

EXPLANATORY STATEMENT

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

Civil Aviation Legislation Amendment (Flight Operations – Consequential Amendments and Transitional Provisions) Regulations 2021

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

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

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

Parts 91, 119, 121, 133, 135 and 138 of the *Civil Aviation Safety Regulations 1998* (CASR) were made on 6 December 2018. Parts 103, 105 and 131 of CASR were made on 12 December 2019. Related amendments to the CASR Dictionary were made in a separate regulation on 4 April 2019. Miscellaneous amendments to various CASR Parts were made on 1 October 2020. Collectively these Parts comprise the flight operations regulations (FOR). The FOR replace the old flight operations rules contained in the *Civil Aviation Regulations 1988* (CAR) and Civil Aviation Orders (CAOs). The FOR regulate the safety of flight operations, including the rules by which all pilots operate aircraft and detailed requirements for the conduct of certain commercial and other operations.

The FOR do not in themselves contain a transition period. Except where CASA defers requirements as mentioned below, aircraft operators, pilots and other crew members are required to comply with the FOR on and from 2 December 2021.

The purpose of the *Civil Aviation Legislation Amendment (Flight Operations – Consequential Amendments and Transitional Provisions) Regulations 2021* (the Regulations) is to provide for a smooth transition from the old rules to the FOR for operators, pilots, crew members and others. It does this primarily by:

- making consequential amendments to CAR and CASR to:
 - repeal CAR provisions that are being replaced by the FOR
 - move the content of some CAR provisions and definitions that are being retained from the CAR into the CASR, and
 - update CAR and CASR provisions to refer to the new rules contained in, and concepts used by, the FOR;
- making minor technical amendments to CAR and CASR provisions as necessary or appropriate to ensure the proper functioning of the regulations; and

- amending Part 202 of CASR to insert transitional, application and savings provisions that provide for the transition from the old rules to the FOR.

Transitional policy

These Regulations implement a significant element of CASA's transitional policy for the FOR. This includes arrangements to enable operators to conduct the same kinds of operation on and from commencement of the FOR as they can under the old rules, whilst minimising the administrative and cost burden. These Regulations give effect to transitional arrangements including:

- automatically extending Air Operator Certificates (AOCs) that would expire close to when the FOR commence, to provide additional time for the assessment and reissue of those AOCs under the new rules
- allowing operators and pilots to make use of approvals, other authorisations and exemptions issued to them under the old rules, for the purposes of corresponding requirements in the FOR
- deeming existing operators to have certain equivalent authorisations and exemptions under the FOR, without the need for those operators to apply for them
- allowing actions taken under the old rules to be recognised for the purpose of the FOR (for example, recognising training and checking completed under the old rules for the purposes of the new training and checking requirements)
- deeming operators' proposed operations manuals, expositions and training and checking manuals prepared for the purpose of compliance with the FOR to be automatically approved upon receipt by CASA, and
- avoiding the need for operators to apply more than once for authorisations and exemptions around the time when the FOR commence.

The Regulations are one element of CASA's transitional policy for the FOR. CASA will give effect to further transitional arrangements via other legislative instruments and administrative action, including to provide for:

- the deferral of certain higher cost requirements of the FOR, for current operators and new applicants, and
- assistance for operators to produce their compliance documentation (expositions, operations manuals, etc) via the publication of templates, sample documents and text, acceptable means of compliance and other guidance material.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, CASA consulted on the Regulations. The FOR were publicly consulted in 2018 and 2019 through separate processes prior to the making of the relevant Parts. In each case the consultation process has involved a series of consultations with relevant industry stakeholders. CASA consulted on proposed transition policies and arrangement in June 2020.

CASA notified all AOC holders and Part 141 certificate holders by email when the consultation opened and again just over a week before it closed. All subscribers to CASA's specific flight operations and regulatory change email lists were also notified at this time. Flight Operations Regulations Technical Working Groups of the Aviation Safety Advisory Panel were also asked to encourage their colleagues to participate.

Comments received were generally in agreement with the transition policies proposed, although some respondents raised concerns with the timing of the transition, in view of the effects of the COVID-19 pandemic and its current and anticipated future impact on their financial standing.

CASA considered all comments received and made refinements to its transition policies as a result, with a view to further reducing the administrative burden on aircraft operators. A summary of consultation was published by CASA on 17 December 2020.

Regulation Impact Statement

CASA prepared three Regulation Impact Statements (RIS) for the FOR implemented in part by the amendment or creation of CASR Parts 91, 103, 105, 119, 121, 131, 133, 135 and 138 (Office of Best Practice Regulation (OBPR) id: 23625, 24505 and 25643). These Regulations provide for the transition from the old rules in the CAR to the new rules in the FOR, and do not materially alter the requirements that were outlined in the three RISs. OBPR has agreed with CASA's assessment that changes to the original RISs or a new RIS is not required. CASA has otherwise considered the regulatory impacts of the measures in the course of developing the Regulations.

Incorporation by Reference

In accordance with paragraph 15J(2)(c) of the *Legislation Act 2003* and subsection 98(5D) of the Act, the Regulations apply, adopt or incorporate matters contained in the following instruments, which are detailed further below:

- the Chicago Convention, including Annexes 2, 4, 10 and 11 to the Convention
- aircraft flight manual instructions
- exposition or operations manual of an operator
- Manuals of Standards (MOS), including the MOS for Parts 45, 91, 103, 105, 121, 131, 133, 135, 138, and 139
- CAOs, including CAO 82.1
- maintenance release for an aircraft, or other document approved for use as an alternative to the maintenance release
- certificate of airworthiness for an aircraft.

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

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

Documents incorporated by reference

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

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

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

Annexes to the Chicago Convention are publicly available but subject to copyright that belongs to the International Civil Aviation Organization (ICAO). It is made available by ICAO for a subscription fee (<https://store.icao.int/>). The Chicago Convention, including its Annexes, have

been incorporated into the Regulations because the regulation of aviation activities in Australia requires reference to the documents and it is not practicable or reasonable to reproduce the whole of the Annexes in the Regulations and to update them in a timely fashion if an Annex is amended. These Regulations incorporate a number of terms defined in the Annexes, in order to ensure the use of those terms in the Australian aviation context is consistent with and compliant with the requirements of the Chicago Convention. Further, CASA has not identified any reliable and freely available documents serving the relevant purpose. The Annexes are incorporated as in force from time to time, in accordance with clause 15 of Part 2 of the CASR Dictionary. CASA will make copies of the Annexes available for inspection at any CASA office by prior arrangement.

Aircraft flight manual instructions:

“Aircraft flight manual instructions”, for an aircraft, is defined for the CASR Dictionary by the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019* to comprise the flight manual for the aircraft; checklists of normal, abnormal and emergency procedures for the aircraft; and any operating limitation, instructions, markings and placards relating to the aircraft. The instructions comprise information required to safely operate the specific aircraft. Instructions are incorporated as they exist from time to time, in accordance with subsection 98(5D) of the Act and consistent with the definition of “flight manual” in clause 37 of Part 2 of the CASR Dictionary.

The aircraft flight manual instructions for an aircraft are proprietary to the owner of the aircraft design (usually the manufacturer). The incorporated requirements of the aircraft flight manual instructions are at the aircraft-specific level, and instructions are required to be provided to owners/registered operators of aircraft. These documents are often publicly available, posted on the manufacturer’s website, or made available free of charge. In some cases a fee may be charged by persons who have a proprietary interest in the documents. Where available, and by prior arrangement, CASA will make aircraft flight manual instructions available for inspection at any CASA office.

Exposition or operations manual of an operator:

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

An “exposition”, for an operator other than an operator certificated under Part 138 of CASR, means the exposition as changed from time to time, in accordance with the definition of “exposition” to be inserted into CASR by the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019*. An “operations manual”, for an operator certificated under Part 138 of CASR, will be inserted in the CASR Dictionary as the set of documents approved for an aerial work operator, as changed in accordance with Part 138. Accordingly, the term is taken to refer to an operations manual as it exists from time to time.

An exposition or operations manual is not publicly or freely available. They are proprietary to the operator and will generally include commercial in confidence information about the operator’s business. The incorporated requirements of an exposition or operations manual are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligation to make the exposition or operations manual available to its personnel who have obligations under the document.

Manuals of Standards and Civil Aviation Orders:

The MOS and CAOs are legislative instruments that prescribe matters for purposes stated in the Regulations. The Regulations incorporate the MOS and CAOs as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*. MOS and CAOs made under the CAR and CASR are freely available on the Federal Register of Legislation.

Maintenance release or other document approved for use as an alternative to a maintenance release:

A maintenance release is central to the safe operation of aircraft that are not maintained under Part 42 of CASR. It provides certificate of registration holders and pilots with evidence that an aircraft has had the required maintenance carried out, provides details of any defects that may require rectification before a flight can commence, and also provides essential information about any scheduled maintenance actions that may become due before completion of a planned flight. It also provides a maintainer with a record of deferred defects and other maintenance actions requiring attention during scheduled and unscheduled maintenance, and provides a certification record of maintenance that has been completed.

A maintenance release is not publicly or freely available. Maintenance releases in respect of Australian aircraft are issued only by persons authorised by CASA, in respect of an individual aircraft. The incorporated requirements and conditions of a maintenance release are specific to the aircraft and apply only to the operator and pilot, and maintainers. A person who has possession or custody of a maintenance release (or a copy) is required to make it available for inspection by CASA or an authorised personnel on request.

Certificate of airworthiness for an aircraft:

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

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

Criminal law issues

The Regulations provide for 5 offences of strict liability, which are outlined in the Statement of Compatibility with Human Rights at Attachment A.

Consistent with the principles set out in the Attorney-General's *A Guide to Framing Commonwealth Offices, Infringement Notices and Enforcement Powers* (September 2011) (the AGD Guide) and the Sixth Report of 2002 of the Senate Standing Committee for the Scrutiny of Bills, *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (26 June 2002), the strict liability offences are considered reasonable, necessary and proportionate to the objective of ensuring aviation safety. In this regard, 4 of the offences are regulatory in nature, in other words their aim is to insist on reasonable compliance with regulated safety standards by those conducting activities which are otherwise intrinsically or potentially unsafe unless such high standards of compliance are met. One of the offences applies if a person appointed by CASA as an authorised person, and who has been issued with an identity card,

ceases to be an authorised person and fails to return the card to CASA within 7 days of the person ceasing to be an authorised person. Not having to prove fault in the relevant circumstances aims to provide a strong deterrent. To this extent, and in this context, they are consistent with other safety-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 integrity of the overall aviation safety regulatory scheme by promoting compliance and deterring non-compliance.

The rationale is that people who have responsibility for general safety duties, and persons authorised by CASA to perform a function or exercise a power for the purposes of CAR or CASR, should be expected to be aware of their duties and obligations. In the context of the rules for the conduct of safe aviation operations and activities under the FOR, a defendant to a prosecution can reasonably be expected to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

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

The Regulations also contain 3 provisions involving a reversal of the evidential burden of proof in relation to prescribed defences to strict liability offences (“offence-specific defences”). Consistent with section 4.3.1 of the AGD Guide, the provisions have been included in the Regulations because they relate to matters that are peculiarly within the knowledge of a defendant and/or would be significantly more difficult and more costly for the prosecution to disprove than for the defendant to establish the matter.

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

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

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the Regulations 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. The provisions of the Regulations commence as follows:

- Sections 1 to 4: the day after registration
- Schedule 1: immediately after the start of 2 December 2021
- Schedule 2: the day after registration
- Schedule 3: immediately after the start of 2 December 2021.

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

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021

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

Overview of the Disallowable Legislative Instrument

The purpose of the *Civil Aviation Legislation Amendment (Flight Operations – Consequential Amendments and Transitional Provisions) Regulations 2021* (the Regulations) is to provide for a transition from the old flight operations rules contained in the *Civil Aviation Regulations 1988* (CAR) and Civil Aviation Orders (CAOs) to the flight operations regulations (FOR) contained in the *Civil Aviation Safety Regulations 1998* (CASR). The FOR is comprised of Parts 91, 103, 105, 119, 121, 131, 133, 135 and 138 of CASR. The FOR regulates the safety of flight operations, including the rules by which all pilots operate aircraft and detail requirements for the conduct of certain commercial and other operations. Noting that the FOR are due to commence on 2 December 2021, the Regulations will:

- make consequential amendments to CAR and various Parts of CASR to:
 - repeal CAR provisions that are being replaced by the FOR. Parts 7 and 8 of CAR and almost all of Parts 11-14 of CAR will be repealed; and
 - move the content of some CAR provisions and definitions that are being retained from the CAR into the CASR; most of the Dictionary in regulation 2 of CAR will be repealed and the definitions moved to the CASR Dictionary; and
 - update CAR and CASR provisions to refer to the new rules contained in, and concepts used by, the FOR; this principally affects the wording of and cross-references contained in Parts 21, 42, 61 and 90 of CASR; and
- make minor technical amendments to CAR and CASR (including FOR) provisions as necessary or appropriate to ensure the proper functioning of the regulations; and
- amend Part 202 of CASR to insert transitional, application and savings provisions that provide for the transition from the old rules to the FOR.

