

EXPLANATORY STATEMENT

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

Civil Aviation Act 1988

Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft—Registration and Accreditation) Regulations (No. 2) 2019

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

Subsection 98(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

On 25 July 2019, the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations 2019* (the Amendment Regulations) amended Part 11, Part 47, Part 101 and Part 202 of the *Civil Aviation Safety Regulations 1998* (CASR). These amendments are scheduled to come into effect from 4 November 2019.

The amendments to CASR Part 47 will introduce a requirement for Remotely Piloted Aircraft (RPA) and model aircraft (more than 250 grams in weight) to be registered. Part 202 provides the transitional provisions for the above matters, including commencement and application dates.

However, the administrative and legal arrangements for a person to pay a fee for registration of an aircraft have not been finalised. CASA proposes levy legislation but consultation on proposed levy and collection Acts have not yet commenced and therefore amendments were required to the various commencement and application dates specified in the Amendment Regulations.

The *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations (No. 2) 2019* (the No 2 Regulations) amend commencement and application dates in Part 202 of the CASR specified in the Amendment Regulations for the registration of RPA and model aircraft.

These changes also delay the commencement of remote pilot accreditation provisions in Part 101 of CASR.

The changes delay the commencement and application of the provisions relating to RPA by approximately six months and the application dates for model aircraft by approximately two years. CASA received Ministerial approval in August 2019 to delay the application dates for both commercial and model aircraft. Market research identified model aircraft and recreational user numbers are estimated to be significantly larger than anticipated. The registration system will be implemented sequentially, commencing with the commercial sector. The second tranche of model aircraft users is deferred to 2022 to allow sufficient time to monitor and develop an appropriately scaled system.

Consultation

Public consultation for the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations 2019* was conducted in January and February 2019 and 4,236 responses were received.

In March 2019 the proposed Regulations and public responses were reviewed by CASA's Aviation Safety Advisory Panel (ASAP) and its subsidiary Unmanned Aircraft Technical Working Group (TWG) which included representation from two leading RPAS industry bodies. The ASAP met on 2 April 2019 and endorsed the introduction of the registration scheme.

CASA has consulted with the Department of Prime Minister and Cabinet, the Department of Finance and the Department of Infrastructure, Transport, Cities and Regional Development in relation to the establishment of an effective RPA and model aircraft registration system, including proposed levy legislation and the proposed amendments to delay commencement and revised application dates. The Deputy Prime Minister approved CASA's proposal to defer the commencement and revise the application dates.

Section 17 of the Legislation Act 2003 requires consultation that is appropriate. As these amendments are machinery in nature, public consultation of these amendments has not been conducted. CASA anticipates both recreational and commercial users will generally favour a delayed implementation of the registration and accreditation scheme. Public consultation regarding the proposed registration levy legislation will occur in late 2019.

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared for the *Amendment Regulations* and approved by the Office of Best Practice Regulation (OBPR id: 24246). This No 2 Regulations only amended the commencement and application dates for the Registration and Accreditation scheme outlined in the RIS. The Office of Best Practice Regulation was notified of the No 2 Regulations to change the commencement and application dates.

Incorporation by Reference

No documents have been incorporated by reference.

Criminal law issues

No criminal law issues arise by the No 2 Regulations additional to those expressed in the Explanatory Statement for the Amendment Regulations.

Statement of Compatibility with Human Rights

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

Commencement and making

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

Details of the Regulations are set out at Attachment B.

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

Sections 1 to 4 of the Regulations would commence on the day after registration, with Schedules 1 and 2 commencing the later of 1 April 2020, or a day determined by the Minister up to 1 October 2020.

Transitional provisions would provide incentive for early registration of RPA or model aircraft.

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

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Details of the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations (No. 2) 2019*

Section 1 - Name of Regulation

Section 1 provides that the title of the Amendment Regulation is the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations (No. 2) 2019*.

Section 2 - Commencement

Section 2 provides for sections 1 to 4 of the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft—Registration and Accreditation) Regulations (No. 2) 2019* to commence on the day after registration.

Section 3 - Authority

Section 3 provides that the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft - Registration and Accreditation) Regulations (No. 2) 2019* is made under the *Civil Aviation Act 1988*.

Section 4 - Schedules

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

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Civil Aviation Safety Legislation Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 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 Disallowable Legislative Instrument

Part 47 of the *Civil Aviation Safety Regulations 1998* (CASR) regulates the registration of conventionally piloted aircraft on the Australian Civil Aircraft Register (ACAR). Part 101 of CASR regulates aspects of the pilot and flight safety requirements for operating remotely piloted aircraft (RPA) and model aircraft.

