### Explanatory Statement

### Civil Aviation Safety Regulations 1998

CASA 44/20 – Remotely Piloted Aircraft – RPA Application Day Determination 2020

**Purpose**

The purpose of *CASA 44/20 –* *Remotely Piloted Aircraft – RPA Application Day Determination 2020* (the ***Director’s determination***)is to defer the ***RPA application day*** from 28 December 2020 to 28 January 2021.

The RPA application day is the day on and after which:

(a) certain commercially-focused or professional remotely piloted aircraft (***RPA***) operators must have registered their RPA with the Civil Aviation Safety Authority (***CASA***); and

(b) their RPA pilots, who do not hold an RPA licence (a ***RePL***), must be accredited by CASA (using an online Q&A safety test).

The RPA application day of 28 December 2020 was prescribed by the effect of the definition of ***RPA application day*** in regulation 202.229 in Division 202.BF.3 in Subpart 202.BF of the *Civil Aviation Safety Regulations 1998* (***CASR***).

This was inserted by the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 2019* (the ***No. 1 R&A Regulations***), the machinery provisions of which, including Schedule 4 for transitional arrangements, commenced on 1 August 2019, but in relation to the actual registration and accreditation provisions which commence on 30 September 2020.

The No. 1 R&A Regulations were amended by the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations (No. 2) 2019* (the ***No. 2 R&A Regulations***) which also amended Division 202.BF.3 in CASR and, as amending provisions, commenced on 22 October 2019.

The two sets of regulations are referred to below as the ***R&A Regulations as amended***.

RPA registration and accreditation is to be accomplished through online applications and processing.

The RPA application day applies in relation to ***relevant RPA***, that is, essentially, all commercially-focused or professionally used RPA, including, for example, excluded RPA (for example, certain RPA operated over land that the owner of the RPA owns or occupies) and micro RPA. It also extends to all ***relevant RPA pilots***, that is, unlicensed RPA pilots, and pilots for excluded RPA, who, on and from 28 January 2021, must be accredited before they operate an RPA.

**Legislation**

Under subsection 98 (1) of the *Civil Aviation Act 1988* (the ***Act***), the Governor-General may, among other things, make regulations prescribing matters required, permitted, necessary or convenient for the Act and in the interests of the safety of air navigation. CASR was made under this power, as were the R&A Regulations as amended which amended CASR.

Schedules 1 and 2 of the R&A Regulations as amended contained amendments to Parts 47 and 101 of CASR to create a legislative scheme for the registration of relevant RPA, and for the accreditation of relevant RPA pilots.

Relevant RPA

In general terms, a relevant RPA is a medium, small, very small or micro aircraft that is used for essentially commercially-focused or professional purposes and these must be registered. Almost all commercial RPA pilots are required to be licensed and those not so required must be accredited.

The R&A Regulations as amended also provided for the registration and accreditation of model aircraft and their pilots (in general terms, small aircraft weighing more than 250 g, and used in sport or recreation) but not until March 2022, and hence these are not relevant to the Director’s determination.

30 September 2020 commencement

On 31 March 2020, the Minister’s notifiable instrument, *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 2019 Commencement Determination 2020*, was registered, determining 30 September 2020 to be the commencement date for Schedules 1 and 2 of the R&A Regulations as amended.

Transitional arrangements

The R&A Regulations as amended inserted Division 202.BF.3 into Subpart 202.BF of CASR to make transitional arrangements for the legislative scheme, effective from 30 September 2020. The key concept within these transitional arrangements is that of the RPA application day, because before that day applications for relevant RPA registration and relevant RPA pilot accreditation may **voluntarily** be made, but after that day the RPA **must** be registered and the pilots **must** be accredited in order for the RPA to be flown.

Thus, under subregulation 202.230 (1) in Division 202.BF.3, provision was made for early voluntary applications for registration of relevant RPA and relevant RPA pilot accreditation before the legal requirement to register takes effect.

On and after commencement on 30 September 2020, an application to register a relevant RPA that is made *before* the RPA application day, CASA must register the aircraft as an RPA if CASA is satisfied that the aircraft is, or will be required to be, registered as an RPA.