Transitional policy

The Regulations implement a significant element of CASA’s transitional policy for the FOR. This includes arrangements to enable operators to conduct the same kinds of operation on and from commencement of the FOR as they can under the old rules, whilst minimising the administrative and cost burden. The Regulations give effect to transitional arrangements that:

- automatically extend Air Operator Certificates (AOCs) that would expire close to when the FOR commence, to provide additional time for the assessment and reissue of those AOCs under the new rules;

- allow operators and pilots to make use of approvals, other authorisations and exemptions issued to them under the old rules, for the purposes of corresponding requirements in the FOR;
- deem existing operators to have certain equivalent authorisations and exemptions under the FOR, without the need for those operators to apply for them;
- allow actions taken under the old rules to be recognised for the purpose of the FOR (for example, recognising training and checking completed under the old rules for the purposes of the new training and checking requirements);
- deem operators' proposed operations manuals, expositions and training and checking manuals prepared for the purpose of compliance with the FOR to be automatically approved upon receipt by CASA; and
- avoid the need for operators to apply more than once for authorisations and exemptions around the time when the FOR commence.

The Regulations are one element of CASA's transitional policy for the FOR. CASA will give effect to further transitional arrangements via other legislative instruments and administrative action, including to provide for:

- the deferral of certain higher cost requirements of the FOR, for current operators and new applicants; and
- assistance for operators to produce their compliance documentation (expositions, operations manuals, etc) via the publication of templates, sample documents and text, acceptable means of compliance and other guidance material.

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).

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 5 criminal offences of strict liability prescribed in the Regulations. Strict liability offences engage the presumption of innocence through the imposition of liability without the

need to prove 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 description of the 5 offences of strict liability in the Regulations:

<p>[item 234] Subregulation 117.020(4).</p>	<p>An aircraft owner or registered operator of the aircraft commits an offence of strict liability if they do not comply with a notice from CASA requiring them to provide to CASA specified statistical or other information relating to the aircraft</p> <p>Penalty - 25 penalty units.</p>
<p>[item 234] Subregulation 117.025(4).</p>	<p>An aircraft owner (for an aircraft engaged in air transport operations) or registered operator of such an aircraft commits an offence of strict liability if they do not comply with a notice from CASA requiring them to prepare traffic reports and provide them to CASA.</p> <p>Penalty - 25 penalty units.</p>
<p>[item 234] Subregulation 117.030(2).</p>	<p>A person who receives any of the information required to be produced to CASA under regulations 117.020 and 117.025, commits an offence if they disclose the information.</p> <p>Penalty - 25 penalty units.</p>
<p>[item 269] Subregulation 201.002(4).</p>	<p>If a person has been issued an identity card, and they cease to be an authorised person for a provision expressed in the card, they commit an offence if they do not return the card to CASA within 7 days</p> <p>Penalty - 10 penalty units.</p>
<p>[item 269] Subregulations 201.002A(1), (2) and (4).</p>	<p>A pilot in command of an aircraft, commits an offence if they do not permit an authorised person to enter the cockpit of an aircraft, or occupy a seat or position in the aircraft.</p> <p>Penalty - 50 penalty units.</p> <p>Note that Subregulation 201.002A(3)</p>

	<p>provides that an offence is not committed if the pilot in command is satisfied that the safety of the aircraft, or of any person or property, is likely to be endangered as a result of the entry of the authorised person to the cockpit, or the occupation of the seat or position by the authorised person. There is an evidential burden in relation to matters under Subregulation 201.002A(3).</p>
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Reasonableness, necessity, and proportionality

The strict liability offences relate to administrative and safety requirements that must be adhered to by regulated persons in the aviation industry to ensure the integrity of the aviation safety system. The imposition of strict liability offences limits the right to the presumption of innocence. However, the limitation is necessary to ensure that such persons are subject to appropriate safety-related obligations in relation to aircraft operations.

The strict liability offences in the Regulations are considered reasonable, necessary and proportionate to the objective of ensuring aviation safety. The offences are regulatory in nature and their aim is to enable CASA to obtain safety related information or observe aircraft operations for surveillance purposes. Not having to prove fault in the relevant circumstances aims to provide a strong deterrent. To this extent, and in this context, they are consistent with other safety-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 industry and the public.

The rationale is that people who perform activities that engage with safety risk should be expected to be aware of their duties and obligations. A defendant can reasonably be expected to know what conduct is required by the law, and the mental, or fault, element can justifiably be excluded.

A number of the provisions are designed to enable CASA to obtain safety information or protect that information from disclosure. The information may identify unsafe trends or practices in aviation. Further, the defence of honest and reasonable mistake, as set out in section 9.2 of the *Criminal Code Act 1995*, will be available to the defendant in all offence provisions. If relied upon, this is an evidential burden on the defence to prove, on the balance of probabilities, that the accused had an honest and reasonable mistaken belief of fact which, if those facts existed, would not have constituted an offence.

The offences are also proportionate in that they fall at the lower end of the penalty scale, not exceeding 50 penalty units (four of the five provisions have a penalty of 25 penalty units or less) and are otherwise consistent with the guidance in *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011 (AGD 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.

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

- [item 234] Under subregulation 117.030(2), a person who receives any of the information required to be produced to CASA under regulations 117.020 and 117.025, commit an offence if they disclose the information. However, under subregulation 117.030(3), 117.030(2) does not apply if:
 - (a) the disclosure is for the purposes of these Regulations or the Act; or
 - (b) the disclosure is authorised or required by a law of the Commonwealth; or
 - (c) the disclosure is in connection with compliance with a requirement of the Chicago Convention; or
 - (d) CASA is satisfied that the disclosure is necessary in the interests of the safety of air navigation; or
 - (e) the disclosure is with the consent of the person to whom the information disclosed relates.
- [item 269] Under subregulations 201.002A(1), (2) and (4), a pilot in command of an aircraft, commits an offence if they do not permit an authorised person to enter the cockpit of an aircraft. However, under subregulation 201.002A(3), subregulations 201.002A(1) and (2), do not apply if the pilot in command is satisfied that the safety of the aircraft, or of any person or property, is likely to be endangered as a result of the entry of the authorised person to the cockpit, or the occupation of the seat or position by the authorised person (as the case may be).

Further, one existing offence provision, namely regulation 135.035 of CASR, is being amended to reverse the evidential burden of proof on the accused in relation to a defence. The Part 135 Manual of Standards may prescribe requirements relating to flight distance limitations for a flight of an aeroplane.

Presently, under subregulation 135.035(2), the operator and the pilot in command of an aeroplane commit an offence if a requirement prescribed in the Part 135 Manual of Standards relating to flight distance limitations is not met. The Regulations [items 254 and 255] amend regulation 135.035, by inserting subregulation 135.035(2A), to provide subregulation 135.035(2) does not apply if the operator or pilot hold an approval under subregulation 135.020.

In each of these cases, the burden of proof has been reversed to establish a defence to an offence provision, once the 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) of the Criminal Code.

It would be a relatively easy matter for the defendant to adduce or point to evidence suggesting any of the above matters, for subregulation 117.030(3). For subregulation 201.002A(3), the pilot in command would be best placed to justify a refusal to permit a CASA inspector to enter the cockpit or be seated in an aircraft for surveillance purposes, based on the safety of the aircraft, or of any person or property, likely being endangered as a result of the entry of the authorised person to the cockpit, or the occupation of the seat or position.

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 aircraft operations is to uphold aviation safety by prescribing the conduct of individuals involved in such operations. For subregulation 117.030(2), the provision reversing the burden of proof pursues this aim as they attach to a defence to a strict liability offence in circumstances where the defence relates to a matter that enables CASA to obtain safety information that may identify unsafe trends or practices in aviation.

For subregulations 201.002A(1) and (2), the provision reversing the burden of proof pursues this aim as they attached to a defence to a strict liability offence in circumstances where the defence relates to a matter that provides for a pilot in command being able to establish that permitting an authorised person to enter a cockpit or being seated in the cockpit would endanger the safety of the aircraft, or of any person or property. The pilot in command is best placed to identify any such matters.

For subregulation 135.035, whilst CASA would know if an operator or pilot hold an approval, this may not always be the case, in that often an approval will be given to an operator's flight crew as a class of person, and CASA will not know whether an individual pilot is in fact flying an aircraft for the operator.

Reasonableness, necessity, and proportionality

The provisions imposing a reversed burden of proof are reasonable as they provide the defendant with the opportunity to adduce evidence of specific matters of a kind contemplated by the offence provisions.

The provisions imposing a reversed burden of proof are necessary as they enable CASA to obtain safety related information or observe aircraft operations for surveillance purposes. To this extent, and in this context, they are consistent with other safety-focussed regulatory regimes and do not impermissibly limit the presumption of innocence. The offences are designed to achieve the legitimate objective of ensuring the safety and integrity of the aviation industry and the public.

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

The factual matters may not be the subject of documentary evidence, for example because they relate to matters of judgement by the defendant, or are matters relating to a particular flight. In each case the matter is of a nature that is significantly easier for the defendant to raise, for example, because it relates to information within the control of the defendant, and/or is a matter peculiarly within the knowledge or control of the defendant

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.

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

Item 270 amends the table at subregulation 201.004(2) of CASR, to include 28 new categories of reviewable decisions subject to merits review in the Administrative Appeals Tribunal.

A person affected by these decisions under the CASR will have rights of merit review in accordance with regulation 201.004 of CASR, in addition to administrative law rights under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* and general principles of Australian administrative law. These merits and administrative law rights exist within a framework for seeking the review of a decision that may not be correct or preferable or where there has been jurisdictional error.

As such, the Regulations promote an individual's right to an effective remedy.

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.

[item 234] Under subregulation 117.020(4) of CASR, an aircraft owner or registered operator of the aircraft commit an offence of strict liability if they do not comply with a notice from CASA requiring them to provide to CASA specified statistical or other information relating to the aircraft, including information in relation to any of the following:

- (i) operations of the aircraft;
- (ii) passengers or cargo carried by the aircraft;
- (iii) crew members of the aircraft;
- (iv) modifications, repairs, damage or defects in the aircraft.

A note to subregulation 117.030(1) states "*For disclosure of personal information: see regulation 201.016.*" Regulation 201.016 of CASR provides CASA is authorised to disclose limited kinds of personal information to a person:

- (i) providing an air traffic service in Australian territory; or
- (ii) carrying out search and rescue operations in Australian territory; and (b) the disclosure is necessary for the safety of air navigation. A note to this regulation states: "*Note: For further authorisation to collect, use and disclose information covered by this subregulation that is personal information, see the Privacy Act 1988.*"

The requirements in the abovementioned regulations involve activities of one or more of the collection, recording and storing of information, some of which may be personal information. The requirements are reasonable as they relate to data and information that is required to uphold the integrity of the safety regulatory scheme that protects all individuals on a flight, by ensuring that information is available about activities affecting safety. The requirements are also necessary to achieve the fulfilment of specific safety objectives, since there are no or limited sources of the information available that will adequately serve the reasonable regulatory purposes.

The requirements are also proportionate as they operate to ensure the fulfilment of safety objectives which are required to ensure the protection and safety of all individuals on the flight, which generally will not relate to personal information. The requirements engage Article 17 but the requirements are reasonable, necessary and proportionate to achieve both CASA's aviation safety and enforcement goals, in that the provision enables CASA to obtain safety information that may identify unsafe trends or practices in aviation.

The protections afforded by the *Privacy Act 1988* also continue to apply to any disclosures made by CASA. To the extent that the subregulation limits 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 safety regulation.

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. The Regulations do not directly address the right to work. However, the transitional provisions in the Regulations provide for regulated operators to be granted equivalent authorisations, delay commencement dates for some new regulatory requirements and provide for the automatic 6-month extensions to Air Operator Certificates expiring in or about December 2021. These provisions promote the right to work to provide for a seamless or orderly transition for air operators to the Flight Operations Regulations.

Conclusion

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

Details of the Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021

Section 1 – Name of Regulations

Section 1 provides that the title of the Regulations is the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*.

Section 2 – Commencement

Section 2 provides for when the Regulations commence.

Sections 1 to 4, Schedule 2, and anything else in the Regulations that is not Schedules 1 and 3, commence the day after the instrument is registered.

