

## **Explanatory Statement**

### **Airspace Regulations 2007**

#### **CASA OAR 042/19 — Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument 2019**

##### **Purpose**

To determine the revised Australian airspace architecture which, effective on 7 November 2019, is published in the *Designated Airspace Handbook* (the **DAH**) of the Aeronautical Information Publication (the **AIP**) for the use of aviators and others.

The determination is similar to its repealed predecessor with only relatively minor adjustments. For example, there are some changes to Controlled Airspace (C) and Controlled Airspace (D) around Hobart to accommodate a new design for SIDs (standard instrument departures) and STARs (standard terminal arrival routes). There are also changes to the Brisbane Control Zone (C) which has become 2 separate volumes of airspace, Brisbane Control Zone A (C) and Brisbane Control Zone B (C). This is to allow unimpeded emergency helicopter operations to the hospitals within that area.

In addition, there have been a number of presentational changes, for example, coordinates are now separated by dashes and where airspace lateral limits reference a circle, the method of describing the circle, its centre and its radius has changed. Overall, there are no significant changes to the airspace architecture as such.

##### **Legislation — the Act**

Section 15 of the *Airspace Act 2007* (the **Act**) provides that the Governor-General may make regulations for the Act.

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

Under subsection 11 (2) of the Act, the regulations may make provision for and in relation to various matters, including the classification and designation of airspace, and the determination of controlled aerodromes, flight information areas, flight information regions and control areas and zones.

##### **Legislation — the regulations**

Under subregulation 5 (1) of the *Airspace Regulations 2007* (the **AsR 2007**), CASA may, in writing, make various determinations about the aviation status of the airspace for whose management Australia has responsibility under the Chicago Convention.

Under subregulation 5 (2) of the AsR 2007, if a determination provides that a volume of airspace of a specified class ceases to be airspace of that class and becomes airspace of another specified class, the determination must specify the date or times of the changed classification or the conditions under which the airspace becomes airspace of another specified class.

Under subregulation 5 (3), a determination must be made to take effect on, or after, the day on which the determination is published in the AIP, or a NOTAM.

Under subregulation 5 (4), unless sooner repealed, a determination ceases to have effect at the time, in the event or in the circumstances specified in the determination or on repeal of the determination.

Under subregulation 5 (5), a determination has no effect during any period in which relevant air traffic services (*ATS*) are not provided.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Background**

Under regulation 5 of the AsR 2007, CASA may make determinations that a volume of airspace is a flight information area, a flight information region, a control zone, a control area or is classified, in accordance with Annex 11 to the Chicago Convention, as Class A, B, C, D, E, F or G airspace. A determination may also be made that an aerodrome is a controlled aerodrome.

Each of these determinations is relevant for the purpose of defining and regulating the use, and relevant air traffic control (*ATC*), of the airspace.

For example, different airspace classifications give rise to differing requirements about the following: the type of flight permitted (whether under visual or instrument flight rules); how aircraft are to be separated; whether there are speed limitations; and whether there are radiocommunication, navigation or ATC requirements. A controlled aerodrome is an aerodrome at which an ATC service is provided to air traffic. A flight information region is an airspace of defined dimensions within which a flight information service and alerting service are provided.

Under subsection 13 (1) of the Act, CASA has responsibility for conducting regular reviews of the existing classifications of volumes of Australian-administered airspace to determine whether those classifications are appropriate.

The definitive description of Australian-administered airspace is compiled and monitored by Airservices Australia (*AA*). Currently, these descriptions are published twice yearly in an alternating 24 or 28 week cycle, in AA's DAH, which is part of the AIP.

The DAH lists and describes, in tabular form, the lateral and vertical limits, and other relevant details, of Australian-administered airspace. The DAH, therefore, contains detailed airspace information in respect of the following: flight information regions, flight information areas, volumes of airspace that fall within the 5 current classifications of Australian-administered airspace (Classes A, C, D, E and G), volumes of airspace that fall within the 2 current control zones (for Class C airspace and Class D airspace), and controlled aerodromes.

