

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Infrastructure and Transport and Regional Development.

Civil Aviation Act 1988
Civil Aviation Legislation Amendment (Part 149) Regulations 2018
Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018

Purpose

The purpose of the *Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018* (the **Part 149 MOS**) is to prescribe matters in relation to approved self-administering aviation organisations (**ASAOs**). The Part 149 MOS is being made under Part 149 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

In particular, the Part 149 MOS deals with:

- the aviation administration functions that an ASAO may be authorised to perform under regulation 149.075 of CASR;
- the kinds of aircraft that are Part 149 aircraft for the purposes of functions prescribed in the Part 149 MOS;
- the persons that are key personnel of an ASAO;
- requirements for an ASAO's safety management system required by regulation 149.270 of CASR;
- requirements for an ASAO's audit and surveillance system required by regulation 149.275 of CASR;
- additional reference materials to which an ASAO must provide access under regulation 149.285 of CASR;
- additional matters that must be included in an ASAO's aviation administration and enforcement rules under regulation 149.290 of CASR; and
- additional matters that must be included in an ASAO's exposition under regulation 149.340 of CASR.

Legislation

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. The *Civil Aviation Regulations 1988 (CAR)* and CASR are made under the Act.

Under regulation 149.010 of CASR, CASA may issue a Manual of Standards for Part 149 of CASR that prescribes matters required or permitted by that Part to be prescribed, or prescribe matters necessary or convenient to be prescribed, for carrying out or giving effect to Part 149. This power is complemented by other provisions, throughout Part 149, which empower CASA to prescribe specific matters in the Part 149 MOS.

Section 4 of the *Acts Interpretation Act 1901* provides, among other things, that if an Act (including a regulation) is enacted and at a time after its enactment (the start time) the Act will confer power to make an instrument, that power may be exercised before the start time as if the relevant commencement had occurred. However, the exercise of this power does not confer a

power or right to impose an obligation on a person before the relevant commencement, except so far as is necessary or convenient. The Part 149 MOS is being made under the power conferred on CASA to do so under regulation 149.010 of CASR, a regulation that will not commence until 14 July 2019 or earlier on a single day to be fixed by the Minister by notifiable instrument.

Part 149 MOS

The Part 149 MOS comprises 7 separate chapters, described below:

Chapter 1	Preliminary
Chapter 2	Aviation administration functions
Chapter 3	Key personnel
Chapter 4	Changes to exposition
Chapter 5	Systems and procedures
Chapter 6	ASAO aviation administration and enforcement rules
Chapter 7	Exposition requirements

Chapter 1 of the Part 149 MOS, comprising sections 1 to 5, sets out the name of the instrument, its commencement, authority, scope and definitions.

For the purposes of Part 149 of CASR, the Part 149 MOS includes new definitions for: *airworthiness activity, applicable CAO, empty weight, flight training, immediate family, overseas authorisation, parachute, parachute airworthiness training, parachute descent, parachute training operation, parachuting training, Part 149 aircraft, Part 149 airworthiness training, powered parachute, trainee parachutist, tandem parachutist, weight control and weight-shift-controlled aeroplane.*

Chapter 2 of the Part 149 MOS comprises 4 divisions (sections 6 to 30).

Division 1 (general) sets out the legislative authority for Chapter 1 (the definition of *aviation administration function* in Part 1 of the Dictionary to CASR), and provides that the Chapter prescribes aviation administration functions that an ASAO may be authorised to perform under regulation 149.075 of CASR.

Division 2 (aviation administration functions for sport and recreational aircraft) comprises 2 subdivisions.

Subdivision A of Division 2 provides for preliminary definitions and their application, i.e. what aircraft are Part 149 aircraft and the purposes for which they are used (for example, sporting or recreational purposes, carriage of the pilot).

Subdivision B of Division 2 provides for the aviation administration functions that an ASAO may apply to administer in relation to *Part 149 aircraft*. The functions include: administering aircraft registration; airworthiness standards and assessments; airworthiness activities; airworthiness organisations; airworthiness training; procedures for safe conduct of flight operations; duties essential to the operation of an aircraft; flight training organisations and the issue of authorisations on the basis of existing authorisations.

The aircraft that the MOS defines as *Part 149 aircraft* for the purposes of Division 2 are aircraft currently regulated under a model that exempts sport and recreational aviation aircraft from otherwise applicable legislation if conditions set out in Part 95 of the Civil Aviation Orders are complied with. The requirements generally involve affiliation with a specified self-administering recreational organisation that is party to a deed of agreement with CASA.

Division 3 (aviation administration functions for parachuting) prescribes functions relating to parachuting activities. These functions cover the conduct of parachute descents and the conduct of operating an aircraft to facilitate a parachute descent. The functions also cover training for parachute descents or jump pilot activities, and maintenance for parachutes. Parachuting activities are currently regulated under instruments made under regulation 152 of CAR.

Division 4 (miscellaneous aviation administration functions) provides for the aviation administration functions for glider-towing aircraft.

Chapter 3 of the Part 149 MOS, comprising section 31, prescribes for the purposes of paragraph (d) of the definition of *key personnel* in Part 1 of the Dictionary to CASR the members of the ASAO's personnel that are key personnel. This is generally a person who carries out the responsibilities of a manager of an administrative aviation function for an ASAO.

Chapter 4 of the Part 149 MOS, comprising section 32, prescribes, for the purposes of regulation 149.115 of CASR, requirements for an application to approve changes to an exposition. This section is reserved.

Chapter 5 of the Part 149 MOS, comprising sections 33 to 35, prescribes, for the purposes of regulation 149.270 of CASR, further requirements for an ASAO safety management system.

Chapter 6 of the Part 149 MOS, comprising section 36, prescribes, for the purposes of regulation 149.290 of CASR, further requirements for ASAO aviation administration and enforcement rules.

Chapter 7 of the Part 149 MOS, comprising section 37, prescribes, for the purposes of regulation 149.340 of CASR, further requirements for the content of an exposition.

A key aspect of the Part 149 MOS is the prescription of the aviation administration functions that an ASAO may be approved to administer. An ASAO may be approved to perform functions to administer an aircraft or to administer activities undertaken by persons in relation to aircraft. As outlined above, the Part 149 MOS also prescribes functions in relation to parachuting activities.

An ASAO administers aircraft if the ASAO has an approved function of establishing a register of aircraft, carrying out certain airworthiness functions in relation to aircraft outlined in section 15, or establishing procedures necessary for the safe conduct of flight operations in the aircraft (section 19). Other functions provide for aviation activities that an ASAO can administer, such as administering flying and other flight operations (for example, conducting flight training in an aircraft), and administering airworthiness activities such as the maintenance of aircraft, and airworthiness training for the qualification of an individual to carry out maintenance.

The scheme allows that a self-administering organisation may administer persons as an organisation that provide flight training, maintenance or maintenance training. Administering those organisations would involve making assessments as to the suitability and capability of the organisation to carry out the activities, and involves the ASAO conducting oversight of the organisation in carrying out activities permitted under the organisation's authorisation. The functions do not delegate the ASAO's responsibility to issue authorisations to individuals to conduct an aviation activity administered by the ASAO. That is, the ASAO retains its responsibility to authorise an individual to, for example, fly an aircraft, conduct flight training during a flight, conduct a parachute descent, or carry out maintenance, even if the individual does this on behalf of an organisation approved by the ASAO to carry out the aviation activities. The authorised individual would conduct activities on behalf of an organisation if, for example, the person is a principal officer, or an employee, of the organisation.

Competency standards and units of competency

Many of the aviation administration functions involve self-administering aviation organisations developing competency standards and units of competency in relation to qualifications for a pilot certification, a parachutist certification or an airworthiness certification. This occurs for the following concepts in the Part 149 MOS:

- Part 149 airworthiness training;
- flight training (in relation to a Part 149 aircraft);
- parachuting training;
- parachuting airworthiness training.

For these functions, an ASAO would develop units of competency that must be successfully completed by applicants for the issue of a relevant authorisation to the person by the ASAO. An ASAO may also establish other requirements such as flight tests, aeronautical knowledge requirements or proficiency checks for the issue of particular authorisations. This is for the purpose of ensuring that an individual undertaking an aviation activity administered by the ASAO is competent to do so.