Schedules 1 and 3 commence immediately after the start of 2 December 2021 (called the “main commencement time”). This ensures those Schedules commence immediately after all of the following regulations comprising the flight operations regulations (FOR), which commence at the start of 2 December 2021:

- the *Civil Aviation Safety Amendment (Part 91) Regulations 2018*
- the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*
- the *Civil Aviation Safety Amendment (Part 119) Regulations 2018*
- the *Civil Aviation Safety Amendment (Part 121) Regulations 2018*
- the *Civil Aviation Safety Amendment (Part 133) Regulations 2018*
- the *Civil Aviation Safety Amendment (Part 135) Regulations 2018*
- the *Civil Aviation Safety Amendment (Part 138) Regulations 2018*
- the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019*.

Schedule 2 commences on the day after the instrument is registered (called the “early commencement time”). This is to provide for the transitional provisions included in Schedule 2 to apply during the period from the early commencement time to the main commencement time (called the “transition period”).

Section 3 – Authority

Section 3 provides that this instrument was made under the *Civil Aviation Act 1988* (the Act).

Section 4 – Schedules

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

Schedule 1—Consequential amendments

Civil Aviation Regulations 1998

Item 1 Subregulation 2(1) (definition of *adopted in pursuance of the Convention*)

This item omits the words “Article 37 of the Convention” from the definition of *adopted in pursuance of the Convention* and substitutes them with the words “Article 37 of the Chicago Convention”.

Item 2 Subregulation 2(1)

This item repeals the definitions (including the notes) of *aerodrome control service, aerodrome meteorological minima, aerodrome reference point, aerodrome traffic, aerodyne, aeronautical mobile radio service, aeroplane, airborne weather radar system, airline, air traffic, air traffic control, air traffic control clearance, air traffic control instructions, air traffic controller licence, air traffic control service, alternate aerodrome, altitude, approach control service, apron, area control service, authorised, authorised person, aviation authority, car, cargo, and ceiling*.

Item 3 Subregulation 2(1) (definition of *centre of gravity*)

This item omits the words “subregulation 235(1)” from the definition of *centre of gravity* and substitutes “regulation 235”.

Item 4 Subregulation 2(1)

This item repeals the definitions (including the notes) of *certificate of airworthiness, channel, and Civil Aviation Orders*.

Item 5 Subregulation 2(1) (paragraph (b) of the definition of *class A aircraft*)

This item omits the words “Air Operator’s Certificate which authorises the use of that aircraft for the commercial purpose referred to in paragraph 206(1)(c)”, and substitutes them with “Australian air transport AOC which authorises the use of that aircraft in scheduled air transport operations”. The modified words are intended to provide for the continuation of the same policy outcomes using terminology that accommodates the changes to regulation 206 of CAR and the introduction of Part 119 of CASR.

Item 6 Subregulation 2(1)

This item repeals the definitions (including the notes) of *class of airspace, constable, control area, controlled aerodrome, controlled airspace, control zone, crew member, cruising level, current flight plan, danger area, elevation, examination, expected approach time, experimental aircraft, FAA, flight information area, flight information service, flight level 290, Flight Service, flight visibility, flying training, foreign aircraft, and grant*.

Item 7 Subregulation 2(1) (definition of *gross weight*)

This item omits the words “subregulation 235(1)” and substitutes them with “regulation 235”.

Item 8 Subregulation 2(1)

This item repeals the definitions (including the notes) of *ground radar, hazardous weather conditions, heading, heavier-than-air aircraft, helicopter, horizontal plane, ICAO Doc. 9574-*

AN/934, I.F.R. flight, I.F.R. operation, I.M.C., international air service, international operating agency, international registration plan, International Telecommunications Convention, jet-propelled aircraft, joint registration plan, landing area, land station, licensed, lighter-than-air aircraft, long-range radio navigation system, manned balloon, maximum landing weight, maximum take-off weight, meteorological information, meteorological minima, meteorological observation, meteorological observer, meteorological report, mile, military aerodrome, military aircraft, movement area, navigation system, night flight, and non-controlled aerodrome.

Item 9 Subregulation 2(1) (definition of *operating crew*)

This item repeals the definition (including the note) of *operating crew* and substitutes it with “*operating crew* means a crew member”.

Item 10 Subregulation 2(1)

This item repeals the definitions (including the notes) of *operational information service, position report, positive position fix, power-assisted sailplane, prohibited area, provisionally certificated aircraft, public transport service, radiocommunication system, radio navigation aid, radio navigation system, radiotelephonic language, Regional Air Navigation Agreement, regular aerodrome, relevant airworthiness standards, reporting point, restricted area, rotorcraft, route sector, route segment, RVSM airspace, RVSM airworthiness approval, RVSM airworthiness approved aircraft, RVSM foreign airworthiness approval, RVSM operational approval, secondary surveillance radar transponder, self-contained navigation system, signal area, State, taxi speed, Territory, the Director of Meteorology, track, traffic advisory service, traffic avoidance advice, traffic information, traffic pattern, unlawful interference with aviation, vertical plane, V.F.R., V.F.R. flight, V.F.R. operation, visibility, and V.M.C.*

Item 11 Subregulation 2(2)

This item omits the words “The Authority” and substitutes them with “CASA”.

Item 12 Subregulations 2(3) to (8), (10) and (11)

This item repeals the subregulations.

Item 13 Regulations 6 and 6A

This item repeals the regulations.

Item 14 Subparagraphs 42X(2)(b)(i) and (ii) and (c)(ii)

This item inserts “national” before “aviation authority”.

Item 15 Paragraph 52(1)(d)

This item omits the words “Air Operator’s Certificate becomes aware of a defect in an aircraft component that he or she owns and intends to install in an aircraft used in operations under that Air Operator’s Certificate”. It is substituted with “AOC, an aerial work certificate or a Part 141 certificate, becomes aware of a defect in an aircraft component that the person owns and intends to install in an aircraft used in operations under that certificate”.

Item 16 Regulation 58 (heading)

This item omits the words “**manned balloon**” and substitutes them with “**manned free balloon**”.

Item 17 Subregulations 58(1) and 60(1) and (2)

This item omits “manned balloon” from these subregulations and substitutes them with “manned free balloon”.

Item 18 Subregulation 5.01(1) (definition of *approved check radio operator*)

This item repeals the definition of *approved check radio operator* and substitutes it with “*approved check radio operator* means a person who holds both a commercial pilot (balloon) licence, and a flight instructor (balloon) rating.”

Item 19 Subregulation 5.01(1) (definition of *balloon proficiency check*)

This item repeals the definition of *balloon proficiency check* and substitutes it with “*balloon proficiency check* means a check that tests the aeronautical skills and aeronautical knowledge relevant to balloon flight of the person undertaking the check.”

Item 20 Subregulation 5.01(1) (definition of *commercial (balloon) pilot licence*)

This item repeals the definition of *commercial (balloon) pilot licence*.

Item 21 Subparagraph 5.138(2)(b)(ii)

This item omits “; and” and substitutes it with “.”.

Item 22 Subparagraphs 5.138(2)(b)(iii) and (iv)

This item repeals the subparagraphs.

Item 23 Subregulation 5.138(3)

This item repeals the subregulation.

Item 24 Subregulation 5.143(1) (note)

This item repeals the note.

Item 25 Subregulation 5.143(7) (paragraph (a) of the definition of *appropriate person*)

This item repeals the paragraph and substitutes it with “(a) a person who holds a flight instructor (balloon) rating; or”.

Item 26 Parts 7 and 8

This item repeals the Parts.

Item 27 Regulations 92 and 92A

This item repeals the regulations.

Item 28 Subregulation 94(1)

This item omits the words “the lights or signals prescribed in Part 13” and substitutes them with “a standard visual signal or aviation distress signal”.

Item 29 Paragraph 95(1)(b)

This item omits the words “the Convention” and substitutes them with “the Chicago Convention”.

Item 30 Regulations 96, 99AA, 99A, 100 and 101

This item repeals the regulations.

Item 31 Paragraph 105(1)(a)

This item omits the words “air traffic controller licence” and substitutes them with “ATC licence”.

Item 32 Divisions 2 and 3 of Part 10

This item repeals the Divisions.

Item 33 Parts 11 to 13

This item repeals the Parts.

Item 34 Division 1A of Part 14

This item repeals the Division.

Item 35 Regulation 206

This item repeals the regulation and substitutes it with a new regulation 206. As amended, regulation 206 provides in summary that, for the purposes of subsection 27(9) of the Act, each of the following is a prescribed purpose:

- the flying or operation of an aircraft for balloon flying training (within the meaning of subregulation 5.01(1) that is:
 - for the grant of a balloon flight crew licence or balloon flight crew rating under Part 5; and
 - conducted for hire or reward;
- an aerial application operation (within the meaning of regulation 137.010 of CASR) to which Part 137 of CASR applies that is conducted for hire or reward;
- the operation of a glider involving the carriage of passengers that is conducted for hire or reward.

In summary, section 27 of the Act requires that the flying or operation of an aircraft for the purposes prescribed under subsection 27(9) must be authorised by an Air Operator’s Certificate (AOC), a New Zealand AOC with Australia New Zealand Aviation (ANZA) privileges that is in force for Australia, or by a permission under section 27A of the Act. After commencement of the FOR, it will no longer be necessary for regulation 206 to provide for aerial work purposes, charter purposes, or regular public transport purposes to be prescribed for the purposes of subsection 27(9) of the Act. This is because, under the FOR:

- Aerial work operations are regulated under Part 138 of CASR, and require an aerial work certificate issued under that Part rather than an AOC.
- Charter operations and regular public transport operations have been replaced by the concept of air transport operations, which includes passenger transport operations, cargo transport operations, and medical transport operations. Regulation 119.030 of CASR

provides that for the purposes of subsection 27(9) of the Act the flying or operation of an aeroplane or rotorcraft for an Australian air transport operation is a prescribed purpose.

Relatedly, the operations that were previously aerial work (air ambulance) operations will be regulated under the FOR as medical transport operations. Medical transport operations are a kind of air transport operation, not an aerial work operation. This ensures the higher safety standards applicable to air transport operations are generally applicable to medical transport operations.

Item 36 Regulations 207 to 209

This item repeals the regulations.

Item 37 Subregulation 210A(5) (subparagraph (c)(iv) of the definition of *licence holder*)

This item repeals the subparagraph and substitutes it with “(iv) a commercial pilot (balloon) licence;”.

Item 38 Regulations 210B, 215 to 222 and 222A to 224

This item repeals the regulations.

Item 39 Paragraph 224A(3)(b)

This item omits the words “is successfully participating in an operator’s training and checking system approved by CASA under regulation 217” and is substituted with “complies with the operator’s training and checking system in accordance with regulation 119.170, 138.125 or 142.310 of CASR”.

Item 40 Regulations 225 to 234A

This item repeals the regulations.

Item 41 Subregulation 235(1)

This item omits “(1)” from the subregulation.

Item 42 Subregulations 235(2) to (13)

This item repeals the subregulations.

Item 43 Regulations 235A to 248 and 248A to 260

This item repeals the regulations.

Item 44 Division 5 of Part 14

This item repeals the Division.

Item 45 Regulations 262AL and 262AO to 262AS

This item repeals the regulations.

Item 46 Subregulation 263(1) (subparagraph (c)(iii) of the definition of *licence*)

This item repeals the subparagraph and substitutes it with “(iii) a commercial pilot (balloon) licence;”.

Item 47 Regulation 268

This item repeals the regulation.

Item 48 Paragraph 297(1)(b)

This item omits the first occurrence of the words “the Convention” and substitutes it with “the Chicago Convention”.

Item 49 Subregulation 297A(1) (table items 24 to 30)

This item repeals the items.

Item 50 Subregulation 298A(8) (paragraph (b) of the definition of *certificate*)

This item repeals the paragraph.

Item 51 Subparagraph 299(1)(c)(iv)

This item repeals the subparagraph and substitutes it with “(iv) a commercial pilot (balloon) licence”.

Item 52 Subregulation 303(1)

This item inserts “, or a Manual of Standards, or both,” after “Civil Aviation Orders”.

Item 53 Regulations 309, 309A, 311, 323AA, 323A, 324 and 332

This item repeals the regulations.

Item 54 Subsections 5(3) and (4) of Part 2 of Schedule 5

This item omits “I.F.R.” and substitutes it with “IFR”.

Item 55 Part 5 of Schedule 7 (heading)

This item omits the words “**manned balloons**” and substitutes it with “**manned free balloons**”.

Item 56 Subclause 5.1 of Schedule 7

This item omits the words “manned balloon” and substitutes it with “manned free balloon”.

Item 57 Parts 1 and 2 of Schedule 8 (headings)

This item omits the word “**balloons**” and substitutes it with “**manned free balloons**”.

Civil Aviation Safety Regulations 1998

Item 58 Subregulation 11.160(3) (note 3)

This item repeals the note.