The *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 2019* (the Amendments) amend Parts 11, 47 and 101 of CASR to provide for registration for certain remotely piloted aircraft and model aircraft, and accreditation of certain persons operating these aircraft. The Amendments:

- except for large RPA which are already subject to aircraft registration, require persons intending to operate any remotely piloted aircraft (RPA), or model aircraft *over 250 g*, to register the RPA or model aircraft for different types of operations;
- require persons intending to operate any RPA, or a model aircraft over 250 g, to complete a short online course and pass a corresponding examination to gain accreditation – unless the person is already the holder of a remote pilot licence;
- introduce a minimum age of 16 years for a person to hold an accreditation to operate an RPA or model aircraft and the corresponding registration, and require a remote pilot under the age of 16 to be supervised by an accredited person 18 years of age or over when operating the RPA or model aircraft;
- introduce a provision for a future Part 47 Manual of Standards;
- introduce new definitions into Part 1 of the CASR Dictionary regarding *registration holder* and *responsible person* and amend existing definitions of *model aircraft* and some RPA (for example, the definitions marginally adjust some of the RPA weight limits in the interests of clarity and consistency); and
- introduce matters relating to applications for an authorisation on behalf of an applicant by an agent.

Model aircraft *other than* those excepted, namely gliders, those used in particular areas and those, weighing no more than 250 g, must be registered in a CASA register. All RPA whose gross weight classes them as micro, very small, small, or medium must similarly be registered. Legislative instruments may exclude certain classes of aircraft from registration.

Persons operating RPA or non-excepted model aircraft over 250 g, must be accredited by successfully completing an online competency course and examination unless the person already holds a remote pilot licence, or the person is under the age of 16 and is supervised by an accredited person over the age of 18. The online course is tailored for the size of the aircraft and the nature of the operation.

A person commits a strict liability offence if the person operates an RPA, or a non-excepted model aircraft over 250 g, and the person is not accredited, or the aircraft is not registered.

The fundamental rationale for the Amendments is to ensure, protect and enhance aviation safety for conventionally piloted aircraft insofar as such aircraft are increasingly exposed to the risks associated with exponentially increasing numbers of RPA in particular, in potentially conflicting airspace. In addition, with increasing numbers of users, these aircraft represent an increasing risk to persons and property on the ground.

Registration requirements to assist in the identification of aircraft, and to impose accreditation requirements, promote greater aviation knowledge and skills among pilots, and are initiatives taken in the interests of general aviation safety. The new requirements are regulatory administrative requirements. They are designed to promote aviation safety and avoid relevant accidents, thereby promoting the right to life through freedom from serious aviation accidents.

Human rights implications

The Regulations engage the following human rights:

- A. the right to a fair trial and fair hearing under Article 14 of the International Covenant on Civil and Political Rights (ICCPR);
- B. the right to protection against arbitrary and unlawful interference with privacy under Article 17 of the ICCPR;
- C. the right to work and rights at work under Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- D. the rights of children under the Convention on the Rights of the Child; and
- E. the right to life under Article 6 the ICCPR.

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

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

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

Strict liability offence provisions

There are 20 offences of strict liability prescribed in the Amendments. Strict liability offences engage the presumption of innocence through the imposition of liability without the need to prove

intentional fault beyond reasonable doubt. However, a strict liability offence will not impermissibly limit the right to the presumption of innocence if the offence pursues a legitimate aim and is reasonable, necessary and proportionate to that aim.

Nature of strict liability provisions

The following is a list of the 20 strict liability offences in the Amendments, with a comment and an indication of the penalty.