Units of competency and competency standards are those set by an ASAO for the purposes of ASAO-issued authorisations, and are not the same as those set by registered training organisations that deliver vocational education and training.

Any requirements that the ASAO attaches to the issue of an authorisation will be set out in the eligibility criteria for the authorisation. The ASAO must include the eligibility criteria for authorisations it issues in its aviation administration and enforcement rules provided for by regulation 149.290 of CASR. Paragraph 149.340(g) requires that the rules be included in the operator's exposition (which must be kept up to date and made readily available to its personnel and authorisation holders under regulation 149.350 of CASR). CASA approves the exposition in the course of approving the ASAO for the issue of an ASAO certificate under regulation 149.075.

The ASAO is further obligated to comply with the terms of its exposition under regulation 149.345 of CASR. Under regulation 149.400, the ASAO is not permitted to reject an application by a person for an authorisation on grounds other than the eligibility criteria it sets out in its aviation administration and enforcement rules. The Part 149 MOS makes provision for persons to meet the units of competency, or to assess persons against the units of competency, in accordance with this framework in the regulations.

Procedures for safe conduct

The functions prescribed in sections 19 and 24 provide for an ASAO to establish procedures for the safe conduct of flight operations in Part 149 aircraft, or the safe conduct of parachute descents. Procedures for safe conduct of authorisation holders are regulated under paragraph 149.290(1)(g) of CASR such that the procedures are required to be set out in the aviation administration and enforcement rules and are required to be included in the exposition. As mentioned, the ASAO has statutory obligations to make the exposition available to persons affected by it and to keep it up to date.

Consultation

The draft Part 149 MOS was first consulted, together with the draft *Civil Aviation Legislation Amendment (Part 149) Regulation 2016*, from 22 August to 28 October 2016. In response to the submissions received from that consultation, the Part 149 MOS underwent substantial revision before being further publicly consulted between 21 September 2018 and 21 October 2018. This

consultation set out the full proposed Part 149 MOS that supports the operation of Part 149 of CASR (Approved self-administering aviation organisations).

Regulation Impact Statement

A Regulation Impact Statement (*RIS*) was prepared for Part 149 of CASR and assessed as adequate by the Office of Best Practice Regulation (OBPR ID: 21149). The Part 149 MOS is a component of Part 149 of CASR and its impacts are incorporated within the RIS.

Incorporation by reference

Civil Aviation Orders

In accordance with paragraph 15J(2)(c) of the *Legislation Act 2003*, the Part 149 MOS applies, adopts or incorporates matters contained in certain Civil Aviation Orders (*CAOs*), as in force from time to time.

The CAOs are legislative instruments that are available on the Federal Register of Legislation.

Incorporating aspects of the CAOs is necessary because of the way the Part 149 scheme will interact with the current framework that regulates sport and recreational aircraft with exemptions from the otherwise applicable legislation. Those exemptions apply to the operators of the aircraft, subject to compliance with operational conditions set out in the CAOs. The conditions include affiliation with named recreational aviation organisations who are parties to deeds of agreement with CASA, but who are intended to become Part 149 ASAOs. The Part 149 MOS prescribes aviation administration functions for ASAOs that apply in relation to these aircraft, and therefore interacts with the exemptions in CAOs for operators of those aircraft.

The CAOs listed below are incorporated by reference for the purpose of the definition of *applicable CAO* in section 5. The concept is used in section 19, which prescribes that it is an aviation administration function to establish procedures necessary for the safe conduct of flight operations in a Part 149 aircraft in accordance with any applicable CAO and the civil aviation legislation. In this way the provision makes it clear that the rules applying to aircraft in an applicable CAO are part of the legislative landscape and cannot be overridden. The definition captures the CAOs that currently regulate flight operations in the aircraft to which the Part 149 MOS applies, including by requiring affiliation with a recreational aviation organisation.

The aircraft defined to be *Part 149 aircraft* are the aircraft currently regulated under exemptions and associated operational conditions in the applicable CAOs. The aircraft are generally used for sport or recreational purposes, or other private operations. Amendments to the CAOs that will broaden their operation to accommodate ASAOs as administering organisations will be in place before the approval of an ASAO affected by the CAO. The operational requirements that apply to sport and recreational aircraft will be the subject of proposed Part 103 of CASR, the development of which is scheduled for 2019.

Civil Aviation Order 95.4 exempts power-assisted sailplanes, powered sailplanes and sailplanes from provisions of CAR if conditions that contain operational requirements are met. The Part 149 MOS also incorporates by reference, in section 5, the meaning that *power-assisted sailplane* has in the CAO.

Civil Aviation Order 95.4.1 exempts gliders engaged in charter operations from provisions of CAR if conditions that contain operational requirements are met. Gliders, in this sense, includes sailplanes, powered-assisted sailplanes or powered sailplanes.

Civil Aviation Order 95.8 exempts hang gliders and paragliders from provisions of CAR. The CAO supports the operation of regulation 200.001 of CASR that exempts the aircraft from CASR if conditions in the CAO are complied with.

Civil Aviation Order 95.10 exempts privately-built low-momentum ultralight aeroplanes from provisions of CAR. The CAO supports the operation of regulation 200.002 of CASR that exempts the aircraft from CASR if conditions in the CAO are complied with. Section 8 of the Part 149 MOS also incorporates by reference:

- requirements in subparagraphs 2.2(a), (b), (c) and (d) of the CAO relating to the building of an aircraft that must be met for the aircraft to be administered under the CAO; and
- paragraph 2.3 of the CAO which empowers CASA to determine that aircraft not meeting the requirements mentioned in paragraph 2.2 can nonetheless be administered under the CAO.

Civil Aviation Order 95.32 exempts weight-shift-controlled aeroplanes and powered parachutes from provisions of CAR. The CAO supports the operation of regulation 200.013 of CASR that exempts the aircraft from CASR if conditions in the CAO are complied with. Item 1 of the table in section 9 also incorporates by reference subparagraphs 1.1(c) and (g) of the CAO that relate to requirements regarding manufacture and airworthiness that must be met by the aircraft in order to be administered under the CAO. Subsection 9(2) of the Part 149 MOS incorporates by reference the rule in paragraph 7.4 of the CAO, which permits a pilot to tow another aircraft in certain circumstances.

Civil Aviation Order 95.55 exempts certain ultralight aeroplanes from provisions of CAR. The CAO supports the operation of regulation 200.014 of CASR that exempts the aircraft from CASR if conditions in the CAO are complied with. Subsection 10(2) of the Part 149 MOS also incorporates by reference paragraph 1.2 of the CAO, which is a lengthy application provision prescribing the kinds of aircraft to which the CAO applies.

Civil Aviation Order 95.54 exempts manned balloons and hot air airships used in private operations from provisions of CAR.

Civil Aviation Orders 95.12 and 95.12.1 exempt gyroplanes from provisions of CAR.

In addition to the applicable CAOs, as defined in section 5 of the Part 149 MOS, Civil Aviation Order 29.10 contains rules about how aerial operations are to be conducted. The Part 149 MOS incorporates by reference in section 5 the meaning of “aerial mustering”. Aerial mustering conducted as a private operation in certain aircraft may be administered under the Part 149 MOS. Subsections 12(2) and (5) of the Part 149 MOS require that aerial mustering conducted in a gyroplane must be done in accordance with the CAO.

Transitional arrangements

Part 149 of CASR provides transitional arrangements in relation to ASAO certificates and ASAO-issued authorisations.

To allow existing organisations to continue to function whilst they are preparing their Part 149 ASAO applications, regulation 202.861 of CASR provides that organisations that were certain sport aviation bodies prior to the commencement of Part 149 of CASR are not required to hold an ASAO certificate for a period of three years from commencement. The concept *sport aviation body* is defined in Part 1 of the Dictionary to CASR.