Item 59 Subregulation 11.185(5) (note 3)

This item repeals the note.

Item 60 Subregulation 11.260(4) (note)

This item repeals the note.

Item 61 Regulation 13.375 (table item 9, column 3)

This item omits the words “Air traffic control licence” and substitutes it with “ATC licence”.

Item 62 Regulation 21.001

This item inserts “(1)” before “This”.

Item 63 At the end of regulation 21.001

This item adds “(2) This Part does not apply to hang gliders or paragliders” along with a note referencing that the Part 103 Manual of Standards may make provision in relation to airworthiness requirements for hang gliders and paragliders.

Upon commencement of Part 103 of CASR, those provisions of Subpart 200.B that presently disapply CASR for certain sport and recreation aircraft (that will become Part 103 aircraft) will be repealed (items 263, 264 and 265). The effect of items 62 and 63 is to ensure that hang gliders and paragliders will continue to be exempt from Part 21 of CASR because these kinds of Part 103 aircraft are not aircraft for which the certification requirements and related airworthiness standards of the Part are necessary.

Item 64 After paragraph 21.006A(1)(a)

This item adds “(aa) if the aircraft is a Part 103 aircraft – the owner of the aircraft” after paragraph 21.006A(1)(a).

For those Part 103 aircraft to which Part 21 applies, this item provides that, as for the operator of an aircraft registered on the Australian Civil Aircraft Register, the owner of a Part 103 aircraft may apply for approval of a change to the flight manual of the aircraft, irrespective of whether the aircraft is registered under Part 47 of CASR or listed with an Approved Self-administering Aviation Organisation (ASAO).

Item 65 At the end of subregulation 21.006A(2) (before the note)

This item adds “or; (c) if the aircraft is a non-type certificated aircraft – the airworthiness standards that applied to the issue of the aircraft’s certificate of airworthiness or permit under this Part”.

Many Part 103 aircraft to which Part 21 applies are not type certificated but are issued certificates of airworthiness or permits under the Part. This item ensures that any application for a change to an aircraft flight manual for a Part 103 aircraft will not result in the aircraft no longer complying with any airworthiness standards that applied to the issue of the certificate or permit.

Item 66 Subregulation 21.081(1)

This item inserts “requirements and” after “in accordance with the” in this subregulation.

Item 67 Paragraph 21.081(1)(b)

This item repeals the paragraph and substitutes it with “(b) under Division 91.T.3”.

Item 68 Subregulation 21.083(1)

This item inserts “requirements and” after “in accordance with the” in this subregulation.

Item 69 Paragraph 21.083(1)(b)

This item repeals the paragraph and substitutes it with “(b) under Division 91.T.3”.

Item 70 Subregulation 21.085(5)

This item omits the words “limitations mentioned in regulation 262AO of CAR” and substitutes it with “requirements and limitations under Division 91.T.3”.

Item 71 Subregulation 21.173(2)

This item omits the words “registered with a sport aviation body” and substitutes it with “listed with a Part 103 ASAO”.

Most Part 103 aircraft are not registered within the meaning of CASR (ie under Part 47 of CASR), but are registered with the administering ASAO. Part 103 of CASR uses the phrase “listed with an ASAO” to differentiate between the two kinds of “registration”. This item removes the ambiguity present in the existing provision and, consistent with Part 103 of CASR, applies the provision only in relation to an ASAO that administers a Part 103 aircraft.

Items 72, 73 and 75 – amendments to regulation 21.181

Items 72, 73 and 75 amend regulation 21.181 to ensure that the certificate of airworthiness of an aircraft is taken to not be in force for any period during which the aircraft is either not registered in Australia or not listed with a Part 103 ASAO. The effect of the provision is to enable aircraft that are registered on the Australian Civil Aircraft Register to cancel their registration for the purposes of listing with an ASAO (and *vice versa*), without the certificate being automatically cancelled. Instead the certificate is not in force for the period that the aircraft is neither listed nor registered. The purpose of the provision is to reduce the administrative burden and expense on the owner of having the aircraft inspected for the issue of a new certificate because of a change to the scheme under which it is administered.

Item 74 Subregulation 21.181(5)

This item omits the words “regular public transport operations” and substitutes it with “scheduled air transport operations”.

Item 76 Regulation 21.192

This item omits the words “registered with a sport aviation body” and substitutes it with “listed with a Part 103 ASAO”.

Item 77 Regulation 21.192 (note)

This item repeals the note. The note is repealed because the note references a repealed definition.

Items 78 to 80 – amendments to regulation 21.195B

Items 78, 79 and 80 amend regulation 21.195B to ensure that an experimental certificate is taken to not be in force for any period during which the aircraft is either not registered in Australia or not listed with a Part 103 ASAO. The effect of the provision is to enable experimental aircraft

that are registered on the Australian Civil Aircraft Register to cancel their registration for the purposes of listing with an ASAO (and *vice versa*), without the certificate being automatically cancelled. Instead the certificate is not in force for the period that the aircraft neither listed nor registered. The purpose of the provision is to reduce the administrative burden and expense on the owner of having the aircraft inspected for the issue of a new experimental certificate because of a change to the scheme under which it is administered.

Item 81 Subregulation 21.197(6)

This item repeals the subregulation and substitutes it with a new subregulation (6). It provides that, if CASA or an authorised person issues a special flight permit for an aircraft, CASA or the authorised person may direct that paragraph 91.145(2)(c), paragraph 91.145(2)(d), or Division 91.C.3 do not apply in relation to the aircraft while the permit is in force.

Item 82 Subregulation 21.213(2)

This item omits the words “AOC issued for regular public transport operations” and substitutes it with “Australian air transport AOC that authorises scheduled air transport operations”.

Items 83 (Paragraph 21.221(1)(b)) and 84 (Subregulation 21.221(5))

These items omit the words “limitations mentioned in subregulation 21.081(4) and regulation 262AO of CAR” and substitute it with “requirements and limitations under subregulation 21.081(4) and Division 91.T.3”.

Items 85 (Paragraph 21.223(1)(b)) and 86 (Subregulation 21.223(6))

These items omit the words “limitations mentioned in subregulation 21.083(7) and regulation 262AO of CAR” and substitute it with “requirements and limitations under subregulation 21.083(7) and Division 91.T.3”.

Items 87 (Paragraph 21.225(1)(b)) and 88 (Subregulation 21.225(5))

These items omit the words “limitations mentioned in subregulation 21.085(6) and regulation 262AO of CAR” and substitute it with “requirements and limitations under subregulation 21.085(6) and Division 91.T.3”.

Item 89 Subregulation 21.460(4)

This item repeals the subregulation and substitutes it with a new subregulation (4) which provides that the holder must ensure that a copy of the current version of the amendment or supplement is available (electronically or otherwise) to the registered operator of the aircraft (for a registered aircraft) or the owner of the aircraft (for a Part 103 aircraft that is listed with the Part 103 ASAO).

This item expands the scope of the application of regulation 21.460 to Part 103 aircraft to which Part 21 applies, such that a person that holds a modification/repair design approval issued under Subpart 21.M and is required to provide instructions for continued airworthiness in respect of the design, must ensure that a copy of the current version of the amendment or supplement is available (electronically or otherwise) to the owner of the aircraft.

Items 90 to 99 – amendments to Part 39

Upon commencement of Part 103 of CASR, those provisions of Subpart 200.B that presently disapply CASR for certain sport and recreation aircraft (which will become Part 103 aircraft) will be repealed (items 263, 264 and 265) and Part 39 will apply to Part 103 aircraft. Part 39 of CASR

is presently drafted in relation to type certificated aircraft. As the majority of Part 103 aircraft are non-type certificated, items 90 through 99 amend the Part to ensure CASA's underlying policy in relation to airworthiness directives functions as intended for non-type certificated aircraft. That is, foreign State of Design airworthiness directives do not automatically apply to non-type certificated aircraft operated under Australian law, but aviation safety is maintained through CASA maintaining the ability to issue an Australian airworthiness directive in relation to any civil aircraft operated in Australia. Items 110-113, 116-120, 123 and 124 are consequential to these amendments.

Item 100 Regulation 42.010 (note 2)

This item omits the words "Under regulation" and substitutes it with "Under regulations 202.180 and".

Item 101 Regulation 42.010 (paragraph (a) of note 2)

This item repeals the paragraph and substitutes a new (a) and (aa) which provides a registered aircraft that is used to conduct a Part 121 and Part 135 operation respectively that is a scheduled air transport operation.

Item 102 Subregulation 42.015(1) (definition of *air transport AOC*)

This item repeals the definition. This term has been superseded by the new term *Australian air transport AOC*.

Item 103 Subregulation 42.015(1) (definition of *EDTO*)

This item repeals the definition. Item 290 of these Regulations inserts a definition of *EDTO* into Part 1 of the Dictionary, which renders this definition superfluous.

Item 104 Subregulation 42.030(2) (note 3)

This item repeals the note.

Item 105 Subregulation 42.040(1) (heading)

This item inserts "Australian" before "air transport AOC".

Item 106 Subregulation 42.040(1)

This item inserts "Australian" before "air transport AOC".

Item 107 Subregulation 42.040(2) (heading)

This item inserts "Australian" before "air transport AOC".

Item 108 Subregulation 42.040(2)

This item inserts "Australian" before "air transport AOC".

Item 109 Subregulation 42.105(1) (note 2)

This item inserts "Australian" before "air transport AOC".

Item 110 Paragraph 42.120(b)

This item inserts “subregulation 39.002(2) or” after “under”.

Item 111 Regulation 42.120

This item omits “39.002(b)” and substitutes it with “39.002(1)(b)”.

Item 112 Regulation 42.120 (note 1)

This item omits “39.002(b)” and substitutes it with “39.002(1)(b)”.

Item 113 Regulation 42.120 (note 1)

This item omits “39.002(c)” and substitutes it with “39.002(1)(c)”.

Item 114 Paragraph 42.155(2)(b)

This item omits “EDTO approval issued under Civil Aviation Order 82.0” and substitutes “approval under regulation 121.010 for the purposes of paragraph 121.035(1)(b)”.

Item 115 After paragraph 42.155(2)(b)

This item inserts a new (ba) into subregulation 42.155(2) which provides an aircraft for which an approval under regulation 135.020 for the purposes of subregulation 135.035(1) is in force.

Item 116 Paragraphs 42.195(1)(b) and (c)

This item omits “39.002(b)” and substitutes it with “39.002(1)(b)”.

Item 117 Subparagraph 42.195(1)(c)(ii)

This item omits “39.002(c)” and substitutes it with “39.002(1)(c)”.

Item 118 Paragraph 42.195(4)(a)

This item omits “39.002(b)” and substitutes it with “39.002(1)(b)”.

Item 119 Subregulation 42.195(5)

This item omits “39.002(b)” and substitutes it with “39.002(1)(b)”.

Item 120 Paragraph 42.195(6)(a)

This item omits “39.002(b)” and substitutes it with “39.002(1)(b)”.

Item 121 Regulations 42.295 and 42.350

This item inserts “Australian” before “air transport AOC”.

Item 122 Subregulation 42.360(3) (note)

This item repeals the note.

Item 123 Paragraph 42.900(2)(f)

This item omits “39.002(b)” and substitutes it with “39.002(1)(b)”.

Item 124 Subparagraph 42.900(2)(f)(ii)

This item inserts “subregulation 39.002(2) or” after “under”.

Item 125 Subregulation 42.930(1)

This item repeals the subregulation and substitutes it with a new subregulation (1), (1A), and (1B). The amendments in this item are consequential to the amendments to regulation 21.181 of CASR made by item 73, and ensure the provisions of regulation 42.390 are consistent with those amendments.

Subregulation 42.930(1) now provides that, if the certificate of airworthiness for an aircraft expires or is cancelled, the airworthiness review certificate for the aircraft ceases to be in force at the same time as the certificate of airworthiness expires or is cancelled.

Subregulation 42.930(1A) now provides that, if the certificate of airworthiness for an aircraft is taken to not be in force under subregulation 21.181(4) for a period, the airworthiness review certificate for the aircraft is taken to not be in force for the same period.

Subregulation 42.930(1B) now provides that, for the purposes of subregulation (1A), the period during which the airworthiness review certificate is taken to not be in force counts as part of the period for which the certificate was issued.

Item 126 Regulations 42.940 and 42.970

This item inserts “Australian” before “air transport AOC” wherever it occurs.

Item 127 Regulation 45.005

This item inserts “(1)” before “This”.

Item 128 At the end of regulation 45.005

This item adds a new subregulation 45.005(2), which provides “however, this Part does not apply to a Part 103 aircraft (other than a sailplane)”.