- Under subregulation 11.033 (4), a person (the agent) commits an offence of strict liability if the person acts as another person's agent in submitting an application for a remote pilot licence or a relevant authorisation, and the agent has not included a declaration that the agent has received the applicant's declaration authorising the agency, and has prepared the application in accordance with the applicant's information — 30 penalty points.
- Under subregulation 11.034 (2), a person (the applicant) commits an offence of strict liability if the person authorises an agent to make a relevant application on the applicant's behalf and fails to give the agent a signed declaration stating that the agent is authorised and that the information provided to the agent is true and correct — 30 penalty units.
- Under subregulation 11.034 (5), a person (other than CASA) who makes or receives a declaration under regulation 11.033 or 11.034 and fails to keep it (or a copy) for the prescribed retention period commits an offence of strict liability — 30 penalty units (the prescribed retention period is 5 years or a CASA-determined period of not more than 5 years).
- Under subregulation 11.034 (8), an agent or an applicant who, within the prescribed retention period, fails to produce a relevant declaration (or copy) for inspection by a police officer or an authorised person commits an offence of strict liability — 5 penalty units.
- Under subregulation 47.096A (1), a person commits an offence of strict liability if the person operates, or conducts an operation using, an unregistered aircraft that is required to be registered — 50 penalty units.
- Under subregulation 47.096A (2), a person commits an offence of strict liability if the person supervises the operation, by a person under 16, of an unregistered aircraft that is required to be registered — 50 penalty units.
- Under subregulation 47.096A (3), a person commits an offence of strict liability if the person operates, or conducts an operation using, an aircraft, registered as a model aircraft but that is not a model aircraft — 50 penalty units.
- Under subregulation 47.096A (4), a person commits an offence of strict liability if the person supervises the operation, by a person under 16, of an aircraft, registered as a model aircraft but that is not a model aircraft — 50 penalty units.
- Under subregulation 47.099B (3), a person commits an offence of strict liability if the person operates, or conducts an operation of, an RPA or a model aircraft that is required to be registered and fails to comply with a demand from a police officer or an authorised person to produce a certificate of registration (or copy) for the aircraft — 5 penalty units.

- Under subregulation 47.099B (4), a person commits an offence of strict liability if the person supervises the operation by a person under 16 of an RPA or model aircraft that is required to be registered and the supervisor fails to comply with a demand from a police officer or an authorised person to produce a certificate of registration (or copy) for the aircraft — 5 penalty units.
- Under subregulation 101.066 (2), a person commits an offence of strict liability if the person operates an unmanned aircraft in a prescribed area without complying with the requirements for operations in the prescribed area — 50 penalty units.
- Under subregulation 101.098 (2), a person commits an offence of strict liability if the person operates, or conducts an operation using, an RPA, or a model aircraft, that is required to be registered and to meet identification requirements prescribed in a Manual of Standards (a MOS) and the person does not comply with the requirements — 50 penalty units.
- Under subregulation 101.099 (2), a person commits an offence of strict liability if the person operates, or conducts an operation within Australian territory using an RPA or a model aircraft that is registered under the law of a foreign country and that is required to meet prescribed requirements under the MOS and the person does not comply with the requirements — 50 penalty units.
- Under subregulation 101.099A (2), a person commits an offence of strict liability if the person operates an RPA or model aircraft that is required to be registered and the aircraft has later been modified beyond the extent to which such an aircraft may, in accordance with the MOS, acceptably be modified without the need to be re-registered as a different aircraft because of the modifications — 50 penalty units.
- Under subregulation 101.372 (2), a person commits an offence of strict liability if the person operates an excluded very small RPA, a small or medium RPA in certain conditions or circumstances, without the first operation of the RPA being the subject of a written notification to CASA — 50 penalty units.
- Under subregulation 101.252 (3), a person commits an offence of strict liability if the person operates an RPA for which a remote pilot licence is required and fails to comply with a demand from a police officer or an authorised person to produce the licence — 5 penalty units.
- Under subregulation 101.374B (1), a person commits an offence of strict liability if the person operates an excluded RPA (a very small, small or medium RPA operated in defined circumstances) or a micro RPA (not more than 250 g gross weight) without either excluded RPA accreditation or a remote pilot licence — 50 penalty units.
- Under subregulation 101.374B (2), a person commits an offence of strict liability if the person operates a model aircraft with a gross weight of more than 250 g and the person is neither accredited for the model aircraft, nor accredited for an excluded RPA or micro RPA, nor holds a remote pilot licence — 50 penalty units.
- Under subregulation 101.374C (4), a person commits an offence of strict liability if the person operates an excluded RPA, a micro RPA or a model aircraft, the operation of which requires authorisation in the form of either accreditation or the holding of a remote pilot licence and fails to comply with a demand from a police officer or an authorised person to produce either form of authorisation — 5 penalty units.

- Under subregulation 101.374C (7), a person supervising someone under the age of 16 in the operation of an excluded RPA, a micro RPA or a model aircraft, commits an offence of strict liability if the person fails to comply with a demand from a police officer or an authorised person to produce the person's accreditation or remote pilot licence — 5 penalty units.