To mitigate against the impact of existing organisations that become ASAOs having to re-issue all the authorisations they have issued to their members immediately upon their being issued an ASAO certificate, regulation 202.862 of CASR provides that a person who holds an authorisation issued by an organisation that becomes an ASAO is taken to be a holder of a Part 149 authorisation on the same terms and conditions for a period of 12 months after the ASAO certificate enters into force, unless the authorisation is cancelled earlier.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment A.

Legislation Act 2003

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of that Act.

Details of the instrument are set out in Attachment B.

Commencement

The provisions of the *Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018* commence on the later of the day after the instrument is registered and immediately after the commencement of the *Civil Aviation Legislation Amendment (Part 149) Regulations 2018*.

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

Statement of Compatibility with Human Rights

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

Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 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 *Civil Aviation Safety Amendment (Part 149) Regulations 2018* (the **Regulations**) amends the *Civil Aviation Safety Regulations 1998 (CASR)* to introduce a new Part 149 under which a Manual of Standards is prescribed for the regulation of approved self-administering aviation organisations (**ASAOs**).

The *Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018* (the **Part 149 MOS**) is issued to prescribe matters required, or permitted, by Part 149 of CASR. Part 149 of CASR establishes a model that will provide a greater degree of transparency and oversight of self-administering organisations approved by the Civil Aviation Safety Authority (**CASA**) to administer aircraft or aviation activities concerning sport and recreational aircraft.

Chapter 1 provides the name, commencement, authority, and scope of the Part 149 MOS. It further provides the definitions of terms used within the instrument.

Chapter 2 defines aircraft that are Part 149 aircraft for the purposes of the aviation administration functions prescribed in Division 2. These are aircraft that are currently regulated under a model that exempts sport and recreational aviation aircraft from otherwise applicable legislation if conditions set out in Part 95 of the Civil Aviation Orders are complied with. The requirements generally involve affiliation with a specified self-administering recreational aviation organisation that is party to a deed of agreement with CASA. The functions that are prescribed in Division 2 include: administering flight operations, including flight training; registering aircraft; establishing procedures for safe conduct of flight operations; and administering the airworthiness of aircraft, including airworthiness training. Division 3 prescribes aviation administration functions for parachuting, including: administering parachute descents, including training; administering the operation of an aircraft to facilitate a parachute descent; establishing procedures for safe conduct of parachute descents; conducting maintenance on parachutes; and administering parachuting operators. Parachuting activities are currently regulated under instruments made under regulation 152 of CAR.

Chapter 3 prescribes that members of an ASAO's personnel who manage a function are a member of the key personnel. An ASAO's key personnel are subject to a greater degree of scrutiny under Part 149.

Chapter 4 is reserved for the purposes of paragraph 149.115(2)(c) of CASR in relation to requirements for applications to CASA to approve changes to an ASAO's exposition.

Chapter 5 prescribes further sets of requirements for a safety management system that the ASAO is required to have, the audit and surveillance system that an ASAO is required to have, and reference materials that an ASAO must make available to personnel and authorisation holders.

Chapter 6 prescribes more requirements for the ASAO's aviation administration and enforcement rules.

Chapter 7 prescribes further requirements for the content of an ASAO's exposition.

Human rights implications

The Regulations engage the following human rights:

- the right to privacy and reputation in Article 17 of the *International Covenant on Civil and Political Rights* (the **ICCPR**);
- the right to work and the rights in work in articles 6(1), 7 and 8(1)(a) of the *International Covenant on Economic, Social and Cultural Rights* (the **ICESCR**);

Aim

The aim of CASA and its regulatory framework, including Part 149 of CASR, is to uphold aviation safety by prescribing the conduct of individuals involved in civil aviation operations.

Reasonableness, necessity and proportionality

Right to Privacy and Reputation

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, or to unlawful attacks on honour and reputation. It further provides that everyone has the right to the protection of the law against such interference or attacks.

Section 14 of the Part 149 MOS prescribes requirements in relation to the keeping and maintaining of an ASAO register that must contain information including the name and address of both the owner and operator of aircraft administered by ASAOs under Part 149 of CASR. The information is required so that the owner and operator can be identified for safety regulatory purposes.

Paragraph 36(e) of the Part 149 MOS provides that an ASAO must include, in its aviation administration and enforcement rules, a process for notifying CASA of the exercise of its enforcement powers and action undertaken by the ASAO regarding contraventions or suspected contraventions by an authorisation holder. It is expected that this will require the keeping of records of personal information, and the disclosure of personal information to CASA. The availability and reporting of this information to CASA is necessary for CASA to effectively conduct oversight of the self-administration of aviation activities, and to take action it thinks necessary to ensure the safety of air navigation.

Subsection 37(2) of the Part 149 MOS requires the recording of the name of certain officers and personnel of an ASAO. This information is required so that persons with responsibility for ensuring the proper administration of ASAOs can be readily identified and contacted.

The requirements in the provisions mentioned above involve activities of one or more of: collecting, recording and storing of personal information. For the reasons stated above, the requirements are reasonable, necessary and proportionate to achieve the fulfilment of specific safety objectives, including the protection of the safety of individuals and the protection of the integrity of the safety regulatory scheme by ensuring that information is available about who is performing activities affecting safety and demonstrating that they are appropriately authorised.

The protections afforded by the *Privacy Act 1988* continue to apply.

To the extent that the Regulations limit the privacy-related rights in Article 17 of the ICCPR, those limitations are reasonable, necessary and proportionate to ensure the safety of air navigation, consistent with the objects of the *Civil Aviation Act 1988*.

Right to Work and Rights in Work

Articles 6(1), 7 and 8(1)(a) of the ICESCR assure individuals their right to freely choose or accept work, including the right not to be deprived of work unfairly. It further provides for the importance of social and economic inclusion.

The Part 149 MOS provides for self-administering organisations to administer the performance of aviation activities. The right to work might be engaged when an ASAO makes a decision about granting an authorisation to a person in relation to conducting an aviation activity that involves professional services, or when it makes a decision under an enforcement power to vary, suspend or cancel such an authorisation held by a person. This is because the decision may engage the person's right to freely choose or accept work and not to be deprived of work unfairly.

However, the scheme provides sufficient safeguards against discrimination or unfair deprivation of work. For example, regulation 149.400 of CASR requires decisions about the grant of authorisations to be made according to the criteria set out in the ASAO's aviation administration and enforcement rules. The rules must be contained in the ASAO's exposition (a document or set of documents approved by CASA and over which CASA has oversight). Further, Part 149 of CASR provides for review by ASAOs and CASA of decisions regarding authorisations that are adverse to the interests of a party, and such decisions are "reviewable decisions" under CASR for the purposes of the *Administrative Appeals Tribunal Act 1975*.

The aviation administration functions prescribed in the Part 149 MOS are aimed at enabling an ASAO to develop measures to ensure the safe conduct of the aviation activities it is administering. The powers exercised by ASAOs, along with CASA's oversight of the ASAOs, are reasonable and proportionate to that end.

Conclusion

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

Civil Aviation Safety Authority

Details of the *Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018*

CHAPTER 1—PRELIMINARY

Section 1 – Name

This section provides that the instrument is called the *Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018*.

Section 2 – Commencement

This section provides for the commencement to be the later of the day after the instrument is registered on the Federal Register of Legislation and immediately after the enabling regulations, namely the *Civil Aviation Legislation Amendment (Part 149) Regulations 2018* (the **Part 149 Regulations**), commence. The Part 149 Regulations were registered on 13 July 2018 and will commence on 14 July 2019 unless they commence earlier on a day fixed by the Minister by notifiable instrument in accordance with section 2 of the Part 149 Regulations.

Section 3 – Authority

This section states that the authority for the instrument is the *Civil Aviation Safety Regulations 1998 (CASR)*.

Section 4 – Scope of Manual of Standards

This section sets out the scope, being that the instrument relates to requirements that must be met by an applicant for an approved self-administering aviation organisation (**ASAO**) certificate under Part 149 of CASR. The instrument also deals with the following matters regarding ASAOs: aviation administration functions; key personnel; and requirements for safety management systems, audit and surveillance systems, and the content of expositions.