Part 103 of CASR prescribes requirements in relation to the marking of aircraft (other than sailplanes) that are listed with a Part 103 ASAO. This provision ensures that a Part 103 aircraft is not subject to duplicate marking requirements.

Item 129 Subregulation 45.015(2)

This item repeals the subregulation and substitutes it with a new subregulation 45.015(2). It provides that, if the aircraft is a registered sailplane operating in Australian territory, the aircraft’s markings need not include the Australian nationality mark, and if the first letter of the aircraft’s registration mark is “G”, the aircraft’s markings need not include that first letter.

This item simplifies the existing provision and substitutes the word “sailplane” for “glider” to ensure that, consistent with item 131, only aircraft registered under Part 47 need to satisfy the requirements of Part 45.

Item 130 Paragraph 45.090(1)(c)

This item omits the words “provisionally certificated aircraft” and substitutes it with “aircraft for which a provisional certificate of airworthiness is in force”.

Item 131 At the end of subregulation 47.015(1) (before the note)

This item adds a new (l) and (m) to subregulation 47.015(1). These new paragraphs provide for certain kinds of Part 103 aircraft that are not required to be registered.

Part 103 of CASR prescribes requirements in relation to the listing of certain Part 103 aircraft. This item amends the subregulation to ensure that certain Part 103 aircraft are not required to be registered under Part 47 – being those aircraft that are required or eligible to be listed with an ASAO under Part 103.

Item 132 Subregulation 61.007(2)

This item omits the words “registered glider” and substitutes it with “glider that is a registered sailplane”.

This item amends the meaning of glider for the purposes of the Part to ensure that, consistent with policy intent of Part 61, only gliders that are sailplanes are included within the Part 61 licensing regime.

Item 133 Regulation 61.010

This item inserts a definition of *glider activity* which is defined to mean operating a Part 103 aircraft that is a glider or providing training in operating a Part 103 aircraft that is a glider. It also provides a definition of *glider organisation* which means a sport aviation body that administers glider activities.

Subparts 61.A to 61.Z make multiple reference to glider activities. This item defines the meaning of glider activity for the purposes of the Part. In conjunction with item 142, the item also amends and moves the extant definition of glider organisation from regulation 61.145 to regulation 61.010. The amendment substitutes “sport aviation body” for the definition repealed by item 134.

Item 134 Regulation 61.010 (definition of *recreational aviation administration organisation*)

This item repeals the definition. The term “recreational aviation administration organisation” is no longer used in CASR, being replaced by sport aviation body or ASAO, as applicable. See also item 309.

Item 135 At the end of regulation 61.025

This item adds “and includes a touring motor glider being operated under Part 91”. This item (together with items 200 and 227 to 229) supports the policy that Part 103 does not apply to a touring motor glider that is operated as an aeroplane under Part 91 by a person with a Part 61 pilot licence with an aeroplane category rating (i.e. the aircraft is operated as an aeroplane without ASAO oversight and is subject to the same regulatory oversight as any other VH-registered aeroplane).

Item 136 Regulation 61.116 (note)

This item omits “229 of CAR” and substitutes it with “91.415”.

Item 137 Regulation 61.120

This item omits “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 138 Regulation 61.120 (note)

This item repeals the note and replaces it with two new notes that provide that a person is prohibited from transmitting on an aviation safety radio frequency unless the person is authorised or qualified to do so, and directs the reader to the Dictionary for the definition of *aviation safety radio frequency*.

Item 139 Paragraph 61.145(1)(a)

This item omits the words “or motorised glider”. This item, as well as items 159, 162, 163, 164, 165, 167, 168, 171 and 173, amend Part 61 to omit references to “motorised glider”. The term is redundant as motorised gliders are now a form of sailplane for the purposes of the Part, as provided by item 132.

Items 140 to 142 – amendments to regulation 61.145

Items 140 to 142 make amendments to regulation 61.145 that are consequential to the commencement of Part 103. Items 140 and 141 amend any references in regulation 61.145 to an operations manual to also include an exposition of an ASAO, if the administering sport aviation body is an ASAO. Item 142 repeals subregulation 61.145(4), as the definition of *glider organisation* is superseded by the new definition inserted into regulation 61.010 by item 133.

Item 143 Subregulation 61.430(2) (note)

This item omits the words “229 of CAR” and substitutes it with “91.415”.

Item 144 Subregulations 61.435(1) and 61.435(3)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 145 Regulation 61.435 (note)

This item repeals the note and substitutes two new notes which provide that a person is prohibited from transmitting on an aviation safety radio frequency unless the person is authorised or qualified to do so, and directs the reader to the Dictionary for the definition of *aviation safety audio frequency*.

Item 146 Regulation 61.450 (note 3)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 147 Paragraph 61.480(1)(a)

This item omits the words “recreational aviation administration organisation” and substitutes it with “sport aviation body”.

Items 147, 149 and 161 amend applicable provisions to substitute “recreational aviation administration organisation” with “sport aviation body”. These amendments are related to the amendments in items 133 and 134.

Item 148 Subregulation 61.490(3)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 149 Paragraphs 61.500(2)(b), (3)(b), (4)(b) and (5)(b)

This item omits the words “recreational aviation administration organisation” and substitutes it with “sport aviation body”.

Item 150 Regulation 61.505 (note 3)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 151 Subparagraphs 61.570(a)(i) to (iii)

This item repeals the subparagraphs and substitutes it with new subparagraphs. As amended, the new provision provides that, subject to Subpart 61.E and regulation 61.575, the holder of a commercial pilot licence is authorised:

- to pilot, as pilot in command, any aircraft in any operation, other than:
 - a multi-crew aircraft in an air transport operation, or
 - if the holder has less than 750 hours of flight time as a pilot of an aeroplane – an aeroplane certificated for single-pilot operation with a maximum certificated take-off weight of more than 5 700 kg in an air transport operation, or
 - if the holder has less than 750 hours of flight time as a pilot of a rotorcraft – a rotorcraft with a maximum certificated take-off weight of more than 3 175 kg in an air transport operation
- to pilot, as co-pilot, any aircraft in any operation.

These changes put in place safety defences that accommodate the removal of regular public transport operations as a delineator within the civil aviation legislation.

Item 152 Regulation 61.570 (note 3)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 153 Regulation 61.635

This item omits the words “is approved as a training and checking organisation under regulation 217 of CAR” and substitutes it for “has a training and checking system that is in accordance with the requirements of Part 119 or 138”.

Item 154 Regulations 61.635 (note 3) and 61.665 (note 3)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 155 Paragraphs 61.1165(j), 61.1190(g) and 61.1227(1)(a)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 156 Subregulations 61.1355(1) and (2)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 157 Regulation 61.1355 (note)

This item repeals the note and replaces it with two new notes that provide that a person is prohibited from transmitting on an aviation safety radio frequency unless the person is authorised or qualified to do so, and directs the reader to the Dictionary for the definition of *aviation safety radio frequency*.

Item 158 Paragraphs 61.1395(f), 61.1427(1)(a) and 61.1510(b)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Items 159, 162 to 165, 167 to 168, 171, and 173

These items omit the words “or motorised glider” where they occur in regulations 61.1510, 61.1515, 61.1520, 61.1530, and 61.1540. These items are related to the amendments in item 139.

Item 160 Regulation 61.1510 (note)

This item repeals the note and replaces it with two new notes that provide that a person is prohibited from transmitting on an aviation safety radio frequency unless the person is authorised or qualified to do so, and directs the reader to the Dictionary for the definition of *aviation safety radio frequency*.

Item 161 Subregulation 61.1515(1)

This item omits the words “operations manual of a recreational aviation administration organisation that administers glider activities” and substitutes it with “operations manual or exposition (whichever is applicable) of a glider organisation”. This item is related to the amendments in items 133 and 134.

Item 166 Paragraph 61.1515(4)(a)

This item omits the words “recreational aviation administration organisation that administers glider activities” and substitutes it with “glider organisation”.

Item 169 Regulation 61.1520

This item omits the words “operations manual of the organisation that” and substitutes it with “operations manual or exposition (whichever is applicable) of the glider organisation that”.

Item 170 Paragraph 61.1525(3)(b)

This item omits the words “recreational aviation administration organisation that administers glider activities” and substitutes it with “glider organisation”.

Item 172 Paragraph 61.1540(2)(a)

This item omits the words “recreational aviation administration organisation that administers glider activities” and substitutes it with “glider organisation”.

Item 174 Paragraph 64.005(a)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 175 Regulation 64.005 (note 1)

This item repeals the note and substitutes it with a new Note 1, Note 1A and Note 1B.

Note 1 provides that a person is prohibited from transmitting on an aviation safety radio frequency unless the person is authorised or qualified to do so.

Note 1A provides that, under Part 61, holders of flight crew licences are authorised to transmit on an aviation safety radio frequency, or to taxi an aeroplane, in certain circumstances, and people receiving training for a flight crew licence are authorised to transmit on an aviation safety radio frequency in certain circumstances.

Note 1B provides that, for the definition of *aviation safety radio frequency*, see the Dictionary.

Item 176 Regulation 64.005 (note 2)

This item omits “229 of CAR” and substitutes it with “91.415”. This item is consequential to the repeal of regulation 229 of CAR by item 40 of these Regulations. That provision is superseded by regulation 91.415.

Item 177 Regulation 64.005 (note 3)

This item repeals the note.

Item 178 Regulation 64.035(1)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 179 Regulation 64.040

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 180 Paragraph 64.045(3)(e)

This item repeals the paragraph and substitutes it with a new paragraph (e) which provides for an aerodrome prescribed as a designated non-controlled aerodrome by the Part 91 Manual of Standards for the purposes of subparagraph 91.400(1)(a)(iv).

Item 181 Subregulation 65.065(1)

This item omits the words “a radio frequency of a kind used for the purpose of ensuring the safety of air navigation” and substitutes it with “an aviation safety radio frequency”.

Item 182 Subregulation 65.065(3) (note)

This item repeals the note and replaces it with two new notes that provide that a person is prohibited from transmitting on an aviation safety radio frequency unless the person is authorised or qualified to do so, and directs the reader to the Dictionary for the definition of *aviation safety radio frequency*.

Item 183 Subregulation 67.235(2)

This item omits the words “air traffic controller licence” wherever it occurs and substitutes it with “ATC licence”.

Item 184 Paragraphs 67.265(1)(c) and 67.270(1)(c)

This item omits the words “air traffic controller licence” wherever it occurs and substitutes it with “ATC licence”.

Item 185 Subregulation 90.008(1) (note)

This item repeals the note. The note referred to regulation 311 of CAR, which is repealed by item 53 of these Regulations.

Items 186, 187, 189, 191, 193, 195, 197, 198 – amendments to replace references to “regular public transport operations” with “scheduled air transport operations”

These items omit the words “regular public transport operations” and substitute the words “scheduled air transport operations” in regulations 90.265, 90.275, 90.280, 90.285, 90.410, the heading to Subpart 90.E, regulation 90.600.

Items 188, 190, 192, 194, 196 and 199 – amendments to repeal notes on provisions in Part 90

These items repeal notes on regulations 90.265, 90.275, 90.280, 90.285, 90.410, and 90.600. The notes foreshadowed that the provisions could be expanded to apply to aircraft used in charter operations on commencement of the FOR. That policy has not been implemented via the FOR or these Regulations.

Item 200 After subregulation 91.030(2)

This item inserts a new subregulation (2A) which provides that, if Part 103 does not apply to the operation of a touring motor glider because of the operation of subregulation 103.005(2A), then, despite subregulation (2) of this regulation, the provisions mentioned in subregulation (2) of the regulation apply to the operation of the touring motor glider. The intent of this provision is that where a touring motor glider is operated as an aeroplane under Part 91, by a pilot exercising the privileges of a (Part 61) pilot licence, then Part 91 as a whole applies to the operation of the touring motor glider for that flight. This is related to the amendments in item 135.

Item 201 After paragraph 91.030(3)(ma)

This item inserts a new paragraph (mb) which provides for regulation 91.725.

Item 202 Subregulation 91.035(1) (after table item 2)

This item inserts a new table item 2A into subregulation 91.035(1). This is a technical amendment to fix an error in the table, which should have included this item.

Item 203 Division 91.C.3 (after the heading)

This item inserts a note that provides that Division 91.C.3 does not apply to the operation of an aircraft if Division 121.C.3, 133.C.3 or 135.C.3 applies to the operation.

Item 204 Paragraphs 91.145(2)(a) to (d)

This item repeals the paragraphs and substitutes new paragraphs (a) to (d). This is a technical amendment to correct minor errors in the original provision.

Paragraph 91.145(2)(a) provides that, if the aircraft is required to be registered, the aircraft must be registered.

Paragraph 91.145(2)(b) provides that the aircraft must have a certificate of airworthiness or special flight permit.