Reasonableness, necessity and proportionality

The strict liability offences in the Amendments are all either directly or indirectly safety-related regulatory administrative offences, that is, they are offences that may be committed by a person failing to comply with the requirements of the Australian government's registration and accreditation scheme for the operation of RPA and model aircraft, a scheme which exists for the express purpose of promoting and enhancing aviation safety.

The numbers of RPA and model aircraft in the airspace has proliferated geometrically over the past few years, and their sophistication and capabilities have also increased markedly, without these rapid developments being matched by appropriate regulatory controls. There is no certainty around the total number of RPA and model aircraft in Australia. However, some high-end estimates place the figure between 400,000 and 1 million. The absence of an appropriate registration scheme means that it is difficult for CASA as the aviation safety regulator to determine with complete accuracy how many such aircraft are using the airspace.

The growing use of RPA in Australia directly correlates with a significant increase in reports to the Australian Transport Safety Bureau (*ATSB*) of RPA safety incidents.

During the period 2012-2018, 632 incident occurrences were reported to ATSB, made up of: 140 accidents, 27 serious incidents and 465 less incidents. Some 56% of reported incidents concerned near-misses with RPA as reported by conventionally piloted aircraft operators.

The most common occurrences are, therefore, interference with other conventionally piloted aircraft and loss of RPA command and control. Such incidents clearly indicate a rising risk to the safety of conventionally piloted aircraft and people on the ground.

The ATSB has analysed the safety factors associated with RPA-related occurrences and found that the major proportion arose from RPA operation factors attributed to a lack of appropriate knowledge and skills to safely conduct the tasks.

While various aviation safety rules apply to the actual operation of RPA and model aircraft, the absence of training for the majority of RPA and model aircraft operators has increased the risks to aviation safety which these aircraft pose to other aircraft in the air and to people on the ground. The absence of any means of identifying who the operator of an infringing RPA or model aircraft is, greatly diminishes CASA ability to enforce the existing operational safety rules.

Because of the increasing numbers of aircraft involved, and the large numbers of potential infringements that could arise under the operational safety rules in the absence of effective deterrence, a requirement to prove in every individual case a specific intent to breach a registration or accreditation requirement is considered inimical to achieving a high level of compliance with the registration and accreditation requirements, and hence a commensurate high level of operational safety.

Although their basis and rationale lies in a quest to enhance aviation safety, the offences themselves are essentially administrative in nature and relate to failures to register RPA and model aircraft that are subject to compulsory registration, and failures to successfully train for, and achieve a degree of, competence in the safe operation of the aircraft.

It is important to note that, because of their different nature, intentionality and likely infrequency, offences protecting the integrity of the online training course and examination from cheating are not strict liability offences and the usual standard and onus of proof applies in these cases (subregulation 101.374F (2) and (3)).

Registration and accreditation as such may be obtained through convenient and easy-to-use online processes. A requirement to prove criminal intent to establish a failure to become accredited or registered in accordance with the regulations would have a damaging effect on the extent of both normative compliance and deliberate infringements.

A further consideration is that the defence of honest and reasonable mistake, as set out in section 9.2 of the *Criminal Code Act 1995*, is available to any defendant with respect to any of the strict liability offences. If relied upon, this defence involves an evidential burden on the defendant to prove, but only on the balance of probabilities, that he or she had an honest and reasonable but mistaken belief in facts which, if those facts had existed, would not have constituted the offence.

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

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

In addition, the offences are also proportionate in that the penalties they attract fall at the lower end of the penalty scale, some as low as 5, and none exceeding 50, penalty units. The framing of the offences is consistent with the guidance set out in *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011 (The Guide).

Reversal of burden of proof provisions

The Guide states that provisions imposing a reversal of the evidential burden of proof are permissible for either or both of the following justifications:

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

Three offence provisions impose a reversed evidential burden of proof on the accused in relation to a defence, as follows.

Under subregulation 101.372 (2), a person commits an offence of strict liability if the person operates an excluded very small RPA, small or medium RPA in certain conditions or circumstances without the registration holder's first operation of the RPA being the subject of a written notification to CASA — 50 penalty units. However, under subregulation 101.372 (3), subregulation 101.372 (2) does not apply if the aircraft registration holder or another person is already a CASA-certified operator. Such a status may reasonably be considered to be peculiarly within the knowledge of the defendant.