Section 5 – Definitions

This section lists all the definitions that are used in the instrument, either setting them out in full or as sign posts to where the definitions are set out elsewhere in the legislation.

The definitions include the concepts **empty weight** and **weight control**. *Civil Aviation Order 100.7 Instrument 2015 (CAO 100.7)* prescribes requirements in relation to the weighing of aircraft for the purposes of subregulation 235(1) of the *Civil Aviation Regulations 1988 (CAR)*. CAO 100.7 applies to all aircraft except manned balloons, hot air airships and aircraft that are administered by a sport aviation body and have been weighed in accordance with the body's procedures. The concept "sport aviation body" will include an ASAO from the commencement of the Part 149 Regulations (see item 34 of Schedule 1 to those regulations). CAO 100.7 includes definitions of **empty weight** and **weight control**.

As CAO 100.7 does not apply to aircraft administered by an ASAO that has the approved function of approving procedures for weight control (under the function prescribed in section 16), it is necessary to include definitions of empty weight and weight control in the Part 149 MOS. This is to ensure consistency of the meaning of these terms for the purposes of the weight control

procedures that will be approved or developed by an ASAO. The definition of empty weight is the same as that expressed in CAO 100.7. The definition of weight control is substantially the same as that expressed in CAO 100.7 with some modification, firstly to account for the unique features of weigh-shift-controlled aeroplanes and secondly to address the supervision of weight control activities that would form part of the be ASAO's function of approving procedures for weight control.

The other definitions in this section are described below for the purposes of the provisions in which they occur.

CHAPTER 2—AVIATION ADMINISTRATION FUNCTIONS

Chapter 2 prescribes the aviation administration functions that an ASAO can apply for under section 149.070 of the Part 149 Regulations.

Division 1—General

Section 6 – Prescribed aviation administration functions

This section sets out the enabling power for prescribing aviation administration functions, being paragraph (b) of the definition of “aviation administration function” in Part 1 of the Dictionary to CASR. It also provides that Chapter 2 prescribes aviation administration functions that an ASAO may be authorised to perform under regulation 140.075 of CASR.

Division 2—Aviation administration functions for sport and recreational aircraft

Subdivision A—Preliminary definitions and application

Sections 7 to 12 in this Subdivision contain definitions of types of aircraft in relation to which the aviation administration functions that are prescribed in Subdivision B of Division 2 of Chapter 2 apply. An organisation may apply to have an aviation administration function in relation to an aircraft that is defined in Subdivision A to be a “Part 149 aircraft”.

Section 7 – Part 149 aircraft—sailplanes and hang gliders

Subsection 7(1) provides for sailplanes, including power-assisted sailplanes and powered sailplanes, that are used only for particular purposes, to be Part 149 aircraft. The purposes are: sporting or recreational purposes, charter or flight training. Subsection 7(3) provides that a powered sailplane that is used to tow sailplanes or hang gliders mentioned in this section is also a Part 149 aircraft.

Subsection 7(2) provides for hang gliders including powered hang gliders, paragliders and powered paragliders, to be Part 149 aircraft if used in private operations for recreational purposes or for flight training.

Section 8 – Part 149 aircraft—low-momentum ultralight aeroplanes

This section provides that a privately-built low-momentum ultralight aeroplane, with certain physical characteristics and that is used only for particular purposes, is a Part 149 aircraft.

Subsection (2) provides for the maximum take-off weight requirements which the aeroplane must meet (between 300 kg and 355 kg depending on its configuration).

Subsection (3) incorporates by reference the requirements in Civil Aviation Order (CAO) 95.10 regarding privately-built aircraft to which the CAO applies. An aircraft must meet the requirements set out in paragraph 2.2 or be subject to a determination made by the Civil Aviation Safety Authority (CASA) under paragraph 2.3 in order to be administered under the CAO. If the CAO does not apply to an aircraft, the exemption provided by regulation 200.002 of CASR does not apply, as it is conditional on compliance with the CAO. Paragraph 2.3 of the CAO allows CASA to determine that an aircraft may be operated safely despite not meeting the specifications in paragraph 2.2.

Subsection (4) provides for the purposes, being: personal carriage of the pilot and aerial inspections of stock, fencing or farm equipment on land owned by the pilot or pilot's immediate family. The note to the section explains that such an aerial inspection is distinct from an aerial application operation that is dealt with in Part 137 of CASR. A flight that is carried out for the purposes of an application operation can only be conducted in accordance with Part 137.

Section 9 – Part 149 aircraft—weight-shift-controlled aeroplanes and powered parachutes

The section provides that a weight-shift-controlled aeroplane or a powered parachute that has certain physical characteristics and meets certain requirements, and that is used only for particular purposes, is a Part 149 aircraft. The table in this section sets out four categories of aircraft.

Item 1 of the table in subsection (1) provides for the physical characteristics and other requirements that must be met for certain of the aircraft that are manufactured commercially.

Item 2 provides that a light sport aircraft (mentioned in regulation 21.172 of CASR) that is manufactured by a qualified manufacturer (*qualified manufacturer* being a term defined in regulation 21.174 of CASR) and that has a special certificate of airworthiness is a Part 149 aircraft.

Item 3 provides that a light sport aircraft that is not manufactured by a qualified manufacturer and that has an experimental certificate is a Part 149 aircraft.

Item 4 provides for the physical characteristics and manufacturing requirements of particular aircraft that are not manufactured commercially.

Subsection (2) provides for the purposes, being: carriage without charge of persons or goods; aerial inspection of stock, fencing or farm equipment on land owned by the pilot or the pilot's immediate family; flight training in the case of certain of the aircraft that have been manufactured commercially; and towing of another aircraft if permitted under paragraph 7.4 of Civil Aviation Order 95.32.

The section also sets out definitions of *powered parachute* and *weight-shift-controlled aeroplane*. These definitions repeat definitions that are in Civil Aviation Order 95.32.

Section 10 – Part 149 aircraft—single-place or 2-place aeroplanes

This section provides that a single-place or a 2-place aeroplane that meets certain physical characteristics and other requirements, and is used only for particular purposes, is a Part 149 aircraft. The aircraft cannot be one that is used for aerial application purposes.

Subsection (2) provides for certain of the physical characteristics (a single engine, single propeller and stall speed not more than 45 knots). The subsection also incorporates the requirements of paragraph 1.2 of Civil Aviation Order 95.55 (*CAO 95.55*). Paragraph 1.2 of the CAO is lengthy and deals with requirements, including in relation to design standards, aircraft certification, modifications of aircraft, manufacturing and light sport aircraft. The aircraft defined as Part 149 aircraft under this section are aircraft that are dealt with in CAO 95.55. The CAO essentially exempts aircraft from provisions of CAR, if the conditions set out in the CAO are met. Aircraft that meet the conditions in the CAO are exempt from provisions of CASR under regulation 200.014 of CASR.

Subsection (3) provides for the purposes, being: private operations; glider towing; and flight training in the case of aircraft built commercially. An aircraft that is privately built by an individual may be used for flying training of the individual.

Section 11 – Part 149 aircraft—manned balloons and hot air airships

This section provides that a free or tethered manned balloon, or a hot air airship, used only for particular purposes, is a Part 149 aircraft. The purposes are: carriage of persons without charge; and participation in events for prizes, certain sponsorships and promotional activities where the pilot is not remunerated.

Section 12 – Part 149 aircraft—gyroplanes

This section sets out 2 groups of gyroplanes that are Part 149 aircraft.

Subsections (1) and (2) provide that a gyroplane that is no more than 250 kg and used only for particular purposes is a Part 149 aircraft. The purposes are: personal carriage of the pilot; aerial inspection conducted as a private operation of stock, fencing or farm equipment on land owned by the pilot or pilot's immediate family; aerial mustering, conducted as a private operation, of land occupied by the pilot and in accordance with requirements of an ASAO that are equivalent to those in Civil Aviation Order 29.10; and flight training done under Part 61 of CASR for aerial mustering.