On 1 July 2007, CASA took over from AA responsibility for the regulation of Australian airspace. While AA remains responsible for the definitive description of Australian-administered airspace, CASA underpins the legality and enforceability of

AA's DAH descriptions by embodying them in a determination under regulation 5 of the AsR 2007.

AA has published its latest DAH, effective on and from 7 November 2019. This updated DAH contains some revision of the descriptions of relevant airspace information since the previous issue by AA in May 2019.

The other changes to the determination are essentially minor adjustments to lateral and vertical limits of airspace volumes. Consequently, it is necessary for CASA, under regulation 5 of AsR 2007, to update the previous principle determination issued by CASA in May 2019.

### **Summary of the determination**

The determination repeals the previous instrument of determination (CASA OAR 020/19) and redetermines it in an instrument with minor changes effective on, and from, 7 November 2019.

This instrument determines relevant volumes of airspace as flight information regions and areas, as classifications of airspace, and as control zones, and determines relevant controlled aerodromes.

### **Details of the determination**

More details of the determination are set out in Appendix 1.

### ***Legislation Act 2003 (the LA)***

Under subsection 8 (4) of the LA, a written instrument is a legislative instrument if it is made under a power delegated by the Parliament and it determines, or alters the content of, the law with consequential effects on privileges, interests, obligations or rights. In effect, an instrument is relevantly taken to be a legislative instrument if it makes new law (rather than applying existing law to a case) and in doing so affects privileges, interests, obligations or rights.

The determination, by repealing and remaking in altered form the existing airspace management determinations is, therefore, a legislative instrument. It is subject to registration, and to tabling in the Parliament, under sections 15G and 38 of the LA, respectively. However, under items 3 and 5 (c) of the tables in sections 10 and 12, respectively, of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the determination is not subject to either disallowance or sunset.

### **Consultation**

Consultation on the determination was carried out using a standardised procedure as follows.

The specific airspace change proposals contained in the determination (all of which were minor adjustments to lateral and vertical limits of airspace volumes) were posted by CASA on its website. Public and aviation industry comments, especially those of the airspace users of any particular airspace, were invited on these proposals.

In addition, relevant Regional Airspace and Procedures Advisory Committees (*RAPACs*) were notified of the proposed minor adjustments and their views sought. RAPACs are primarily state-based aviation forums whose minuted discussions cover all matters relating to airspace and related procedures in Australia, specifically in their

particular areas of responsibility. RAPAC membership is open to all significant airspace users, through their major industry associations or organisations, or independently.

Finally, information was distributed to the regional contacts of RAPAC groups for consultation purposes based on an extensive database.

Any representations made by airspace users and others in the course of this consultation process are taken into account by CASA. There were no substantive objections or reservations concerning the minor changes proposed for the airspace classification determination.

The next DAH revision, and the associated determination instrument, are expected to be made on or about 21 May 2020.

### **Office of Best Practice Regulation (OBPR)**

CASA considers that this instrument represents the administration of existing regulatory requirements. OBPR has provided general advice that the administration of existing regulatory requirements are exempt from the preparation of a Regulation Impact Statement.

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

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument is compatible with human rights and, to the extent that it may also limit human rights by imposing certain limitations on freedom of movement, those limitations are reasonable, necessary and proportionate to protect aviation safety in the use of airspace.

### **Making and commencement**

The determination has been made by the Branch Manager, Air Navigation, Airspace & Aerodromes, a delegate of CASA, under subsection 94 (1) of the *Civil Aviation Act 1988*.

As required by subregulation 5 (2) of the AsR 2007, following registration the determination commences on 7 November 2019, the day it is published in the AIP DAH.

## Appendix 1

### Details of CASA OAR 042/19 — Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument 2019

#### Section 1 — Name

Under this section, the determination is named *CASA OAR 042/19 — Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument 2019* to identify its purpose.