Under subregulation 101.374B (2), a person commits an offence of strict liability if the person operates a model aircraft with a gross weight of more than 250 g and the person is neither accredited for the model aircraft, nor accredited for an excluded RPA or micro RPA, nor holds a remote pilot licence. However, under subregulation 101.374B (3), subregulation 101.374B (2) does not apply to a person operating a model aircraft if the model aircraft is being operated in a CASA-approved area and in accordance with the conditions in the approval. Such a fact may reasonably be considered to be peculiarly within the knowledge of the defendant.

Under subregulation 101.374B (1), a person commits an offence of strict liability if the person operates an excluded RPA (a very small, small or medium RPA operated in defined circumstances) or a micro RPA (not more than 250 g gross weight) without either accreditation or a remote pilot licence. Also, under subregulation 101.374B (2), a person commits an offence of strict liability if the person operates a model aircraft with a gross weight of more than 250 g and the person is neither accredited for the model aircraft, nor accredited for an excluded RPA or a micro RPA, nor holds a remote pilot licence. However, under subregulation 101.374B (4), these provisions do not apply to a person under 16 years of age who is being supervised by an accredited or licensed person over 18 years of age.

In each of these cases, the burden of proof has been reversed to establish a defence to an offence provision, once prosecution discharges the legal and evidential burden of proof in establishing the offence. The burden of adducing or pointing to evidence must only suggest a reasonable possibility that the matter exists or does not exist. This is in accordance with subsection 13(3)(6) of the Criminal Code. It is a relatively easy matter for the defendant to adduce or point to evidence suggesting a reasonable possibility that there was prior certification or a CASA-approved area, or that the respective ages of the child and the supervisor were under 16 years and over 18 years respectively.

To be acceptable, the reversed burden must pursue a legitimate aim and be reasonable, necessary and proportionate to that aim.

Aim

The aim of CASA and its regulatory framework for RPA and model aircraft operations is to uphold aviation safety by prescribing the conduct of individuals involved in civil aviation operations. The provisions reversing the burden of proof pursue this aim as they attached to a defence to a strict liability offence in circumstances where the defence relates to a safe aviation practice.

Reasonableness, necessity and proportionality

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

The provision imposing a reversal of the evidential burden of proof is proportionate because it is more practicable for defendants to prove that they satisfy the requirements of the defence given that it is significantly more difficult and costly for the prosecution to prove the negative, that is, the absence of the exculpatory circumstances.

Implication on right to presumption of innocence

The provisions reversing the evidential burden of proof are consistent with the presumption of innocence, as they are within reasonable limits which take into account the importance of the objective being sought while maintaining the defendant's right to a defence. In particular, the burden is reversed only where the matter to be established is peculiarly within the knowledge of the defendant in particular circumstances. For such circumstance it is significantly more costly for the prosecution to disprove and relatively easy for the defendant to prove. At that point, it would then be for the prosecution to prove, beyond reasonable doubt, that the defence was not available as a matter of fact.

B Right to protection against arbitrary and unlawful interference with privacy

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.

Under regulation 47.098, registration of an RPA or a model aircraft may only be obtained after a person submits to CASA an application with details of the person's name and address and information about the aircraft to be registered. The collection of this limited application information is reasonable, necessary and proportionate in order to provide a basis for the aircraft registration scheme. Without it, registration of RPA and model aircraft would be without substance or meaning.

Subregulation 201.016 (1), applies to *conventionally piloted aircraft generally*, and authorises CASA to disclose certain personal information to a person providing an air traffic service or carrying out a search and rescue operation in Australian territory, if the disclosure is necessary for the safety of air navigation. The information (under existing subregulation 201.016 (2)) is limited to name, address, telephone number, aviation reference number (ARN) and details of CASA civil aviation authorisations and CASA medical certificates held.

The disclosure of name, address, telephone number, ARN and details of CASA civil aviation authorisations and CASA medical certificates held is also reasonable, necessary and proportionate when it is for the purpose of air traffic control or search and rescue operations in relation to conventionally piloted aircraft operations. The disclosure of details of CASA medical certificates held is no less reasonable, necessary and proportionate in circumstances in which a conventionally piloted aircraft's access to certain classes of airspace may be dependent of the level of pilot licence held, itself affected by the nature of the medical certificate held. Disclosure of such details may also be necessary to ensure the successful completion of a search and rescue mission for a missing aircraft and pilot.