A gyroplane that meets the physical and other requirements in subsection (4) and is operated only for a purpose set out in subsection (5) is also a Part 149 aircraft. Subsection (4) covers gyroplanes that have a maximum take-off weight up to 600 kg and meet certain other physical characteristics, and gyroplanes that are light sport aircraft and meet certain certification requirements. The purposes include: personal carriage of the pilot, private operations involving aerial inspections (as mentioned in previous provisions) and also certain aerial mustering operations in accordance with Civil Aviation Order 29.10. The purposes also include CASR Part 61 flight training for aerial mustering, and the carriage of a passenger in certain circumstances that involve the oversight of an ASAO.

Section 13 – Application—manned balloons or hot air airships

This section provides that sections 14, 15, 16, 17 and 18 do not apply to a Part 149 aircraft that is a manned balloon or a hot air airship. Those sections set out aviation administration functions involving registering aircraft, airworthiness standards, performance of maintenance, airworthiness organisations and airworthiness training. The airworthiness of manned balloons and hot air airships is dealt with elsewhere in the civil aviation legislation.

Subdivision B—Aviation administration functions for Part 149 aircraft

Subdivision B prescribes aviation administration functions that may apply in relation to the aircraft defined in Subdivision A to be Part 149 aircraft. An organisation may apply to CASA to be approved to perform an aviation administration function in relation to a Part 149 aircraft.

Section 14 – ASAO registration of certain aircraft

This section prescribes that establishing and maintaining a register of Part 149 aircraft that meets the requirements for a register, as set out in paragraphs (2)(a) to (e), is an aviation administration

function. The requirements relate to information that must be kept on a register that would enable an aircraft, the owner and the operator to be identified.

The function is prescribed in relation to any of the aircraft listed in subsection (1). The subsection does not include sailplanes, manned balloons or hot air airships.

Section 15 – Airworthiness standards and assessments etc.

Subsection (1) prescribes that setting design, manufacturing and maintenance standards for a Part 149 aircraft is an aviation administration function. Such standards may relate to the aircraft, aircraft engine, propellers, rotor systems, materials, parts, processes and appliances. The note to the section explains that the civil aviation legislation allows for standards to be set by sport aviation bodies in limited circumstances.

Subsection (2) prescribes certain assessments of the airworthiness of aircraft to be an aviation administration function. These include:

- an assessment of whether, for aircraft not including experimental or amateur-built aircraft, the aircraft design meets an airworthiness standard set by the ASAO under subsection (1);
- assessing an aircraft for the purposes of issuing a certificate in accordance with regulation 200.002 of CASR. This function applies to certain privately-built low-momentum aircraft to which CAO 95.10 applies and that are owned by a person who did not build the aircraft. The certificate relates to whether the aircraft complies with the ASAO's requirements concerning the manufacture of the aircraft.

Subsections (4) and (5) provide for an airworthiness function that will enable an ASAO, that has an approved function mentioned in section 14 or 19 of administering a particular Part 149 aircraft, to assess an aircraft to ascertain whether the aircraft meets a definition or other requirement that would characterise the aircraft as a Part 149 aircraft. The applicable definitions and requirements are generally to be found in Subdivision A of Division 2, but could reside elsewhere. For example, Part 1 of the Dictionary to CASR has definitions that may be relevant (for example, “glider” or “sailplane”). The examples set out under the provision illustrate how the function would be performed for various circumstances.

Section 16 – Airworthiness activities

This section prescribes that administering an airworthiness activity mentioned in subsection (3) is an aviation administration function. Activities under subsection (3) cover carrying out maintenance on a Part 149 aircraft or an aeronautical product for the aircraft, conducting procedures for weight control of the aircraft, or flying the aircraft under a special flight permit. Paragraph (3)(e) provides a catch-all provision to cover any other activity concerning the airworthiness of aircraft that an ASAO might propose to administer. Issuing an authorisation to an individual to undertake such an airworthiness activity is part of the function.

Subsection (2) provides some detail concerning what it means to administer an airworthiness activity. Administering airworthiness activities includes developing competency standards and units of competency for the Part 149 airworthiness training that the ASAO considers must be completed by a candidate before being issued an authorisation to undertake an airworthiness activity. Subsection (2) also includes approving modifications of the aircraft, approving procedures for weight control of the aircraft, developing a scheme for the issue of special flight permits and developing requirements for the keeping of airworthiness records.

Any eligibility criteria that an ASAO imposes under the function for the issue of an authorisation must be set out in its aviation administration and enforcement rules under paragraph 149.290 (1)(b) of CASR. Regulation 149.400 of CASR does not permit an ASAO to reject an application for an authorisation on grounds other than the eligibility criteria set out in the ASAO's aviation administration and enforcement rules.

Subsection (4) prescribes that the airworthiness activities are those that may be performed by an individual without remuneration or on behalf of an airworthiness organisation approved by the ASAO under the function in section 17 (about Part 149 airworthiness organisations). It is not contemplated that an individual can be authorised under section 16 to perform maintenance services on a commercial basis. Airworthiness services on a commercial basis are to be administered under the function mentioned in section 17.

Subsection (5) sets out authorisations that can be issued to a person to carry out an airworthiness activity.

Subsection (6) contains a definition of **Part 149 airworthiness training** for the purposes of its use in paragraph (2)(a) and section 18.

Section 17 – Part 149 airworthiness organisations

This section prescribes that it is an aviation administration function to administer a person that provides airworthiness services in relation to a Part 149 aircraft. The note to subsection (1), referencing section 12C of the *Acts Interpretation Act 1901*, explains that a person authorised under this function can be a corporate body or an individual.

Subsection (2) provides some detail about what it means to administer a person to perform this activity. An ASAO would assess the person's organisation and its procedures, practices, personnel and facilities to determine if the person is capable of providing the airworthiness services. If satisfied, the ASAO would issue an authorisation to the person to carry out airworthiness services. The function also includes ongoing oversight of the capability of the person to continue providing the airworthiness services.

Subsection (3) defines **airworthiness services** for the purposes of the function to be commercial services relating to the airworthiness of an aircraft, including carrying out airworthiness activities and managing continuing airworthiness of the aircraft. An airworthiness activity is an activity mentioned in subsection 16(3). This is established by the definition of **airworthiness activity** in section 5.

Subsection (4) provides that an organisation carries out an airworthiness activity if an individual who holds an authorisation issued by an ASAO carries it out on behalf of the organisation. This would be a person who has successfully completed the relevant training, and been assessed by the ASAO who has issued an authorisation permitting the person to perform the airworthiness activities the person is qualified for. An individual who is not authorised by an ASAO cannot carry out maintenance for a Part 149 organisation.

Section 18 – Part 149 airworthiness training

This section prescribes that administering a person who conducts Part 149 airworthiness training in relation to a Part 149 aircraft is an aviation administration function. Part 149 airworthiness training is the training developed by the ASAO that the ASAO requires to have been completed

before it issues an authorisation to an individual to perform an airworthiness activity. See the definition in subsection 16(6) of *Part 149 airworthiness training*.

Subsection (2) provides some detail about what it means to administer a person to conduct the training. An ASAO would assess the person's organisation and its procedures, practices, personnel and facilities to determine if the person is capable of conducting the training. If satisfied, the ASAO would issue an authorisation to the person to conduct the training. The function also includes ongoing oversight of the capability of the person to continue to conduct training.

Subsection (3) sets out the authorisations that an ASAO can issue under this function. A person can be authorised to conduct training. A person can also be authorised to assess candidates against the competency standards developed by the ASAO for the training. An ASAO might decide to itself assess candidates that have undertaken the training, although it may also decide that the training organisation may do the assessments.

Section 19 – Flight operations—procedures for safe conduct

This section prescribes that it is an aviation administration function to administer a Part 149 aircraft by establishing procedures necessary for the safe conduct of flight operations in the aircraft. Any procedures are to be in accordance with any applicable CAO and any other provision of the civil aviation legislation that applies to the flight operations.

The applicable CAOs are provided for in subsection 5(2). These CAOs set out the conditions that must be complied with in order for the aircraft mentioned in the CAOs to be exempted from compliance with specified provisions of CAR and CASR. While the development of proposed Part 103 of CASR is underway, the scheme continues to rely on flight rules and requirements that are currently set out in the applicable CAOs and certain other CAOs. This provision also captures any other instruments containing flight rules and requirements that apply generally to a particular Part 149 aircraft. CASA is in the process of amending the applicable CAOs and any other applicable instrument so that the rules and requirements in them will apply to Part 149 aircraft that are administered by an ASAO.

