder of the certificate of airworthiness for the purpose of paragraph 91.920(2)(b)(ii)..

Subregulation 91.920(3) provides that a contravention of subregulation (1) or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Subpart 91.Y – Minimum equipment lists

This Subpart inserts a new Subpart 91.Y of CASR, inclusive of Division 91.Y.1 to 91.Y.5, that prescribes requirements for the administrative matters associated with a Minimum Equipment List (MEL).

Division 91.Y.1 – Preliminary

This Division inserts a new Division 91.Y.1 of CASR, inclusive of regulations 91.925 and 91.930 that prescribes definitions and requirements regarding the contents of a minimum equipment list.

Regulation 91.925 provides definitions for CAR and CASR, of the terms ‘master minimum equipment list’, ‘minimum equipment list’ and ‘rectification interval’.

Regulation 91.930 – Requirements for minimum equipment lists

Subregulation 91.930(1) provides a head of power for the Part 91 MOS to prescribe requirements relating to MELs for aircraft.

Subregulation 91.930(2) provides that without limiting subregulation (1), the Part 91 MOS may prescribe requirements relating to the contents of MELs, the calculation and specification of rectification intervals for items in an MEL; and conditions and limitations that may or must be included in an MEL.

Division 91.Y.2 – Approval of minimum equipment lists

This Division inserts a new Division 91.Y.2 of CASR, comprising regulation 91.935, that prescribes requirements for the approval of MELs.

Regulation 91.935 – Approval of minimum equipment lists

Subregulation 91.935(1) provides that the operator of an aircraft may apply, in writing, for the approval of an MEL for the aircraft.

Subregulation 91.935(2) prescribes the persons, including CASA, to whom the application may be made.

Subregulation 91.935(3) provides that the application must include the proposed MEL.

Subregulation 91.935(4) provides that if an application for the approval is made under subregulation (1), the MEL may be approved if the decision maker is satisfied that the MEL complies with the requirements mentioned in regulation 91.930 and will enable the operator to operate the aircraft safely.

A note to the regulation explains that not all aircraft are required to have an MEL. Other provisions of CAR and CASR require certain aircraft to have an MEL. This regulation sets out how an MEL for an aircraft must be approved.

Division 91.Y.3 – Variations of minimum equipment lists

This Division inserts a new Division 91.Y.3 of CASR, comprising regulation 91.940, that prescribes requirements for the variation of MELs.

Regulation 91.940 – Approval of variations

Subregulation 91.940(1) provides that the operator of an aircraft may apply, in writing, for an approval of a variation of an MEL for the aircraft.

Subregulation 91.940(2) prescribes the persons, including CASA, to whom the application may be made.

Subregulation 91.940(3) provides that the application must include the proposed variation of the MEL.

Subregulation 91.940(4) provides that if an application for the approval of a variation to an MEL is made under subregulation (1), the variation may be approved if the decision maker is satisfied that the MEL, as proposed to be varied, complies with the requirements mentioned in regulation 91.930 and will enable the operator to operate the aircraft safely.

Division 91.Y.4 – Extensions of rectification intervals

This Division inserts a new Division 91.Y.4 of CASR, inclusive of regulations 91.945 to 91.955, that prescribes requirements regarding the extension of rectification intervals for an equipment item specified in an MEL.

Regulation 91.945 – Approval of extensions of rectification intervals

Approval of extension of application

Subregulation 91.945(1) provides that the operator of an aircraft may apply, in writing, for the approval of an extension of a rectification interval for an item specified in an MEL for the aircraft.

Subregulation 91.945(2) provides persons to whom the application may be made, being CASA or a permitted continuing airworthiness management organisation (CAMO), who is not the operator of the aircraft.

Subregulation 91.945(3) provides that if an application is made under subregulation (1), CASA or the CAMO may, subject to subregulation (5), approve the extension.