Paragraph 91.145(2)(c) provides that the aircraft must meet the requirements prescribed by the Part 45 Manual of Standards (i.e. display of nationality marks, registration marks and aircraft registration identification plates).

Paragraph 91.145(2)(d) provides that, if Part 42 does not apply to the aircraft, a maintenance release, or other document approved for use under these Regulations as an alternative to a maintenance release, must be in force for the aircraft, and the flight must comply with any condition that is set out or referred to in the maintenance release or other document approved for use as an alternative to the maintenance release.

Item 205 At the end of subregulation 91.145(2)

This item adds a note that provides CASA, or an authorised person, may direct that these requirements do not apply to an aircraft with a special flight permit.

Item 206 Subparagraph 91.745(2)(d)(i)

This item omits the words “a provisionally certificated aircraft” and substitutes it with “an aircraft for which a provisional certificate of airworthiness is in force”.

Item 207 Paragraph 91.850(2)(c)

This item inserts “or a balloon transport operation” after “operation”.

Item 208 Paragraph 91.865(1)(a)

This item omits “the aircraft is provisionally certificated” and substitutes it with “only a provisional certificate of airworthiness has been issued for the aircraft”.

Item 209 Subregulation 91.870(1)

This item omits “a provisionally certificated aircraft” and substitutes it with “an aircraft for which a provisional certificate of airworthiness is in force”.

Item 210 Subregulation 91.900(4)

This item omits the words “a person” and substitutes it with “an authorised person”.

Item 211 Regulation 92.165 (heading)

This item repeals the heading and substitutes it with “**92.165 Goods carried by external load**”. This item and items 212 to 220 make amendments to Part 92 that flow from changes in terminology in the FOR, including to reflect that a slung load will be an external load, and that these regulations apply in relation to rotorcraft generally rather than only helicopters.

Item 212 Regulation 92.165

This item omits the words “that is a helicopter” and substitutes it with “that is a rotorcraft”.

Item 213 Paragraph 92.165(a)

This item omits the word “helicopter” and substitutes it with “rotorcraft”.

Item 214 Subparagraph 92.165(b)(i)

This item omits the words “a slung load” and substitutes it with “an external load”.

Item 215 Paragraph 92.165(c)

This item omits the words “operating crew” and substitutes it with “crew members”.

Item 216 Paragraph 92.165(c)

This item omits the word “helicopter” and substitutes it with “rotorcraft”.

Item 217 Paragraph 92.165(d)

This item omits the word “helicopter’s” and substitutes it with “rotorcraft’s”.

Item 218 Paragraph 92.165(e)

This item repeals the paragraph and substitutes it with a new paragraph 92.165(e). It provides that the rotorcraft is being used to conduct an external load operation in accordance with the requirements of these Regulations that apply in relation to the rotorcraft.

Item 219 Regulation 92.165 (note)

This item repeals the note and substitutes it with a new note. The new note directs the user to see Part 133 in relation to requirements that apply to external load operations that are part of a medical transport operation and Part 138 in relation to requirements that apply to external load operations that involve an aerial work operation.

Item 220 Paragraphs 92.195(1)(b) and (2)(b)

This item omits the words “an aircraft engaged in regular public transport operations” and substitutes it with “a prescribed aircraft (within the meaning of section 9 of the *Aviation Transport Security Act 2004*)”.

Item 221 Paragraphs 99.015(2)(i) and (j)

This item omits the words “air traffic controller licence” and substitutes it with “ATC licence”.

Item 222 Regulation 101.020

This item omits the words “7, 9, 10, 11, 12, 13” from regulation 101.020 (Exemption from certain provisions of CAR) and substitutes it with “9, 10”. This is to update the provision in light of the repeal of various Parts of CAR previously disapplied by regulation 101.020.

Item 223 Subregulation 101.105(1) (definition of *tethered balloon*)

This item omits the words “a balloon” and substitutes it with “an unmanned balloon”.

Item 224 Subregulation 101.285(2) (paragraph (c) of the definition of *relevant qualification*)

This item repeals the paragraph and substitutes it with a new paragraph (c) which refers to an ATC licence. This amendment replaces an erroneous reference to “air traffic control licence”, which is not a defined term.

Item 225 Subregulation 101.285(7)

This item omits the words “specified under paragraph 99A(3)(b) of CAR for a particular area or aerodrome” and substitutes the words “prescribed by the Part 91 Manual of Standards for the purpose of subregulation 91.255(1) or paragraph 91.630(1)(b)”.

Item 226 Paragraphs 101.290(1)(a), 101.295(3)(c) and 101.300(3)(c)

This item omits the words “air traffic control licence” wherever they occur and substitutes them with “ATC licence”.

Item 227 After subregulation 103.005(2)

This item inserts a new (2A) which provides that, despite subregulation (1), this Part does not apply to the operation of a touring motor glider if the touring motor glider is registered, the touring motor glider is being operated solely under Part 91 during a flight and either the pilot in command for the flight is exercising the privileges of a pilot licence with an aeroplane category rating, or the pilot in command for the flight holds an approval under regulation 61.040 for paragraph 61.1515(1)(b).

Item 228 After subparagraph 103.005(4)(b)(iv)

This item inserts (iva) which provides for a touring motor glider.

This item explicitly includes a touring motor glider listed with an ASAO and operated as an aeroplane to be a Part 103 aircraft, so as to differentiate the aircraft from a VH-registered touring motor glider operated under Part 91, or a VH-registered touring motor glider operated as a sailplane under Part 103.

Item 229 Paragraph 103.025(2)(a)

This item omits the words “or powered paraglider” that substitutes “, powered paraglider or registered touring motor glider”.

This amendment is consequential to items 227 and 228. It gives effect to the policy that a VH-registered touring motor glider operated as a sailplane under Part 103 is not required to be listed with an ASAO.

Item 230 Regulation 103.100

This item repeals the regulation and substitutes a new regulation. It amends regulation 103.100 to give effect to the policy that CAR Parts 4 and 4A apply only to a Part 103 aircraft that is listed with an ASAO and has a standard certificate of airworthiness.

Subregulation 103.100(1) provides that Parts 4 and 4A of CAR do not apply to a Part 103 aircraft unless the aircraft is listed with a Part 103 ASAO and a standard certificate of airworthiness is in force in relation to the aircraft.

Subregulation 103.100(2) provides Parts 4B, 4C and 4D of CAR do not apply to a Part 103 aircraft unless a standard certificate of airworthiness is in force in relation to an aircraft, and the aircraft is a sailplane or listed with a Part 103 ASAO.

Item 231 Subregulation 105.085(2)

This item omits the words “The pilot in command of the aircraft contravenes” and substitutes it with “The operator and the pilot in command of an aircraft each contravene”.

This item amends the regulation to expand the offence provision to apply in relation to the operation of a limited category aircraft for the purposes of a parachute descent. The similar existing offence in regulation 132.080 of CASR is repealed by item 250 of these Regulations.

Items 232, 233 and 234 – amendments to Part 117

These items make amendments to Part 117 that are consequential to the repeal of regulation 132 of CAR (which repeal is given effect by item 32 of these Regulations) and to the making of the FOR.

In summary, regulation 132 relevantly imposed requirements for owners of aircraft to provide statistical returns and other information, and for airlines and owners of aircraft used in a regular public transport service to provide traffic reports, to CASA. It also provided for restrictions on the disclosure of information received by CASA or an authorised officer pursuant to those requirements.

Item 234 adds new regulations 117.020, 117.025, and 117.030, which implement a continuation of the policy previously included in subregulations 132(1) to (3A) of CAR. Although the language has been updated in light of contemporary drafting practice, the policy and requirements included in the new provisions are substantively the same as in the old provisions. The requirement in subregulation 132(4) for CASA to transmit information to the Council of the ICAO has not been retained, as this requirement no longer reflects current practice. Further detailed information on the new regulations is included below.

Item 232 adds paragraphs (c) and (d) to regulation 117.005, to include that the Part provides for offences for not providing statistical information about aircraft and not providing traffic reports.

Item 233 adds paragraphs (e) and (f) to regulation 117.015, to include the holder of an aerial work certificate, and the holder of an approval under regulation 131.035 to conduct a specialised balloon operation, as persons subject to the requirement to provide safety-related surveys or questionnaires.

Regulation 117.020 – Owner or registered operator to provide information about aircraft

Subregulation 117.020(1) provides that CASA may, by written notice given to the owner of an aircraft or the registered operator of the aircraft if the owner is not the registered operator of the

aircraft, direct a person to collect specified statistical and other information to the aircraft, and provide the information to CASA within the time stated in the notice.

Subregulation 117.020(2) provides that the person may, before the end of the time stated in the notice, apply in writing to CASA for an extension.

Subregulation 117.020(3) provides that CASA may, by written notice given to the person, grant the extension. A person affected by a decision to refuse to grant an extension of time will have rights of merit review in accordance with regulation 201.004 of CASR, in addition to administrative law rights under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* and general principles of Australian administrative law. These merits and administrative law rights exist within a framework for seeking the review of a decision that may not be correct or preferable or where there has been jurisdictional error. In terms of merits review, the approval of an extension of time constitutes an authorisation within the meaning of regulation 11.015 of the CASR as it would authorise the non provision of information to CASA for a specified period of time. Item 1 of the Table 201.004 of CASR (see subregulation 201.004(2) of CASR) deems an adverse decision on an authorisation to constitute a reviewable decision on its merits by the Administrative Appeals Tribunal.

Subregulation 117.020(4) provides that, if CASA gives a person a direction under this regulation, the person must comply with the direction within the time stated in the notice of extension (if CASA grants an extension under subregulation (3), otherwise within the time stated in the notice under subregulation (1)).

Subregulation 117.020(5) provides that a person commits an offence of strict liability if the person contravenes subregulation 117.020(4).

Regulation 117.025 – Owner or registered operator to provide traffic reports

Subregulation 117.025(1) provides that CASA may, by written notice given to the owner of an aircraft engaged in air transport operations or the registered operator of the aircraft if the owner is not the registered operator of the aircraft, direct the person to prepare traffic reports and provide the traffic reports to CASA within the time stated in the notice.

Subregulation 117.025(2) provides that the person may, before the end of the time stated in the notice, apply in writing to CASA for an extension.

Subregulation 117.025(3) provides that CASA may, by written notice given to the person, grant the extension.

Subregulation 117.025(4) provides that, if CASA gives a person a direction under this regulation, the person must comply with the direction within the time stated in the notice (if CASA grants an extension under subregulation 117.025(3), otherwise within the time stated in the notice under subregulation 117.025(1)).

Subregulation 117.025(5) provides that a person commits an offence of strict liability if the person contravenes subregulation 117.025(4).

Regulation 117.030 – Protection of information

Subregulation 117.030(1) provides that this regulation does not apply in relation to personal information.

Subregulation 117.030(2) provides that a person to whom information has been disclosed under regulation 117.020 or 117.025 must not disclose the information.

Subregulation 117.030(3) provides that subregulation 117.030(2) does not apply if the disclosure is for the purposes of these Regulations or the Act, is authorised or required by a law of the Commonwealth, is in connection with compliance with a requirement of the Chicago Convention, or CASA is satisfied that the disclosure is necessary in the interests of the safety of air navigation or the disclosure is with the consent of the person to whom the information disclosed relates.

Subregulation 117.030(4) provides that a person commits an offence of strict liability if the person contravenes subregulation (2).

Items 235 to 238 – amendments to regulations 119.070 and 119.080

These items make amendments to regulations 119.070 and 119.080 of CASR that are consequential to the repeal of regulation 205 of CAR (which repeal is given effect by item 34 of these Regulations). In summary, regulation 205 provided for additional conditions for the issue of an Australian AOC with ANZA privileges by CASA, and conditions on an Australian AOC with ANZA privileges, to give effect to the arrangements between Australia and New Zealand for the mutual recognition of AOCs for aircraft with more than 30 seats or weighing more than 15,000kg maximum take-off weight (MTOW). Mutual recognition enables Australian and New Zealand operators to operate to, from and within either country on the basis of their home certification. As the policy contained in regulation 205 has not changed, the repeal of that provision prompts the need to include similar requirements in CASR.

Items 236 and 238 insert additional subregulations into regulations 119.070 and 119.080 of CASR to provide for similar conditions on the issue by CASA of an Australian air transport AOC with ANZA privileges, and conditions on Australian air transport AOCs with ANZA privileges, that that each aeroplane operated by the AOC holder under the AOC for ANZA activities in New Zealand must either have a MTOW of more than 15,000 kg or be permitted by its type certificate or foreign type certificate to have a passenger seating capacity of more than 30 seats, and be registered in Australia or New Zealand.

Items 235 and 237 insert notes after subregulations 119.070(1) and 119.080(1) respectively, to explain the operation of these provisions.