#### Section 2 — Commencement

Under this section, the determination commences on 7 November 2019. It was published in the AIP DAH as required by subregulation 5 (3) of AsR 2007.

#### Section 3 — Repeal

Under this section, the previous determination, CASA OAR 020/19, is repealed.

#### Section 4 — Definitions

Under this section, some terms and phrases are defined for clarity.

#### Section 5 — Determinations of airspace and controlled aerodromes etc.

Under subsection 5 (1), the CASA delegate determines that the volumes of airspace described in a Schedule listed in an accompanying table (the **Table**, see below), are the areas, regions or zones, or have the airspace classifications (in accordance with Annex 11 to the Chicago Convention), mentioned in the Table for the Schedule. The Table indicates as follows:

Schedule	Areas, regions, zones or classifications
Schedule 1	Flight information regions
Schedule 2	Flight information areas
Schedule 3	Class A airspace
Schedule 4	Class C airspace
Schedule 5	Class C control zones
Schedule 6	Class D airspace
Schedule 7	Class D control zones
Schedule 8	Class E airspace
Schedule 9	Class G airspace
Schedule 10	Controlled aerodromes

Under subsection 5 (2), the CASA delegate determines that the aerodromes mentioned in Schedule 10 are controlled aerodromes.

Under subsection 5 (3), it is provided that, subject to sections 6 and 7, each of the determinations made by subsections 5 (1) and 5 (2) ceases to have effect only if the instrument is repealed or amended, and then only in accordance with the amendment.

## **Section 6 — Determination that airspace of a class becomes airspace of another class**

Under subsection 6 (1), the CASA delegate determines that the airspace classified as Class A, C, D, E or G by section 5 above (*initial classification*), temporarily ceases to be airspace of that class and becomes airspace of another specified class in accordance with the condition mentioned in subsection 6 (2).

Under subsection 6 (2), and subject to subsection 6 (3), a volume of airspace with an initial classification ceases to be airspace of that class and becomes airspace of another specified class outside the ATC service hours of activity specified in the AIP, or in a NOTAM authorised by the delegate, or, if the ATC service for the airspace has been suspended or has ceased functioning, in accordance with a NOTAM authorised by the delegate.

However, under subsection 6 (3), airspace that would become classified as airspace of another class does not do so if AA continues *temporarily* to control the airspace under the initial classification because this is necessary for continued aircraft separation or other operational reasons. Under subsection 6 (4), the airspace becomes the specified class as intended when the temporary requirement ceases.

Under subsection 6 (5), the determination made by subsection 6 (1) ceases to have effect only if the determination instrument is repealed or amended, and then only in accordance with the amendment.

## **Section 7 — Emergency determination that airspace of a class becomes airspace of another class**

Under subsection 7 (1), the delegate determines that a volume of airspace, described in Schedule 3, 4, 5, 6, 7, 8 or 9 (a *classification Schedule*) as being of the class mentioned for it in the Table in section 5 (*initial classification*), temporarily ceases to be airspace of that class and becomes airspace of another specified class in accordance with the condition mentioned in subsection 7 (2).

Under subsection 7 (2), a volume of airspace with an initial classification as described in a classification Schedule ceases to be airspace of that class and temporarily becomes airspace of another specified class (the *new class*) if hours of activity for the new class are specified in a NOTAM that is authorised in writing by the delegate.

Under subsection 7 (3), an authorisation may only be given on the grounds that emergency or other conditions affecting, or that are likely to affect, the relevant airspace make the temporary reclassification of that airspace necessary or prudent in the interests of aviation safety. Under subsection 7 (4), an authorisation mentioned in subsections (2) and (3) must include the delegate's determination that the grounds mentioned in subsection (3) exist.