Approval of extension without application—continuing airworthiness management organisation is the operator

Subregulation 91.945(4) provides that a CAMO may, subject to subregulation (5), approve an extension of the rectification interval for an item specified in an MEL for the aircraft if the CAMO is the operator of the aircraft, and if the CAMO is permitted to approve the extension in accordance with Part 42 of CASR.

Requirements for approval of extension

Subregulation 91.945(5) provides that the requirements that must be met in order for an extension of a rectification interval to be approved. Each of the requirements in the subregulation must be met, except that the requirement in paragraph (f) only applies if a provision of CAR or CASR (other than this Subpart) permits the aircraft to operate with the item inoperative for a maximum period of time.

Matters to be set out in approval

Subregulation 91.945(6) provides requirements for the substance and form of an approval given under subregulation (3) or (4).

Regulation 91.950 – Effect of approval

Subregulation 91.950(1) provides that if an extension of a rectification interval is approved under subregulation 91.945(3) or (4), the operation of the aircraft with the inoperative item during the extended rectification interval is taken to be permitted by the MEL.

Subregulation 91.950(2) provides that if Part 42 of CASR (Continuing Airworthiness Requirements) does not apply to the aircraft, subregulation (1) applies to the operation of the aircraft

only if a copy of the approval of the extension is kept with the maintenance release for the aircraft throughout the period of the extension.

Regulation 91.955 – CASA to be notified of extensions approved by a continuing airworthiness management organisation

Subregulation 91.955(1) provides that this regulation applies if an extension of a rectification interval is approved by a CAMO.

Subregulation 91.955(2) provides that the operator of the aircraft must notify CASA, in writing, of the matters prescribed in this subregulation, within 10 days of the start of the extended rectification interval.

Subregulation 91.955(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 20 penalty units.

Division 91.Y.5 – Other

This Division inserts a new Division 91.Y.5 of CASR, comprising regulation 91.960, that prescribes other requirements regarding the operation of aircraft with inoperative systems.

Regulation 91.960 – Operation of aircraft with multiple inoperative items not permitted in certain circumstances

Subregulation 91.960(1) provides that this regulation applies if:

- (a) an aircraft begins a flight with more than one inoperative item, in accordance with an MEL for the aircraft; and
- (b) the number and kinds of inoperative items for the flight, or the relationship between the items, reduces the level of safety of the operation of the aircraft, or increases the flight crew's workload, to the extent that it is unsafe for the flight to be conducted.

Subregulation 91.960(2) provides that for the purposes of CAR and CASR, the operation of the aircraft for the flight with the inoperative items is not permitted by the MEL for the aircraft.

The purpose of this regulation is to ensure an aircraft with more than one inoperative item permitted by the MEL can only be operated if it is safe for the flight to be conducted.

Subpart 91.Z—Foreign aircraft

This Subpart inserts a new Subpart 91.Z of CASR, inclusive of regulations 91.965 to 91.995, that prescribes requirements for foreign registered aircraft to meet certain requirements of the Chicago Convention, certain airworthiness requirements and CASA directions. It also prescribes certain requirements for foreign state aircraft.

Regulation 91.965 – Foreign registered aircraft—Chicago Convention

Subregulation 91.965(1) provides that the operator and pilot in command of an aircraft each contravene this subregulation if the aircraft is flown in Australian territory and certain requirements of the Chicago Convention prescribed in paragraph (b) are not complied with.

Subregulation 91.965(2) provides that requirements in subparagraph (1)(b)(ii), relating to the aircraft's certificate or airworthiness do not apply if a special flight authorisation has been granted and is in force.

Subregulation 91.965(3) provides that requirements under specified subparagraphs of subregulation (1) do not apply to the extent that the requirement is inconsistent with a requirement under another provision of this Part.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. In particular, it is costly and impracticable for the Commonwealth to establish in each prosecution, under the provision, that the Chicago Convention requirement is consistent with every provision of Part 91, in circumstances where the defendant is aware of, and may wish to raise, an inconsistency as a defence.