Section 20 – Flight operations—duties essential to the operation of aircraft

This section prescribes the function of administering the flight operations of a Part 149 aircraft. The function includes the issuing of authorisations to individuals to perform a duty essential to the operation of the aircraft.

Subsection (2) provides some detail about what it means to administer flight operations. The function includes establishing a certification scheme that deals with the privileges and limitations of a pilot certification and any associated system of ratings or endorsements on the certificate, issued by an ASAO. The function does not inhibit the way an ASAO would choose to structure its pilot authorisations and the way it would confer flying privileges and limitations. The function includes developing competency standards and units of competency that would qualify an individual to be issued an authorisation to conduct a flight operation (e.g. piloting an aircraft: see subsection (3)). Paragraph (2)(c) covers other requirements applicable to, and assessments and testing of, pilots that an ASAO develops in its administration of the function, including aeronautical knowledge, flight tests, experience, proficiency checks and flight reviews. Because flight training also includes ground training and theory not undertaken in aircraft, paragraph (2)(d) covers the conduct and assessment of training not done in an aircraft.

Any eligibility criteria that an ASAO imposes under the function on the issue of an authorisation must be set out in its aviation administration and enforcement rules under paragraph 149.290 (1)(b) of CASR. Regulation 149.400 of CASR does not permit an ASAO to reject an application for an authorisation on grounds other than the eligibility criteria set out in the ASAO's aviation administration and enforcement rules.

Subsection (3) sets out detail about what flight operations are. They include operating the aircraft for a flight and conducting flight training, a flight test or assessment in an aircraft for the issue of a pilot certificate or the issue of a rating or endorsement regarding particular activities permitted under the pilot certificate. Paragraph (3)(d) covers the conduct of flight reviews of pilots to assess their ongoing competency. Paragraph (3)(e) includes the activity of conducting flight testing of an aircraft.

Subsection (4) provides that aeronautical knowledge training of pilots conducted in the classroom on the ground is taken to be a flight operation and is administered under this function. In terms of the design of the legislation, it was considered that this training should be administered under the flight operations function because aeronautical knowledge is necessary to qualify for an authorisation to undertake flight operations, and administering the function includes the development of pilot training and the assessment of pilots.

Subsection (5) provides that flight operations may be performed by an individual on the individual's own behalf, on behalf of the ASAO or on behalf of a Part 149 flight training organisation that is administered by the ASAO under the function in section 21. This provision clarifies the scope of flight training authorised under this function. It is authorised only for private operations, by personnel of the ASAO in the performance of its functions or for a flight training organisation that is administered by the ASAO under section 21.

Subsection (6) sets out the authorisations that an ASAO can issue under the function.

Section 21 – Part 149 flight training organisations

This section prescribes that it is an aviation administration function to administer a person that conducts flight training or flight tests in relation to a Part 149 aircraft. The concept ***flight training*** is defined in section 5 and means the training and assessment required by an ASAO for the issue of a pilot authorisation.

Subsection (2) provides some detail about what is covered by the function of administering a person to conduct the training. An ASAO would assess the person's organisation and its procedures, practices, personnel and facilities to determine if the person is capable of conducting flight training or flight tests (or both). If satisfied, the ASAO would issue an authorisation to the person to conduct training or flight tests. The function includes ongoing oversight of the capability of the person to continue to conduct the training or flights tests covered by the authorisation. The function also includes approving aeronautical examinations that may be conducted by the person.

Subsection (3) sets out the authorisations that an ASAO can issue under the function. An ASAO can issue an authorisation to conduct flight training, flights tests or aeronautical examinations to assess candidates of flight training courses. This reflects the situation in which an ASAO could itself assess candidates who have been trained by a flight training organisation, or it could authorise the organisation to assess the candidates.

Subsection (4) provides that an individual who conducts flight training or a flight test must hold an authorisation issued by the ASAO under the function in section 20. This includes individuals who are personnel of a Part 149 flight training organisation.

Section 22 – Applications to undertake aviation activity on basis of existing authorisations

This section prescribes it is an aviation administration function to administer individuals who hold certain existing authorisations that are listed in subsection (3). These authorisations cover an overseas authorisation, or an authorisation issued by CASA or another sport aviation body (including another ASAO). The concept *sport aviation body* is defined in Part 1 of the Dictionary to CASR. The existing authorisations can relate to operating an aircraft or airworthiness of an aircraft. The concept *overseas authorisation* is defined in section 5. It intends to cover authorisations, issued overseas, that would be equivalent to the kinds of authorisations issued by an ASAO in Australia.

Subsection (2) provides that the function includes assessing an existing authorisation to determine whether the holder is competent to undertake an activity administered by the ASAO. The function includes the ASAO issuing an authorisation to the holder. The function enables the holder of an overseas authorisation, or an authorisation issued by another sport aviation body or CASA, to apply to an ASAO for the issue of an equivalent authorisation on the basis of their existing authorisation by undergoing assessment against the ASAO's eligibility criteria (this may also include a flight test or written/oral examination). This would allow the person to undertake aviation activities in Australia without the necessity to re-qualify *ab initio*. The provisions in Subpart 149.G of the Part 149 regulations set out an ASAO's responsibilities regarding applications to it for authorisations to undertake aviation activities it administers.

Division 3—Aviation administration functions for parachuting activities

Division 3 sets out aviation administration functions for administering parachute descents and the operation of an aircraft to facilitate a parachute descent. The functions are set out separately from the general functions in Division 2 so that they may deal with the specific nature of these aviation activities.

Section 23 – Parachute descents

This section prescribes the aviation administration function of administering a parachute descent, including a parachute descent activity set out in subsection (3). The function includes issuing an authorisation to a person to undertake a parachute descent activity.

Subsection (2) provides detail about what is included for the administration of the function. The function includes establishing a certification scheme dealing with the privileges and limitations of parachutist certifications, and any ratings or endorsements that attach to a certification. The description of the function does not predetermine how an ASAO is to structure its certification scheme. Paragraph (2)(b) provides that the function includes developing competency standards and units of competency for the training that the ASAO requires before issuing a certification. Paragraph (2)(c) covers any other of the ASAO's requirements for a certification, or to exercise privileges of certification, including aeronautical knowledge requirements, tests, experience requirements and assessments of ongoing competency.

Any eligibility criteria that an ASAO imposes under the function on the issue of an authorisation must be set out in its aviation administration and enforcement rules under paragraph 149.290 (1)(b) of CASR. Regulation 149.400 of CASR does not permit an ASAO to reject an application for an

authorisation on grounds other than the eligibility criteria set out in the ASAO's aviation administration and enforcement rules.

Subsection (3) provides for parachuting activities to include parachute descents, parachuting training during a descent, the assessment of persons for the issue of a parachutist authorisation and the assessment of persons for ongoing competency to perform an activity authorised by a certificate, rating or endorsement.

Subsection (4) provides that the parachute descent activities are those that can be performed by an individual on their own behalf, on behalf of the ASAO or on behalf of a parachuting training organisation authorised by the ASAO under the function in section 27 (about parachuting training organisations). It is not contemplated that a person can be authorised under this function to perform parachuting training on a commercial basis.

Subsection (5) sets out authorisations that can be issued under this function. These include parachutist certifications to undertake parachute descents, authorisations of parachutist instructors (however named) to conduct certain activities, and authorisations of parachutist examiners (however named) to conduct certain activities. The provisions do not require an ASAO to reflect the terminology used. Essentially, instructors and examiners are differentiated by the kinds of authorisations they can be given. An instructor can be authorised to conduct training, issue endorsements to a parachutist or make recommendations to an ASAO about the grant of a rating or endorsement to a parachutist. Examiners can be authorised to assess candidates for a parachutist authorisation or assess the ongoing competency of a parachutist. This reflects generally what currently occurs in parachutist organisations.