Under subregulation 202.230 (2), the registration requirement provisions apply in relation to a relevant RPA on and after the RPA application day and the RPA must be registered before it can be flown.

CASA estimates that there could be up to 40 000 relevant RPA eligible for registration in Australia, and some 30 000 applications for RPA pilot accreditation. Therefore, from a workload and processing perspective, the purpose of the exercise is to allow, invite and encourage early applications, to endeavour to avoid a last minute rush, and thus to smooth out the flow of applications over a manageable time period in a way that will not unnecessarily interfere with ongoing, commercially-focused or professional RPA operations.

RPA application day

As noted above, the key concept is that of the RPA application day. Under subregulation 202.229 (1) of CASR (inserted by the R&A Regulations as amended), the RPA application day initially meant the later of:

(a) 29 June 2020; and

(b) if the Director of CASA, before 29 June 2020, by instrument determines a day before 13 December 2020 — the day so determined.

However, the 29 June 2020 date was extended by the effect of subregulation 202.229 (4) (added to regulation 202.229 by the No. 2 R&A Regulations). This provided (in effect) that if the Minister determines a commencement day for Schedules 1 and 2 of the R&A Regulations as amended 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*** to a particular date is taken to be a reference to *the date that is the extended number of days* ***later***.

Extension of days

As noted above, the Minister determined 30 September 2020 to be the commencement date for Schedules 1 and 2 of the R&A Regulations as amended, giving rise to an extended number of days after 1 April 2020. When the extended number of days are added to 29 June 2020, the relevant date becomes 28 December 2020. Thus, the RPA application day means the later of:

(a) 28 December 2020; and

(b) if the Director of CASA, before 28 December 2020, by instrument determines a day before 13 June 2021 — the day so determined.

Similarly, the 13 December 2020 date before which a determination must be made becomes 13 June 2021.

This mechanism was created to ensure that if the Minister extended the date of commencement of Schedules 1 and 2, there could be a parallel extension in the time available for the Director of CASA to make a relevant determination of the RPA application day, if appropriate. Thus, the elements in the overall timeframe for implementation of the registration and accreditation could remain synchronised with each other.

**Background**

The effective reason for the Director’s determination concerns the reasonable logistical capability for both CASA and the relevant RPA sector. The 28 December 2020 is in the middle of the Christmas and New Year period.

It is considered to be an unrealistic final go-live date both for the relevant RPA sector and for CASA whose RPA and IT staff must be available to deal with last minute registration questions or issues. The Director of CASA has decided, therefore, consistent with his power under paragraph (b) of the operative definition of ***RPA application day***, to determine that 28 January 2021 would be the RPA application day.

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

Under subsection 8 (2) of the LA, if a law (like regulations, for example) gives power to do something by legislative instrument, the thing must be done by instrument and such an instrument is a legislative instrument.

Under subregulation 202.229 (2) of CASR, originating in the R&A Regulations as amended, the Director of CASA may “by legislative instrument” determine a day for the purposes of the definition of ***RPA application day***.

The Director’s determination is, therefore, a legislative instrument and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

**Consultation**

Without the Director’s determination, the RPA application day would, by operation of law, occur on 28 December 2020. As indicated above, for both CASA and the RPA sector, this would likely be a difficult or impracticable go-live day for inevitable last‑minute RPA registrants who had failed to take advantage of the opening of voluntary registration on and from 30 September 2020.

Reasonable consideration, therefore, suggests a short deferral until 28 January 2021. In these circumstance, for section 17 of the LA, CASA is satisfied that consultation as such is not appropriate.

CASA is embarking on a public information program to alert the relevant RPA sector as follows: that the RPA application day is 28 January 2021, by which date, in order to continue operations, relevant RPA must be registered with CASA and relevant RPA pilots accredited; that voluntary RPA registration and pilot accreditation opens on and from 30 September 2020; and that relevant owners and pilots should apply as early as possible to avoid any last-minute issues that might arise in the lead-up to 28 January 2021.