Subregulation 201.016 (3) applies only to registered RPA and model aircraft. It authorises CASA to disclose registration information to a person who provides an air traffic service in Australian territory, or to an enforcement body (within the meaning of the *Privacy Act 1988*) for the purposes of the body's enforcement related activities.

An enforcement body is defined in the *Privacy Act 1988* to include a range of Australian law enforcement authorities, from police forces and Directors of Public Prosecutions, to crime and corruption investigation bodies and the Immigration Department. An enforcement related activity is also defined in that Act to include criminal investigation, surveillance and prosecution activities.

The requirements in this subregulation engage Article 17 but the requirements are reasonable, necessary and proportionate to achieve both CASA's aviation safety enforcement goals and broader law enforcement outcomes. CASA has to rely to a large extent on relevant police forces and the Director of Public Prosecutions to assist it in investigating and prosecuting infringements of aviation safety laws, including the laws in relation to the safe operation of registered RPA and model aircraft by accredited remote pilots. In addition, RPA are, and will likely increasingly be, used for unlawful purposes, including carriage of contraband, drugs and firearms, and spying on and unlawful surveillance of government and law enforcement activities.

Unless registration information can be shared with the government law enforcement agencies mentioned above, it will be exceptionally difficult both to deter and to investigate aviation safety offences and other offences involving RPA and model aircraft.

The protections afforded by the *Privacy Act 1988* continue to apply to any disclosures made by CASA.

To the extent that the subregulations limit the privacy-related rights in Article 17 of the ICCPR, those limitations are reasonable, necessary and proportionate for aviation safety purposes, consistent with the objects of the Civil Aviation Act and the peace, order and good government that arises from effective general law enforcement.

C Right to work and rights at work

The Amendments may engage the right to work that is protected under Article 6 (1) of International Covenant on Economic, Social and Cultural Rights (ICESCR). This right includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept.

Regulations in force prior to the Amendments, regulate use of RPA of less than 2 kg for commercial purposes in simple lower-risk activities. They required only that the participant must *notify* CASA of their presence in the industry and acknowledged that they would adhere to a regulated list of standard operating conditions.

Under the Amendments, however, the details of all relevant RPA must be registered in the operator's name. Nevertheless, with the facilitation of online processing, the imposition of this registration requirement on people who use RPA in their work is not unduly burdensome and is not expected that operators would cease commercial activities because of it.

Before the Amendments were made, for operators other than the less than 2 kg for commercial purposes class, it was already the case that to use an RPA for commercial purposes required the person who supplied the RPA to be a certificated RPA operator and mandated that the remote pilot who flew the RPA must hold a remote pilot licence.

It is not necessary for such a licence holder to be accredited under the Amendments since the process of gaining the licence requires more sophisticated sets of learning and competencies than is involved in the new accreditation scheme. However, for the reasons described above, it is now necessary that all relevant RPA and model aircraft, including those used for commercial purposes, be registered. The right to work may be engaged by this requirement insofar as it imposes a registration obligation for the lawful conduct of relevant flights.

However, as described above, it is the interests of aviation safety that now require the registration of all RPA, including those used for commercial purposes. This is, in the circumstances, a reasonable, necessary and proportionate requirement under aviation safety law. It will ensure the integrity of the aviation safety system in so far as it may be affected by relevant RPA and model aircraft.

The right of relevant persons to the opportunity to gain their living by work using RPA for commercial purposes is recognised. However, the lawful exercise of that right requires the person to carry out their RPA registration responsibilities in the safety-critical aviation industry. Accordingly, any potential limitation on the right to work is necessary, reasonable and proportionate in achieving the aim of protecting and improving aviation safety.

D The rights of children under the Convention on the Rights of the Child

Under the Convention on the Rights of the Child, States are required in their laws and practices to give special protection to children under the age of 18 years, so that in all actions concerning children the best interests of the child must be the primary consideration.

Also, Article 26 of the ICCPR prohibits discrimination on various grounds one of which, “other status”, may be taken to include age. However, differential treatment based on prohibited grounds like age will not constitute discrimination where it is aimed at achieving a legitimate purpose, the criteria for differentiation are reasonable and objective, and the measure is proportionate to achieving the legitimate aim.

Under subregulation 47.097 (2), an individual may apply to register an aircraft as an RPA or a registrable model aircraft but only if the individual is at least 16 years old.

Under subregulation 101.374E (2), an applicant is eligible for an accreditation of an excluded RPA, a micro RPA, or a model aircraft over 250 g only if the applicant is, among other things, at least 16 years old.