Item 239 Paragraphs 131.005(3)(a) and (b)

This item repeals the paragraphs and substitutes them with a new (a) and (b). The intent of these changes is to create a clearer distinction between tethered gas balloons that are required to comply with Subpart 131.Z of CASR and tethered gas balloons that are required to comply with the relevant provisions of Part 101 of CASR.

Item 240 At the end of subregulation 131.025(1)

This item adds a new paragraph (c) which has the effect that balloon flying training (within the meaning of subregulation 5.01(1) of CAR) for the grant of a balloon flight crew licence (within the meaning of that subregulation) or a balloon flight crew rating (within the meaning of that subregulation) is not a *Part 131 recreational activity*.

Item 241 Division 131.C.6 (heading)

This item omits “for balloons”.

Item 242 Subregulation 131.435(1)

This item repeals the subregulation and substitutes a new subregulation (1) which provides that the operator and pilot in command of a Part 131 aircraft for a flight that is a balloon transport operation each contravene this subregulation if, during the flight, the pilot in command permits balloon flying training (within the meaning of subregulation 5.01(1) of CAR) for any purpose.

Item 243 Regulation 131.450

This item repeals the regulation and substitutes a new regulation 131.450. This regulation provides that a balloon transport operator's exposition must include a range of information in relation to a flight of a Part 131 aircraft.

Item 244 Subregulation 131.565(1)

This item inserts "or (2A)" after "subregulation (2)".

Item 245 After subregulation 131.565(2)

This item inserts a new subregulation (2A) which provides that the requirement is that any other person who is to perform an activity essential to the operation of the Part 131 aircraft for the flight is authorised to perform that activity under regulation 5.03 of CAR.

Item 246 Subregulation 132.005(1)

This item repeals the subregulation.

Item 247 Paragraph 132.045(1)(a)

This item repeals the paragraph.

Item 248 Paragraph 132.045(1)(b)

This item inserts "or of Part 91" after "CAR" in paragraph 132.045(1)(b). The effect of this amendment is to maintain the status quo in relation to the interaction between Part 132 and the parts of the regulations that provide for the normal flight operations rules. A provision of CAR or of Part 91 of CASR that applies to the operation of a limited category aircraft and is inconsistent with Part 132 has no effect to the extent of the inconsistency in relation to the operation of the limited category aircraft. However, if such a provision is capable of operating concurrently with the provision of Part 132, then it is taken to be consistent with Part 132 (and applies) to that extent.

Item 249 Subparagraph 132.070(1)(a)(ii)

This item omits the words "regular public transport or charter operations" and substitutes it with "air transport operations".

Item 250 Regulation 132.080

This item repeals the regulation. This item relates to the amendments in item 231.

Item 251 Subparagraph 132.150(a)(ii)

This item omits the words "regular public transport or charter operations" and substitutes it with "air transport operations".

Item 252 Paragraph 132.155(4)(a)

This item omits the words “regular public transport or charter operations” (wherever occurring) and substitutes it with “air transport operations”.

Item 253 Subregulation 132.155(4) (note)

This item omits the words “Division 4 of Part 14 of CAR” and substitutes it with “Division 91.D.7”.

Item 254 After subregulation 135.035(2)

This item inserts a new subregulation (2A) which provides that subregulation (2) does not apply to an operator or a pilot and a requirement if the operator or the pilot holds an approval under regulation 135.020 for the requirement. The purpose of this amendment is to allow an operator or pilot to obtain an approval from CASA to authorise the holder to exceed the flight distance limitations for the flight of an aeroplane prescribed in the Part 135 MOS.

Item 255 At the end of regulation 135.035 (after the penalty)

This item adds a new note which provides that the defendant bears an evidential burden in relation to the matters in subregulation (2A).

Item 256 Subregulation 137.135(4) (note)

This item repeals the note.

Item 257 Regulation 137.155

This item repeals the regulation.

Item 258 Regulation 139.001 (note 1)

This item omits “regulation 92 of CAR” and substitutes it with “regulations 91.410 and 121.205”.

Item 259 Regulation 139.001 (paragraph (a) of note 2)

This item omits the words “use of aerodromes (Part 9 of CAR) or”.

Item 260 Subparagraphs 141.015(1)(g)(ii) and 142.015(2)(g)(ii)

This item omits the words “a training and checking organisation approved under regulation 217 of CAR” and substitutes it with “an operator that has a training and checking system that is in accordance with the requirements of Part 119 or 138”.

Item 261 Subregulation 149.415(6)

This item omits the words “the sport aviation body” and substitutes it with “the ASAO”.

This item corrects an error in the existing regulation in that the regulation is intended to be in relation to an ASAO, and not the broader meaning given by sport aviation body.

Item 262 Subregulation 171.010(1) (definition of *radionavigation service*)

This item repeals the definition.

Item 263 Subpart 200.A

This item repeals the Subpart. For items 263, 264, 265, 266 and 267, with the commencement of Part 103, those provisions of Part 200 that presently disapply CASR for certain sport and recreation aircraft (that will become Part 103 aircraft) are repealed, because these aircraft are now subject to applicable CASR Parts. These items also relate to the amendments in item 63.

Item 264 Regulations 200.001, 200.002, 200.003, 200.004, 200.006, 200.010, 200.013 and 200.014

This item repeals the regulations.

Item 265 Regulation 200.020

This item omits the words “(other than the excluded provisions)”.

Item 266 Paragraph 200.025(a)

This item inserts “(other than an ASAO)” after “sport aviation body”.

Item 267 Paragraph 200.030(b)

This item inserts “(other than an ASAO)” after “sport aviation body”.

Item 268 Subregulation 201.001(1)

This item repeals the subregulation and substitutes a new subregulation (1) which provides that CASA may appoint a person, or the persons included in a class of persons, to be an authorised person in relation to any one or more of CASR, a particular provision of CASR, CAR, or a particular provision of CAR.

Item 269 After regulation 201.001

This item inserts a new regulation 201.002 (Identity cards) and 201.002A (Authorised persons requesting cockpit entry or occupation of seat etc).

Regulation 201.002 – Identity cards

This regulation is consequential to the repeal of regulation 6A of CAR (Identity cards) by item 13. It provides for matters related to identity cards for authorised persons who are officers of CASA and who perform functions or duties or exercise powers under certain provisions of CAR or CASR.

Subregulation 201.002(1) provides that CASA must issue an authorised person with an identity card if the person is an officer or performs functions or duties or exercise powers under a range of listed provisions.

Subregulation 201.002(2) provides that the identity card is valid for the period for which the person has been appointed as an authorised person.

Subregulation 201.002(3) provides that the identify card must contain a photograph of the person that is no more than 5 years old, and specify what the person is appointed as an authorised person for, and must specify any conditions of the appointment.

Subregulation 201.002(4) provides that a person contravenes this subregulation if the person has been issued with an identity card, the person ceases to be an authorised person for any or all of the provisions specified in the card, and the person does not return the card to CASA within 7 days of the person ceasing to be an authorised person.

Subregulation 201.002(5) provides that a person commits an offence of strict liability if the person contravenes subregulation (4).

Subregulation 201.002(6) provides that, if an authorised person is performing functions or exercising powers in accordance with CASR or CAR, the person must wear their identity card so that it can be readily seen and, upon request, show their identity card.

Regulation 201.002A – Authorised persons requesting cockpit entry or occupation of seat etc.

This regulation is consequential to the repeal of regulation 227 of CAR (Admission to crew compartment) by item 40 of these Regulations. It provides for matters related to a request by an authorised person to enter the cockpit or occupy a particular seat or particular position on an aircraft.

Subregulation 201.002A(1) provides that the pilot in command of an aircraft for a flight contravenes this subregulation if, during the flight, an authorised person requests to enter the cockpit, the request is for the purposes of, or in connection with, the authorised person performing their duties, the authorised person produces or displays their identity card, and the pilot in command refuses or fails to comply with the request.

Subregulation 201.002A(2) provides that the pilot in command of an aircraft for a flight contravenes this subregulation if during the flight, an authorised person requests to occupy a particular seat or particular position on the aircraft, the request is for the purposes of, or in connection with, the authorised person performing their duties, the authorised person produces or displays their identity card, and the pilot in command refuses or fails to comply with the request.

Subregulation 201.002A(3) provides that subregulation (1) or (2) do not apply if the pilot in command is satisfied that the safety of the aircraft, or of any person or property, is likely to be endangered as a result of the entry of the authorised person to the cockpit, or the occupation of the seat or position by the authorised person (as the case may be).

Subregulation 201.002A(4) provides that the pilot in command of an aircraft for a flight contravenes this subregulation if subregulation (1) or (2) applies in relation to a request (the first request) by an authorised person, the authorised person requests the pilot in command to report to CASA the reasons for the refusal or failure to comply with the first request, and the pilot in command fails to give the report to CASA in the approved form within 7 days of the refusal or failure.

Subregulation 201.002A(5) provides that a person commits an offence of strict liability if the person contravenes subregulation (1), (2), or (4).

Items 270 to 273 – amendments to regulation 201.004 (review of decisions)

Items 270 to 272 amend the table in subregulation 201.004(2) of CASR, to include 28 new categories of reviewable decision subject to merits review in the Administrative Appeals

Tribunal. Item 273 adds a note that directs the reader to section 31 of the Act, which provides for certain other decisions to be reviewable. A person affected by these decisions under CASR will have rights of merit review in accordance with regulation 201.004 of CASR, in addition to administrative law rights under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and general principles of Australian administrative law. These merits and administrative law rights exist within a framework for seeking the review of a decision that may not be correct or preferable or where there has been jurisdictional error.

Item 274 After regulation 201.020

This item inserts a new regulation 201.022 (Carriage of medicines—relationship with other laws). The intent of this provision is to continue in effect the policy previously embodied in subregulation 253(7) of CAR, which is repealed by item 43 of these Regulations. The policy intent is that if CASA requires the carriage of a medicine or drug on an aircraft (ie under a provision of CASR or of a Manual of Standards), or prescribes requirements in relation to that carriage or the use of the medicine or drug, then the operator, pilot in command or crew members should not be required to obtain a licence, approval or permission for carrying or using the medicine or drug on the aircraft to meet the requirement. This applies despite any law of the Commonwealth, or of a State or Territory.

Item 275 At the end of Part 201

This item inserts a new regulation 201.030 (Approvals by CASA—definitions in these Regulations). This regulation allows a person to apply in writing to CASA for an approval mentioned in a definition. Subject to regulation 11.055, CASA is required to grant such an approval, and subregulation 11.055(1B) applies to the granting of an approval under this regulation.

Item 276 Division 202.AD.1

This item repeals this Division. Division 202.AD provided for transitional provisions relating to the commencement of Part 11. That Division is now spent. Some exemptions continued in effect under the Division are continued in effect by regulation 202.416C inserted by item 1 of Schedule 3 to these Regulations.

Items 277 and 278 – amendments to regulations 202.180 and 202.181 of CASR

These items amend regulations 202.180 (Application of Part 42) and 202.181 (Election that Part 42 is to apply to an aircraft) to accommodate the changes to regulation 206 of CAR and the introduction of Parts 121, 133 and 135 of CASR.

In summary, under subregulation 202.180(1), Part 42 will apply to:

- a registered aircraft that is used to conduct a Part 121 operation that is a scheduled air transport operation
- a registered aircraft that is used to conduct a Part 135 operation that is a scheduled air transport operation
- a registered aircraft for which an election under regulation 202.181 is in force, and
- an aeronautical product for an aircraft.

Subregulations 202.180(2) and (3) are not changed.

Regulation 202.181(1) provides for the kinds of aircraft in relation to which the registered operator may elect that Part 42 is to apply. Under subregulation 202.181(1), those kinds of aircraft now include:

- a registered aircraft that is used to conduct a Part 121 operation that is not a scheduled air transport operation
- a registered aircraft that is used to conduct a Part 133 operation
- a registered aircraft that is used to conduct a Part 135 operation that is not a scheduled air transport operation
- a registered aircraft that is used to conduct an aerial work operation under an aerial work certificate
- a registered aircraft that is used to conduct an aerial application operation under an AOC
- a registered aircraft that is used to conduct authorised Part 141 flight training or an authorised Part 142 activity
- a registered large aircraft that is not authorised to operate under an AOC, an aerial work certificate or a Part 141 certificate.

Item 279 Paragraph 202.862(4)(a)

This item omits the word “sports” and substitutes it with “sport”.

Item 280 Part 1 of the Dictionary

This item inserts definitions of *aerodrome control service*, *aerodrome reference point*, *aerodrome traffic*, *aeroplane*, *air traffic*, *air traffic control*, *air traffic control clearance*, *air traffic control instructions*, and *air traffic control service* into Part 1 of the Dictionary.