Under subsection 7 (5), an authorisation mentioned in subsections (2) and (3) may not remain in force for longer than 7 days but may be renewed in accordance with this section. Under subsection 7 (6), the determination made in subsection (1) ceases to have effect only if the instrument is repealed, or amended, and then only in accordance with the amendment.

## Section 8 — Determination for voice deactivation of Class C Control Zones

Under subsection 8 (1), the delegate determines that a volume of airspace described in Schedule 5 as a Class C Control Zone temporarily ceases to be a Class C Control Zone and becomes airspace of another specified class if:

- (a) the details for the Control Zone set out in Schedule 5 provide for its activation in accordance with an hours of activity statement that is a NOTAM (an *activating NOTAM*); and
- (b) the activating NOTAM specifies a finish time for the activation (the *specified finish time*); and
- (c) the Controlling Authority for the Control Zone uses voice telecommunication to a receiving ATC authority to deactivate the Control Zone earlier than the specified finish time (*early deactivation*) in accordance with subsection (2).

A Note explains that activation times specified in a NOTAM are in UTC unless otherwise indicated.

Under subsection 8 (2), early deactivation may only be carried out if the activity for which the activating NOTAM was published has been completed or otherwise terminated.

Under subsection 8 (3), early deactivation may not occur earlier than 60 minutes before the specified finish time unless an amending NOTAM is issued.

Under subsection 8 (4), to avoid doubt, the period of activation of a Control Zone activated by NOTAM may not be extended by voice telecommunication past the specified finish time.

A series of Notes offer guidance. Note 1 explains that for an early deactivation within the 60 minutes before the specified finish time, an amending NOTAM is NOT required. Note 2 explains that for an early deactivation that is earlier than 60 minutes before the specified finish time, an amending NOTAM IS required. Note 3 explains that for an extension to the specified finish time, an amending NOTAM IS required.

Note 4 sets out the proper *pro forma* for an activating NOTAM as follows:

Reference/year NOTAMN

A) [Insert details]

B) [Insert start time specified in UTC]

C) [Insert finish time specified in UTC]

D) [Insert periods of activity details]

E) [Insert details of Control Zone, including the following statement:

“active; however may be subject to early deactivation. Check status with [insert details of ATC authority].”]

## Schedule 1 — Flight information regions

This Schedule describes the flight information regions (*FIR*). These FIR encompass the entire airspace overlying continental Australia out to 12 nautical miles beyond the coastline, plus other airspace allocated to Australia by the International Civil Aviation Organization (*ICAO*). The effect of the determination is that this airspace is to be

provided with a flight information service and an alerting service. For guidance only, a Note inserts a map of FIR.

The impact of the new determination of Australian FIR is expected to be nil as these regions are in existence solely for the delineation for the flight information centre's area of responsibility.

#### **Schedule 2 — Flight information areas**

This Schedule describes the flight information areas (*FIA*). These FIA encompass the entire airspace overlying continental Australia out to 12 nautical miles beyond the coastline, plus other airspace allocated to Australia by ICAO. The effect of the determination is that FIA are airspace of defined dimensions, excluding controlled airspace, within which flight information and alerting services are provided by an ATS unit.

The impact of the new determination of Australian FIA is expected to be nil as these regions are in existence solely for the delineation for the flight information centre's area of responsibility.

#### **Schedule 3 — Class A airspace**

This Schedule describes the Class A airspace. The effect of the determination is that in these areas only instrument flight rules (*IFR*) aircraft are permitted. All flights are to be provided with an ATC service and be separated from each other.

The impact of the new determination of Class A airspace is expected to be negligible as the majority of this airspace is already in existence as previously established airspace for IFR operations within the Australian flight information region. Any changes are minor adjustments only.

#### **Schedule 4 — Class C airspace**

This Schedule describes the Class C airspace. The effect of the determination is that in these areas IFR and visual flight rules (*VFR*) aircraft are permitted. All flights are to be provided with an ATC service and IFR flights are to be separated from other IFR and VFR flights. VFR flights are to be separated from IFR flights and receive traffic information in respect to other VFR flights. The impact of the new determination of Class C airspace is expected to be negligible as the majority of this airspace is already in existence as previously established airspace for IFR and VFR operations within the Australian flight information region. Any changes are minor adjustments only.