However, the effect of subregulation 101.374B (4) is that a person under 16 years old (the ***child***) may operate an excluded RPA, a micro RPA or a model aircraft if the child is being supervised by another person (the ***supervisor***) who is at least 18 years old and that supervisor is lawfully authorised to operate the RPA or model aircraft (through accreditation or the holding of a remote pilot licence).

These requirements, if observed, do not prevent a child from using, becoming familiar with and training on, a relevant RPA or model aircraft.

It is considered, therefore, that these requirements are necessary, reasonable and proportionate in achieving the intended legitimate purpose of primarily protecting children from risk of self-injury, and of also promoting and improving aviation safety.

The purpose of the Amendments is to require relevant RPA and model aircraft registration, and to enhance relevant flying skills. It is considered that it would be irresponsible and inappropriate to permit children under the age of 18 to register relevant RPA and model aircraft without the knowledge and supervision of a responsible adult. Similarly, it would be irresponsible and

inappropriate to permit children under the age of 18 to operate relevant RPA or model aircraft which if flown without skill, care and responsibility would give rise to aviation risks, as well as risks of injury to other persons or even the child.

E The right to life under the ICCPR

Insofar as the Amendments are crafted and intended as far as possible to promote and enhance aviation safety in the responsible use of relevant RPA and model aircraft which in some circumstances may have lethal potential, they promote the right to life under Article 6 of the ICCPR by legislating for safer conditions in both general and commercial operations.

Conclusion

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

Schedule 1 – Amendments

Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations (No. 2) 2019

Item 1 Subsection 2(1) (table item 2)

Subsection 2(1) (table item 2) is repealed and a new table substituted to express new commencement dates of Schedules 1 and 2 of the amendment regulations:

2. Schedules 1 and 2	The later of: 1 April 2020; and if the Minister, before 1 April 2020, by instrument under subsection (2) of this section, determines a day before 1 October 2020—the day so determined.
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Civil Aviation Safety Regulations 1998

Item 2 Subregulation 202.229(1)

Paragraphs (a) and (b) of the definition of *model aircraft stage 1 application day* is amended to omit “2 March 2020”, and substituted with “1 March 2022”.

Item 3 Subregulation 202.229(1)

Paragraph (b) of the definition of *model aircraft stage 1 application day* is amended to omit “2 September 2020”, and substituted with “1 September 2022”.

Item 4 Subregulation 202.229(1)

Paragraphs (a) and (b) of the definition of *model aircraft stage 2 application day* is amended to omit “29 May 2020”, and substituted with “30 May 2022”.

Item 5 Subregulation 202.229(1)

Paragraph (b) of the definition of *model aircraft stage 2 application day* is amended to omit “29 November 2020”, and substituted with “30 November 2022”.

Item 6 Subregulation 202.229(1)

Paragraphs (a) and (b) of the definition of *RPA application day* is amended to omit “13 December 2019”, and substituted with “29 June 2020”.

Item 7 Subregulation 202.229(1)

Paragraph (b) of the definition of *RPA application day* is amended to omit “13 June 2020”, and substituted with “13 December 2020”.

Item 8 At the end of regulation 202.229

The following is inserted:

- (3) If the Director, under subregulation (2), determines a day for the purposes of the definition of *model aircraft stage 1 application day* in subregulation (1) that is later than 1 March 2022 by a particular number of days (the *extended number* of days), a reference in the definition of *model aircraft stage 2 application day* in

subregulation (1) to a particular date is taken to be a reference to the date that is the extended number of days later.

- (4) If the Minister, under subsection 2(2) of the amending Regulations, determines a day for the purposes of item 2 of the table in subsection 2(1) of the amending Regulations that is later than 1 April 2020 by a particular number of days (the *extended number* of days), a reference in the definition of *RPA application day* in subregulation (1) to a particular date is taken to be a reference to the date that is the extended number of days later.

Item 9 Subregulation 202.230(1)

The note is amended to omit “13 December 2019 (or a later day determined by the Director)”, and substituted with “29 June 2020 (or a later day)”.

Item 10 Subregulation 202.230(2)

The note is amended to omit “2 March 2020 (or a later day determined by the Director)”, and substituted with “1 March 2022 (or a later day)”.

Item 11 Subregulation 202.231(1)

The note is amended to omit “2 March 2020 (or a later day determined by the Director)”, and substituted with “1 March 2022 (or a later day)”.