Subsection (6) contains a definition of the concept *parachuting training*. Essentially, it means the training and assessment required by an ASAO for the grant of a parachutist authorisation.

Section 24 – Parachuting operations—procedures for safe conduct

This section prescribes that it is an aviation administration function to administer parachute descents by establishing procedures necessary for their safe conduct and in accordance with any provision of the civil aviation legislation that applies to the descents. Note 1 in the section makes reference to instruments that apply to parachute descents. Flight rules and other requirements that are presently incorporated within these instruments and that are intended to apply to parachute descents generally will be included within proposed Part 105 of CASR. This Part is currently under development and is expected to be made in 2019.

Section 25 – Parachuting operators other than training organisations

This section prescribes that it is an aviation administration function to administer a person who carries on a business or undertaking that provides services or equipment to a parachutist for a parachute descent. The function covers businesses or undertakings other than those mentioned in section 27 (about parachuting training organisations).

The function is stated at a general level, such that it leaves it open to an organisation to set out in an application to CASA (under regulation 149.070) the detail of the business or undertaking proposed to be administered and the activities this would encompass. Examples of such undertakings include entities operating a drop zone that are not parachute training operations and third parties that provide services and equipment directly to parachutists, parachute training organisations or non-parachute training organisations (e.g. rigging lofts). Prescribing the function provides for parachuting operators, however they are described, to be the subject of

administration by an ASAO that administers parachuting. This is because the activities of parachuting operators will affect the safety of parachuting.

Section 26 – Operating an aircraft to facilitate a parachute descent

This section prescribes that it is an aviation administration function to administer the operation of an aircraft to facilitate a parachute descent, including a jump pilot activity set out in subsection (3). A jump pilot activity includes: operating an aircraft to facilitate a parachute descent; jump pilot training during a flight; assessing pilots for a jump pilot authorisation; and assessing the competency of a pilot. The function includes issuing an authorisation to a pilot to operate an aircraft to facilitate a parachute descent.

Subsection (2) provides detail about what it means to administer the function. It includes developing competency standards and units of competency required by the ASAO for the issue of a jump pilot authorisation to a person to conduct a parachute training operation. The concept **parachute training operation** is provided for in subsection (5) and means an aircraft operation involving a descent from the aircraft by a trainee parachutist or a tandem parachutist. It covers an aircraft operation involving the descent of a person who is receiving training or whose harness is attached to the harness of the instructor who is in control of the descent. For this purpose, subsection (5) sets out definitions for the terms **trainee parachutist** and **tandem parachutist**. Paragraph (3)(b) provides that developing experience requirements, or any other ASAO requirements relating to the operation of an aircraft for facilitating a parachute descent, is also part of the function.

Any eligibility criteria that an ASAO imposes under the function for the issue of an authorisation must be set out in its aviation administration and enforcement rules under paragraph 149.290(1)(b) of CASR. Regulation 149.400 of CASR does not permit an ASAO to reject an application for an authorisation on grounds other than the eligibility criteria set out in the ASAO's aviation administration and enforcement rules.

Subsection (4) sets out authorisations that can be issued under the function. This includes a jump pilot authorisation that authorises the holder to operate an aircraft to facilitate a parachute descent and authorisations relating to authorising a person to be a jump pilot trainer. These can cover conducting jump pilot training, making recommendations to an ASAO about jump pilot authorisations, assessing candidates for a jump pilot authorisation or assessing the ongoing competency of pilots.

Section 27 – Parachuting training organisations

Section 27 prescribes that it is an aviation administration function to administer a person that conducts parachuting training. The note to subsection (1), referencing section 12C of the *Acts Interpretation Act 1901*, explains that a person authorised under this function can be a corporate body or an individual. The concept **parachuting training** is defined in subsection 23(6) and means the training and assessment required by an ASAO for the issue of a parachutist certification authorising a person to undertake a parachute descent.

Subsection (2) provides some detail about what it means to administer a person to conduct the training. An ASAO would assess the person's organisation and its procedures, practices, personnel and facilities to determine if the person is capable of conducting the training. If satisfied, the ASAO would issue an authorisation to the person to conduct the training. The function also includes ongoing oversight of the capability of the person to continue to conduct training.

Subsection (3) sets out authorisations that can be issued under this function. They include an authorisation to conduct parachuting training and an authorisation to assess the candidates to undertake the training. Although an ASAO can authorise a training organisation under this function to assess candidates that it has trained, an ASAO could decide to do the assessments itself.

Subsection (4) provides that an organisation conducts parachuting training for a parachute descent if an individual who holds an authorisation issued by the ASAO under section 23 conducts the training on the organisation's behalf. Any individual that conducts parachuting training needs to be authorised by the ASAO under section 23, including any personnel of a training organisation.

The function in section 27 does not cover jump pilot training that is dealt with under the function in section 26.

Section 28 – Parachute airworthiness

This section prescribes that administering the airworthiness of a parachute used in a parachute descent is an aviation administration function. The function includes issuing authorisations to undertake an airworthiness activity. Subsection (3) sets out that an airworthiness activity includes packing, assembling or conducting maintenance on a parachute.

Subsection (2) provides some detail about what is included in the function. Administering parachute airworthiness includes developing competency standards and units of competency for parachuting airworthiness training that the ASAO considers must be completed before a person can be authorised to pack, assemble or conduct maintenance on a parachute. The concept **parachute airworthiness training** is defined in subsection (5) and means the training and assessment required by an ASAO for the issue of an authorisation to conduct an airworthiness activity.

Any eligibility criteria that an ASAO imposes under the function on the issue of an authorisation must be set out in its aviation administration and enforcement rules under paragraph 149.290 (1)(b) of CASR. Regulation 149.400 of CASR does not permit an ASAO to reject an application for an authorisation on grounds other than the eligibility criteria set out in the ASAO's aviation administration and enforcement rules.

Subsection (4) sets out authorisations that can be issued under the function.

Section 29 – Applications to undertake parachuting activity on basis of existing authorisations

This section prescribes it is an aviation administration function to administer individuals who hold certain existing authorisations that are listed in subsection (3). These authorisations cover an overseas authorisation, or an authorisation issued by CASA or another sport aviation body (including another ASAO). The concept **sport aviation body** is defined in Part 1 of the Dictionary to CASR. The existing authorisations can relate to undertaking a parachute descent or parachute airworthiness activities. The concept **overseas authorisation** is defined in section 5. It intends to cover authorisations, issued overseas, that would be equivalent to the kinds of authorisations issued by an ASAO in Australia.

Subsection (2) provides that the function includes assessing an existing authorisation to determine whether the holder is competent to undertake an activity administered by the ASAO. The function includes the ASAO issuing an authorisation to the holder. This enables the holder of an overseas authorisation, or an authorisation issued by another sport aviation body or CASA, to

apply to an ASAO for the issue of an equivalent authorisation on the basis of their existing authorisation, by undergoing assessment against the ASAO's eligibility criteria (this may also include a practical test or written/oral examination). This would allow the person to undertake aviation activities administered by the ASAO without the necessity to re-qualify *ab initio*. The provisions in Subpart 149.G of the Part 149 regulations set out an ASAO's responsibilities regarding applications to it for authorisations to undertake aviation activities it administers.

Division 4—Aviation administration functions: miscellaneous

Section 30 – Airworthiness functions—aircraft operated to tow gliders

This section prescribes it is an aviation administration function to administer the airworthiness of the tow release used in the towing system of an aircraft operated to tow a glider, including authorising persons to carry out maintenance on the tow release.

An aircraft operated to tow a glider could be any aircraft, including a Part 149 aircraft, but not exclusively so. The function is limited to the tow release, because any other maintenance for the aircraft is already covered, for a Part 149 aircraft, under an airworthiness function prescribed in Division 2 and, for another kind of aircraft, under the applicable airworthiness provisions in CAR or CASR.

CHAPTER 3—KEY PERSONNEL

Section 31 – Key personnel—managers of approved functions

This section prescribes that particular members of an ASAO's personnel are *key personnel* for the purposes of the provisions in Part 149 of CASR that apply in relation to key personnel. This section provides that the manager of aviation administration functions (with certain exceptions) that the ASAO is approved to perform is a member of the ASAO's key personnel.