#### **Schedule 5 — Class C control zones**

This Schedule describes the Class C control zones. The effect of the instrument is that these areas contain the paths of IFR flights arriving and departing from aerodromes to be used under instrument meteorological conditions (*IMC*).

The impact of the new determination of Class C control zones is expected to be negligible. These zones are established for current IFR and VFR operations within the Australian flight information region. Any changes are minor adjustments only.

#### **Schedule 6 — Class D airspace**

This Schedule describes Class D airspace. The effect of the determination is that in these areas IFR and VFR aircraft are permitted. All flights are to be provided with an

ATC service and IFR flights are separated from other IFR flights and receive traffic information in respect of VFR flights. VFR flights receive traffic information in respect of all other flights.

The impact of the new determination of Class D airspace is expected to be negligible. This airspace is established airspace for current IFR and VFR operations within the Australian flight information region. Any changes are minor adjustments only.

#### **Schedule 7 — Class D control zones**

This Schedule describes the Class D control zones. The effect of the instrument is that these areas contain the paths of IFR flights arriving and departing from aerodromes to be used under IMC.

In terms of the minor adjustments made, the impact of the new determination of Class D control zones is expected to be negligible. These zones are established for current IFR and VFR operations within the Australian flight information region.

#### **Schedule 8 — Class E airspace**

This Schedule describes Class E airspace. The effect of the determination is that in these areas IFR and VFR aircraft are permitted. IFR flights are to be provided with an ATC service and IFR flights are separated from other IFR. All flights will receive traffic information so far as practical.

The impact of the new determination of Class E airspace is expected to be negligible as the majority of this airspace is already in existence as previously established airspace for IFR operations within the Australian flight information region. Any changes are minor adjustments only.

#### **Schedule 9 — Class G airspace**

This Schedule describes Class G airspace. The effect of the determination is that in these areas IFR and VFR aircraft are permitted. The impact of the new determination of Class G airspace is expected to be negligible as the majority of this airspace is already in existence as previously established airspace for all flight operations within the Australian flight information region. Any changes are minor adjustments only.

#### **Schedule 10 — Controlled aerodromes**

Under regulation 3.03 of the *Air Services Regulations 1995*, certain qualified employees of AA may give air traffic instructions and air traffic clearances to an aircraft at a controlled aerodrome or in airspace that is determined to be of a particular class. This Schedule lists the aerodromes that are controlled aerodromes. The effect of the determination is to identify the aerodromes at which licensed AA air traffic controllers may issue enforceable directions and instructions to aircraft. Any changes are minor adjustments only.

## Statement of Compatibility with Human Rights

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

### Airspace Regulations 2007

#### **CASA OAR 042/19 — Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument 2019**

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

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

Under regulation 5 of the *Airspace Regulations 2007*, CASA may make determinations that a volume of airspace is a flight information area, a flight information region, a control zone, a control area or is classified, in accordance with Annex 11 to the Convention on International Civil Aviation (the ***Chicago Convention***), as Class A, B, C, D, E, F or G airspace. A determination may also be made that an aerodrome is a controlled aerodrome. Each of these determinations is relevant for the purpose of defining and regulating the use, and relevant air traffic control, of the airspace. Such a determination is a legislative instrument.

#### **Human rights implications**

Each of the determinations in the legislative instrument may indirectly engage the right to freedom of movement in the air under the *International Covenant on Civil and Political Rights* (ICCPR). However, this right is more directly engaged by the primary requirements of airspace regulation designed for aviation safety and conformity with the standards of the International Civil Aviation Organization under the Chicago Convention.

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

#### **Conclusion**

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

### Civil Aviation Safety Authority