Subregulation 91.965(4) provides that a contravention of subregulation (1) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

A note to the regulation refers to sections 25, 26 and 27A of the Act in relation to conditions that may be imposed by CASA on the operation of foreign registered aircraft in Australian territory.

Regulation 91.970 – Foreign registered aircraft—special flight authorisations

Subregulation 91.970(1) provides that a person may apply to CASA for a special flight authorisation, in respect of a foreign registered aircraft, to fly the aircraft in Australian territory without a certificate of airworthiness required under regulation 91.965.

Subregulation 91.970(2) provides that subject to regulation 11.055 of CASR, CASA must grant the authorisation. Regulation 11.055 provides general requirements for the consideration of applications for authorisations by CASA.

Subregulation 91.970(3) provides that the pilot in command of foreign registered aircraft contravenes this subregulation if a special flight authorisation is in force for the aircraft, the aircraft is flown in Australian territory and the pilot in command fails to comply with conditions of the authorisation.

Subregulation 91.970(4) provides that a contravention of subregulation (3) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.975 – Foreign state aircraft—approval to fly in Australian territory

Subregulation 91.975(1) provides that the operator and pilot in command of a foreign state aircraft each contravene this subregulation if the aircraft is flown in Australian territory and the operator does not hold a CASA approval under regulation 91.045.

Subregulation 91.975(2) provides that the pilot in command of foreign state aircraft contravenes this subregulation if the aircraft is flown in Australian territory and the pilot in command fails to comply with a condition of the approval held by the aircraft operator under regulation 91.045 for the flight.

Subregulation 91.975(3) provides that a contravention of subregulation (1), or (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.980 – Foreign registered aircraft—major defect—CASA direction

Subregulation 91.980(1) provides that if CASA is satisfied that a foreign registered aircraft in Australian territory has a major defect, CASA may issue a written direction to a person imposing conditions on the operation of the aircraft that:

- (a) for an aircraft registered in a Contracting State—are requested by the national aviation authority of the State, or
- (b) CASA is satisfied are necessary for the safety of air navigation.

Subregulation 91.980(2) provides that a person contravenes this subregulation if the person contravenes a direction issued under subregulation (1).

Subregulation 91.980(3) provides that a contravention of subregulation (2) is an offence of strict liability. The penalty for the offence has been established as 50 penalty units.

Regulation 91.985 provides that if CASA issues a direction under regulation 91.980 in relation to an aircraft that is registered in a Contracting State, CASA must give the national aviation authority of the State notice in writing of the action taken by CASA, a copy of the direction and a report, in writing, of the defect.

Regulation 91.990 – Foreign registered aircraft—CASA may revoke direction

Revocation following notification by Contracting State

Subregulation 91.990(1) provides that CASA may revoke, in writing, a direction issued under regulation 91.980 in relation to an aircraft registered in a Contracting State if the national aviation authority of the Contracting State provides CASA with a written notification that meets the requirements prescribed in this subregulation.

Subregulation 91.990(2) provides that, despite subregulation (1), CASA must not revoke the direction if it is satisfied that doing so would adversely affect the safety of air navigation.

Revocation if CASA satisfied direction no longer necessary

Subregulation 91.990(3) provides that CASA may revoke, in writing, a direction issued under regulation 91.980 if CASA is satisfied that the direction is no longer necessary for the safety of air navigation. This mechanism is available in relation to all foreign registered aircraft, including those registered in a non-Contracting State.

Regulation 91.995 – Foreign registered aircraft—when direction or revocation takes effect

Subregulation 91.995(1) provides that a direction issued under regulation 91.980 does not have effect in relation to a person until it has been served on the person or affixed to the aircraft to which it relates.

Subregulation 91.995(2) provides that revocation of a direction under regulation 91.990 has effect when it is served on the person on whom the direction was served or, if the direction was affixed to the aircraft to which the direction relates, when CASA affixes the revocation to the aircraft.