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

In 2019 a Regulation Impact Statement was prepared for the regulatory amendments to establish the requirement for RPA registration and accreditation (OBPR id: 24246). OBPR has assessed that the change of application date is minor and that the original Regulation Impact Statement does not need to be updated, nor is there a requirement for a new Regulation Impact Statement.

**Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights at Appendix 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Director’s determination indirectly engages one of the applicable rights and freedoms, namely, the right to work, but, in the context of aviation safety, does so in a reasonable, necessary and proportionate way to ensure safety and is, therefore, compatible with human rights, as it does not improperly infringe any human rights.

**Commencement and making**

The Director’s determination has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act. The instrument commences on the day it is registered on the Federal Register of Legislation.

Appendix 1

**Statement of Compatibility with Human Rights**

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

CASA 44/20 – Remotely Piloted Aircraft – RPA Application Day Determination 2020

**Overview of the legislative instrument**

The purpose of *CASA 44/20 –* *Remotely Piloted Aircraft – RPA Application Day Determination 2020* (the ***Director’s determination***)is to defer the ***RPA application day*** from 28 December 2020 to 28 January 2021.

The RPA application day is the day by and after which:

(a) certain commercially-focused or professional remotely piloted aircraft (***RPA***) operators must have registered their RPA with the Civil Aviation Safety Authority (***CASA***); and

(b) their RPA pilots, who do not hold an RPA licence (a ***RePL***), must be accredited by CASA.

The RPA application day of 28 December 2020 was prescribed by the effect of the definition of ***RPA application day*** in regulation 202.229 in Division 202.BF.3 in Subpart 202.BF of the *Civil Aviation Safety Regulations 1998* (***CASR***), inserted by the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 2019* (the ***No. 1 R&A Regulations***), the machinery provisions of which, including Schedule 4 for transitional arrangements, commenced on 1 August 2019, but in relation to the actual registration and accreditation provisions which commence on 30 September 2020.

The No. 1 R&A Regulations were amended by the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations (No. 2) 2019* (the ***No. 2 R&A Regulations***) which also amended Division 202.BF.3 in CASR and, as amending provisions, commenced on 22 October 2019.

RPA registration and accreditation is to be accomplished through online applications and processing.

The effective reason for the Director’s determination concerns the reasonable logistical capability for both CASA and the relevant RPA sector. The 28 December 2020 is in the middle of the Christmas and New Year period.

It is considered to be an unrealistic final go-live date both for the relevant RPA sector and for CASA whose relevant RPA and IT staff must be available to deal with last minute registration questions or issues. The Director of CASA has decided, therefore, consistent with his power under paragraph (b) of the operative definition of ***RPA application day***, to determine that 28 January 2021 would be the RPA application day.

**Human rights implications**

***The right to work***

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

Without the Director’s determination, the RPA application day would, by operation of law, occur on 28 December 2020. As indicated above, for both CASA and the relevant RPA sector, this would likely be a difficult or impracticable go-live day for inevitable last-minute RPA registrants who had failed to take advantage of the opening of voluntary registration on and from 30 September 2020.

The consequence of leaving the 28 December 2020 date in place could be that some relevant RPA operators and RPA pilots would not be registered or accredited in time and their commercially-focused or professional operations would be grounded until they had done so after the Christmas and New Year period. Reasonable consideration, therefore, suggests a short deferral until 28 January 2021 to enable operations to continue and facilitate last‑minute applications.

It might be argued that the deferral favours inefficient operators and pilots who had ample opportunity to register and become accredited between 30 September 2020 and 28 December 2020 as their more efficient competitors may have done and that the deferral limits the rights of these more efficient operators. Because the deferral is of such a brief duration, this argument is considered to be theoretical only.

The right of all relevant persons to the opportunity to gain their living by work is, recognised by the Director’s determination. Any potential limitation on the right to work is considered necessary, reasonable and proportionate in achieving the aim of protecting and improving aviation safety which is the ultimate goal of the registration and accreditation scheme.

Conclusion

The legislative instrument is compatible with human rights and, to the extent that it may limit human rights, the 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**