The exceptions are the cases where Part 149 of CASR already provides for the manager of the function to be a member of the key personnel. Paragraph (b) of the definition of *key personnel* in Part 1 of the Dictionary to CASR provides that if an ASAO administers aircraft, the manager of the activity is a member of the key personnel. This applies for the functions prescribed in section 14 (registration of certain aircraft), subsections 15(1) and (2) (airworthiness standards and assessments) and section 19 (flight operations—procedures for safe conduct) that are cast in terms of administering a Part 149 aircraft.

As opposed to regulating the aircraft, the functions to which section 31 applies are the functions regulating the conduct by persons of aviation activities.

CHAPTER 4—CHANGES TO EXPOSITION

Section 32 – Requirements for application to approve changes to exposition

This section is reserved.

CHAPTER 5—SYSTEMS AND PROCEDURES

Section 33 – Requirements for safety management system

This section prescribes the requirements for an ASAO's safety management system. This is done under paragraph 149.270(b) of CASR. Paragraph 149.270(a) of CASR requires an ASAO to have a safety management system that is appropriate for the ASAO's approved functions, and takes into account the nature and complexity of the functions and the size of the ASAO.

The safety management system must use a systematic approach to managing aviation safety and set out the organisational structures, key personnel accountabilities, policies, and procedures for conducting and overseeing each of the ASAO's approved functions.

The safety management system must describe the ASAO's safety policy and objectives. Subsection (3) provides that this includes: managing the ASAO's commitment to, and responsibility for, aviation safety; aviation safety accountabilities; appointment of key personnel; the safety management system implementation plan; relevant third-party relationships and interactions; coordination of an emergency response plan; and safety management system documentation.

The section provides for: the integration of human factors principles into the safety management system; details about an ASAO's safety risk management process, including hazard mitigation and risk assessment processes; and a safety management assurance system that covers safety performance monitoring, investigations, change management and continuous improvement of the safety management system.

The safety management system must also describe an ASAO's safety training and promotion system dealing with training and safety communication.

Section 34 – Requirements for audit and surveillance system

This section prescribes the requirements for an ASAO's audit and surveillance system for the purpose of regulation 149.275 of CASR. The requirements include having an audit and surveillance system that takes account of the nature, complexity and risk of the aviation administration functions of the ASAO, but that is also proportionate to the size of the ASAO.

The audit and surveillance system should cover policies, processes and procedures for the conduct of audit and surveillance, and should include a process of regular evaluation of authorisation holders regarding compliance.

Paragraph (d) sets out matters dealing with the evaluation of authorisation holders who issue authorisations or who make recommendations to the ASAO about the issue of authorisations.

An ASAO must have a process for how it will produce audit and surveillance records to CASA on request.

Paragraph (f) sets out a requirement for the ASAO to capture data relevant to its approved functions regarding the authorisations it issues, its members, the aircraft administered and any accidents, incidents, defects and fatalities.

An audit and surveillance system allows an ASAO to gauge the level of compliance by persons it administers and to identify systemic issues that, if unchecked or unaddressed, may present immediate dangers or develop into longer term threats to the safety of air navigation.

Section 35 – Reference materials for administered Part 149 aircraft

This section prescribes, for regulation 149.285 of CASR, reference materials (in addition to those provided for in the regulation) that an ASAO must provide to its personnel and authorisation holders.

The section applies to an ASAO that administers aircraft under section 19 (procedures for safe conduct of flight operations) with the exception of hang gliders, paragliders, manned balloons or hot air airships. Hang gliders and paragliders are omitted from this requirement as operation and maintenance of these aircraft is substantively the same across the different makes and models for which an individual may be issued a relevant flight or airworthiness authorisation by an ASAO. Manned balloons are excluded on the basis that their requirements are covered elsewhere in the civil aviation legislation (for example, in sections 30, 33 and 42 of CAR, Schedules 6, 7 and 8 to CAR, CAOs 100.96 and 101.54, and Part 31 of CASR). The section also applies to an ASAO who has a function of registering a Part 149 aircraft.

The section prescribes flight manuals, any handbook that exists for an aircraft, and any maintenance manual that exists for the aircraft. Flight manuals and aircraft handbooks contain information providing for operational limitations and performance data of aircraft and therefore are necessary for administering the capabilities required of an authorisation holder for the safe conduct of flight operations in what may be a complex or high-performance aircraft. Similarly, maintenance manuals are necessary for administering aircraft (in particular, for assessment of first-of-type aircraft) and for ensuring the competencies of ASAO authorisation holders are relevant and suitable for the aircraft, particularly if the aircraft introduces new or uncommon technology, or is complex.

CHAPTER 6—ASAO AVIATION ADMINISTRATION AND ENFORCEMENT RULES

Section 36 – Aviation administration and enforcement rules

This section prescribes, under paragraph 149.290(1)(k) of CASR, for additional matters that must be included in an ASAO's aviation administration and enforcement rules provided for in that regulation.

This includes processes for reporting matters to CASA, under regulation 149.425 of CASR, about the conduct of authorisation holders, and matters required to be reported to CASA under regulation 149.430 regarding applications made to the ASAO for an authorisation.

An ASAO must have rules governing management of safety risks if an authorisation holder overrides, or attempts to override, a safety decision of the ASAO's key personnel. The rules must provide for written notices of review rights to persons affected by an enforcement decision. There must also be a process for notifying CASA of the ASAO's exercise of enforcement powers and other action taken by the ASAO relating to a contravention, or suspected contravention, of the exposition by an authorisation holder. Regulation 149.620 of CASR provides that information and documents must be provided to CASA in relation to certain decisions of an ASAO, including the exercise of the ASAO's enforcement powers.

CHAPTER 7—EXPOSITION REQUIREMENTS

Section 37 – Requirements for content of exposition

This section is made for the purposes of paragraph 149.340(k) of CASR and provides for matters, additional to those set out in that regulation, that must be included in the ASAO's exposition.

Paragraphs (2)(a) to (d) specify information relating to contact details, names, business information and addresses. Paragraphs (e) and (f) specify information relating to the ASAO's organisation, its reporting lines, and the process to be followed if personnel fail to carry out duties regarding the ASAO's functions.

Paragraphs (2)(g) and (h) specify matters about key personnel vacancies and positions for the purposes of regulation 149.085 of CASR.

The exposition must include information about the risk of human fatigue, an alcohol and other drugs policy if required by CASA, procedures for ensuring there are enough competent, qualified and trained personnel, and record keeping and retention procedures.

The exposition must include matters regarding the ASAO's process for applying to CASA to make changes to the exposition that require CASA approval, and also for identifying changes to the exposition that do not require CASA approval.

Under paragraph (2)(k), in the event that an ASAO enters into an agreement with another ASAO, the exposition must include certain information regarding how the organisations will ensure that their activities will not have an adverse effect on the safety of air navigation. The information is processes and procedures about information sharing arrangements and operational cooperation arrangements between the organisations. This relates to CASA's power in regulation 149.060 of CASR allowing CASA to limit the number of ASAO certificates it issues if it considers there may be an adverse effect on aviation safety. In practice, an adverse effect may occur if more than one organisation administers the same aviation activities.

Paragraph (2)(q) provides for an ASAO with the aviation administration function of registering aircraft to include in the exposition a description of its procedures for the registration of aircraft and the publication of the register. An ASAO register of aircraft must contain sufficient information to enable the ASAO or CASA to identify any aircraft on the register, the aircraft's owner and the aircraft's operator. This is necessary for the purposes of providing information under regulation 149.540 of CASR.

Paragraph (2)(r) specifies for inclusion in the exposition a copy of any document prepared by the ASAO that contains its rules and procedures relating to its functions.

The exposition itself may comprise material that is kept electronically. Also, the exposition can refer to another of the ASAO's documents that contains information required for the ASAO's exposition. This would incorporate the other document into the exposition by reference. The incorporated document would be subject to the same rules covering expositions as if it was directly written into the exposition, and is regarded as part of the exposition.