Item 12 Subregulation 202.231(2)

The note is amended to omit “29 May 2020 (or a later day determined by the Director)”, and substituted with “30 May 2022 (or a later day)”.

Item 13 Subregulation 202.231(3)

The note is amended to omit “13 December 2019 (or a later day determined by the Director)”, and substituted with “29 June 2020 (or a later day)”.

Item 14 Regulation 202.232

The regulation is repealed and substituted with:

202.232 Initial periods of registration of aircraft as model aircraft

- (1) Subregulation (2) applies if:
- (a) an aircraft begins to be registered as a model aircraft under Division 47.C.2 during the period beginning on the model aircraft stage 1 application day and ending on 26 April 2022; and
 - (b) a certificate of registration is issued for the model aircraft under subparagraph 47.098(2)(b)(i).
- (2) Despite subparagraph 47.099(2)(b)(i), the registration of the model aircraft ends in accordance with the following table, unless sooner cancelled:

Initial periods of registration of aircraft as model aircraft		
Item	If the aircraft begins to be registered as a model aircraft under Division 47.C.2 during the period ...	the registration ends at the end of ...
1	between 1 March 2022 and 15 March 2022	29 June 2023

Initial periods of registration of aircraft as model aircraft

Item	If the aircraft begins to be registered as a model aircraft under Division 47.C.2 during the period ...	the registration ends at the end of ...
2	between 16 March 2022 and 29 March 2022	22 June 2023
3	between 30 March 2022 and 12 April 2022	15 June 2023
4	between 13 April 2022 and 26 April 2022	8 June 2023

Note 1: The registration of an aircraft as a model aircraft under Division 47.C.2 on or after 27 April 2022, or any later day, generally ends 12 months after the day on which the aircraft begins to be so registered. For example, if an aircraft begins to be so registered on 15 May 2022, the registration generally ends on 14 May 2023. However, this is only the case if the certificate of registration for the model aircraft is issued under subparagraph 47.099(2)(b)(i).

Note 2: A certificate of registration originally issued under subparagraph 47.098(2)(b)(i) for one model aircraft (the *original model aircraft*) may later be reissued under subregulation 47.099A(2) to include evidence of the registration of an additional model aircraft. The registration of the additional model aircraft ends at the same time as that of the original model aircraft, no matter when the additional model aircraft was registered—see subparagraph 47.099(2)(b)(ii).

- (3) If the Director, under subregulation 202.229(2), determines a day for the purposes of the definition of *model aircraft stage 1 application day* in subregulation 202.229(1) that is later than 1 March 2022 by a particular number of days (the *extended number of days*), a reference in subregulation (1) or (2) to a particular date is taken to be a reference to the date that is the extended number of days later.

Example: If the day determined under subregulation 202.229(2) is 15 March 2022 (14 days later than 1 March 2022), a reference to a particular date in subregulations (1) and (2) of this regulation is taken to be a reference to the date that is 14 days later than the date expressly mentioned.

Item 15 Regulation 202.463

The note to the definition of *model aircraft stage 1 application day* is amended to omit “2 March 2020 (or a later day determined by the Director)”, and substituted with “1 March 2022 (or a later day)”.

Item 16 Regulation 202.463

The note to the definition of *model aircraft stage 2 application day* is amended to omit “29 May 2020 (or a later day determined by the Director)”, and substituted with “30 May 2022” (or a later day).

Item 17 Regulation 202.463

The note to the definition of *RPA application day* is amended to omit “13 December 2019 (or a later day determined by the Director)”, and substituted with “29 June 2020 (or a later day)”.

Item 18 Regulation 202.464

The note is amended to omit “4 November 2019 (or a later day determined by the Minister)”, and substituted with “1 April 2020 (or a later day): see section 2 of the amending Regulations”.

Item 19 Regulation 202.465

Note 1 is amended to omit “13 December 2019 (or a later day determined by the Director)”, and substituted with “29 June 2020 (or a later day)”.

Item 20 Subregulation 202.466(1)

Note 2 is amended to omit “2 March 2020 (or a later day determined by the Director)”, and substituted with “1 March 2022 (or a later day)”.

Item 21 Subregulation 202.466(3)

The note is amended to omit “4 November 2019 (or a later day determined by the Minister)”, and substituted with “1 April 2020 (or a later day): see section 2 of the amending Regulations”.

Item 22 Subregulation 202.466(5)

Note 1 is amended to omit “29 May 2020 (or a later day determined by the Director)”, and substituted with “30 May 2022 (or a later day)”.