Item 281 Part 1 of the Dictionary (definition of *Air Traffic Services*)

This item repeals the definition for *Air Traffic Services* and substitutes it with a new one.

Item 282 Part 1 of the Dictionary

This item inserts definitions of *alternate aerodrome*, *altitude*, *approach control service*, *apron*, *area control service*, and *Australian-administered airspace* into Part 1 of the Dictionary.

Item 283 Part 1 of the Dictionary (definition of *authorised Part 141 flight training*)

This item repeals the definition of *authorised Part 141 flight training* and substitutes it with a new definition.

Item 284 Part 1 of the Dictionary (definition of *authorised Part 142 activity*)

This item repeals the definition of *authorised Part 142 activity* and substitutes it with a new definition.

Item 285 Part 1 of the Dictionary (definition of *authorised person*)

This item repeals the definition of *authorised person* and substitutes it with a new definition.

Item 286 Part 1 of the Dictionary

This item inserts definitions of *aviation safety radio frequency*, *balloon transport AOC*, *balloon transport operation*, *balloon transport operator*, *class of airspace*, and *cloud ceiling* into Part 1 of the Dictionary.

Item 287 Part 1 of the Dictionary (definition of *commercial (balloon) pilot licence*)

This item repeals the definition of *commercial (balloon) pilot licence* and substitutes it with a new definition of *commercial pilot (balloon) licence*, which means a commercial pilot (balloon) licence issued under Part 5 of CAR.

Item 288 Part 1 of the Dictionary

This item inserts definitions of *control area*, *controlled aerodrome*, *controlled airspace*, and *control zone* into Part 1 of the Dictionary.

Item 289 Part 1 of the Dictionary (definition of *corporation*)

This item omits the words “and 149” and substitutes it with “, 131 and 149”.

Item 290 Part 1 of the Dictionary

This item inserts definitions of *cruising level*, *danger area*, *EDTO*, *elevation*, *employed in private operations*, and *examination* into Part 1 of the Dictionary.

Item 291 Part 1 of the Dictionary (definition of *excluded provisions*)

This item repeals the definition.

Item 292 Part 1 of the Dictionary

This item inserts the definition of *experimental aircraft*.

Item 293 Part 1 of the Dictionary (at the end of the definition of *exposition*)

This item amends the definition of *exposition*.

Item 294 Part 1 of the Dictionary

This item inserts definitions of *FAA*, *flight information area*, *flight information service*, *flight plan*, *flight visibility*, *flying training*, *foreign aircraft*, and *gas balloon* into Part 1 of the Dictionary.

Item 295 Part 1 of the Dictionary (definition of *glider*)

This item repeals the definition of *glider* and substitutes it with a new definition.

For items 295, 297, 304, 310, 311, 312, 313, 314 and 322, the definitions of certain Part 103 aircraft are amended to ensure the correct operation of applicable CASR Parts and consistency with any applicable ICAO definitions.

Item 296 Part 1 of the Dictionary

This item inserts what a *grant* includes.

Item 297 Part 1 of the Dictionary (definition of *hang glider*)

This item repeals the definition of *hang glider* and substitutes it with a new definition.

Item 298 Part 1 of the Dictionary

This item inserts definitions of *heading*, *height*, *helicopter*, *hot air airship*, *IFR operation*, *international operating agency*, *international registration plan*, and *joint registration plan* into Part 1 of the Dictionary.

Item 299 Part 1 of the Dictionary (paragraphs (b) and (c) of the definition of *key personnel*)

This item inserts “(however described)” after “the people”.

Item 300 Part 1 of the Dictionary (at the end of the definition of *key personnel*)

This item adds to the definition of *key personnel*.

Item 301 Part 1 of the Dictionary

This item inserts definitions of *landing area*, *level* and *licensed* into Part 1 of the Dictionary.

Item 302 Part 1 of the Dictionary (paragraph (a) of the definition of *manned free balloon*)

This item repeals the paragraph and substitutes it with a new paragraph (a).

Item 303 Part 1 of the Dictionary

This item inserts definitions of *meteorological information*, *military aircraft*, *movement area*, *navigation system*, *non-controlled aerodrome*, and *non-scheduled air transport operation* into Part 1 of the Dictionary.

The term *non-scheduled air transport operation* is defined to mean an air transport operation that is not a scheduled air transport operation or a medical transport operation. This term is used in these Regulations as an equivalent to how the term ‘charter operation’ was used under the old CAR. Some provisions of CAR and CASR are amended by these Regulations to replace references to a charter operation with a non-scheduled air transport operation, in order to maintain equivalence to existing requirements. This term will eventually be phased out as further work is conducted to align the standards previously applicable to aircraft used in charter operations with aircraft used in air transport operations generally.

Item 304 Part 1 of the Dictionary (definition of *paraglider*)

This item repeals the definition of *paraglider* and substitutes it with a new definition.

Item 305 Part 1 of the Dictionary

This item inserts a definition of *Part 141 certificate* into Part 1 of the Dictionary.

Item 306 Part 1 of the Dictionary (paragraph (b) of the definition of *passenger*)

This item omits the words “member of the crew” and substitutes it with “crew member”.

Item 307 Part 1 of the Dictionary (definition of *passenger transport operation*)

This item repeals the definition of *passenger transport operation* and substitutes it with a new definition, which points to clause 75 of Part 2 of the Dictionary.

Item 308 Part 1 of the Dictionary (paragraph (a) of the definition of *personnel*)

This item repeals the paragraph and substitutes it with a new paragraph (a).

Item 309 Part 1 of the Dictionary (paragraph (a) of the definition of *pilot certificate*)

This item omits the words “recreational aviation administration organisation” and substitutes it with “sport aviation body”. This item relates to the amendments in item 134.

Item 310 Part 1 of the Dictionary (definition of *power-assisted sailplane*)

This item repeals the definition of *power-assisted sailplane* and substitutes it with a new definition.

Item 311 Part 1 of the Dictionary (definition of *powered hang glider*)

This item repeals the definition of *powered hang glider* and substitutes it with a new definition.

Item 312 Part 1 of the Dictionary (definition of *powered parachute*)

This item repeals the definition of *powered parachute* and substitutes it with a new definition.

Item 313 Part 1 of the Dictionary (definition of *powered paraglider*)

This item repeals the definition of *powered paraglider* and substitutes it with a new definition.

Item 314 Part 1 of the Dictionary (definition of *powered sailplane*)

This item repeals the definition of *powered sailplane* and substitutes it with a new definition.

Item 315 Part 1 of the Dictionary

This item inserts a definition for *private operation*. This term is defined to mean an operation of an aircraft that is not one of the following:

- an operation that is required to be conducted under the authority of an AOC under Part 119, 129 or 131 [of CASR] or regulation 206 of CAR;
- an operation that is required to be conducted under the authority of an aerial work certificate under Part 138;
- Part 141 flight training (within the meaning of Part 141);
- a Part 142 activity (within the meaning of Part 142);
- an adventure flight for a limited category aircraft;
- a specialised balloon operation that is conducted for hire or reward;
- an operation authorised by a New Zealand AOC with ANZA privileges that is in force for Australia;
- an operation under a permission under subsection 25(2) or (3) (non-scheduled flights by foreign registered aircraft) or section 27A (permission for operation of foreign registered aircraft without AOC) of the Act.

This definition is broadly consistent with the old use of the term “private operation” as previously provided for under paragraph 7(d) of the old CAR. However, it has been updated to reflect the kinds of operations provided for in the FOR.

Item 316 Part 1 of the Dictionary (definition of *probity offence*)

This item repeals the definition.

Item 317 Part 1 of the Dictionary (definition of *prohibited area*)

This item repeals the definition of *prohibited area* and substitutes it with a new definition.

Item 318 Part 1 of the Dictionary

This item inserts definitions of *radio navigation aid*, *radionavigation service* and *Regional Air Navigation Agreement* into Part 1 of the Dictionary.

Item 319 Part 1 of the Dictionary (definition of *regular public transport operations*)

This item repeals the definition.

Item 320 Part 1 of the Dictionary

This item inserts a definition for *relevant airworthiness standards*.

Item 321 Part 1 of the Dictionary (definition of *restricted area*)

This item repeals the definition of *restricted area* and substitutes it with a new definition.

Item 322 Part 1 of the Dictionary (definition of *sailplane*)

This item repeals the definition of *sailplane* and substitutes it with a new definition.

Item 323 Part 1 of the Dictionary

This item inserts a definition for *scheduled air transport operation*. This term is defined to mean an air transport operation, other than a medical transport operation, that is conducted in accordance with fixed schedules to and from fixed terminals over specific routes with or without intermediate stopping places between terminals, and in circumstances in which the accommodation in the aircraft is available for use by persons generally.

This term is used in these Regulations as an equivalent to the term “regular public transport operation” under the old CAR. Some provisions of CAR and CASR are amended by these Regulations to replace references to regular public transport operations with scheduled air transport operations, in order to maintain equivalence to existing requirements. It is anticipated that this term will eventually be phased out as further work is conducted to align the standards previously applicable to aircraft used in charter operations with aircraft used in air transport operations generally.

Item 324 Part 1 of the Dictionary (first and second occurring definitions of *significant change*)

This item repeals the definition of *significant change* and substitutes it with a new definition, which points to regulation 119.020 (for an Australian air transport operator), regulation 131.030 (for a balloon transport operator), and regulation 138.012 (for an aerial work operator).

Item 325 Part 1 of the Dictionary

This item inserts a definition for *specialised balloon operation*, which points to regulation 131.020.

Item 326 Part 1 of the Dictionary (paragraph (d) of the definition of *sport aviation body*)

This item repeals the paragraph and substitutes it with a new paragraph (d).

Item 327 Part 1 of the Dictionary (paragraph (f) of the definition of *sport aviation body*)

This item repeals the paragraph and substitutes it with a new paragraph (f).

Item 328 Part 1 of the Dictionary

This item inserts a definition of *State*.

Item 329 Part 1 of the Dictionary (definition of *student pilot*)

This item repeals the definition of *student pilot* and substitutes it with a new definition.

Item 330 Part 1 of the Dictionary

This item inserts definitions of *Territory*, *traffic information* and *traffic pattern* into Part 1 of the Dictionary.

Item 331 Part 1 of the Dictionary (definition of *unmanned free balloon*)

This item repeals the definition of *unmanned free balloon* and substitutes it with a new definition.

Item 332 Part 1 of the Dictionary

This item inserts a definition for *VFR operation*.

Item 333 Clause 3 of Part 2 of the Dictionary

This item repeals the clause and substitutes it for a new clause 3 which provides the definition of *air transport operation*. The purpose of this amendment is to clarify that an air transport operation does not include an aerial work operation or a balloon transport operation.

Item 334 Subclause 60(2) of Part 2 of the Dictionary (subparagraph (a)(i) of the definition of *psychoactive substance*)

This item omits the words “that Convention” and substitutes it with “the Chicago Convention”.

Item 335 At the end of Part 2 of the Dictionary

This item adds a definition of *passenger transport operation*. This term is defined to mean an operation of an aircraft that involves the carriage of passengers, whether or not cargo is also carried on the aircraft. However, an operation is not a passenger transport operation if the operation is:

- an operation of an aircraft with a special certificate of airworthiness
- a cost-sharing flight
- a medical transport operation
- if the registered operator of an aircraft is an individual – an operation of the aircraft that involves the carriage of that individual, and does not also involve the carriage of other passengers, or

- if the registered operator of an aircraft is an individual – an operation of the aircraft that involves the carriage of that individual, and involves the carriage of other passengers, for which no payment or reward is made or given in relation to the carriage of the other passengers or cargo.

This amendment is associated with item 307 of this instrument that repeals the existing definition of passenger transport operation and inserts a signpost definition to this new location in Part 2 of the Dictionary. This change of the definition is intended to maintain the policy that was reflected in subparagraphs 2(7)(d)(i), (v), (va) and (vi) and subregulation 2(7A) of CAR. Operations involving the personal transportation of the owner of the aircraft (including with other passengers, so long as there is no charge for carriage of those passengers or their cargo), and cost-sharing flights, are not intended to be defined as passenger transport operations.

Schedule 2—Transitional provisions commencing at early commencement time

Civil Aviation Safety Regulations 1998

Item 1 After Subpart 202.EA

This item inserts a new Subpart 202.EAA—Transitional provisions for Parts 91, 103, 105, 119, 121, 131, 133, 135 and 138 after Subpart 202.EA of CASR.

Subdivision 202.EAA.1.1—Preliminary

This new Subdivision includes regulations 202.405 to 202.405C.

Regulation 202.405 – Definitions for this Division

This regulation provides for definitions that are used in Division 202.EAA.1. Definitions are provided for the terms ***aerial work (air ambulance) operations, amending Regulations, authorisation, corresponding new provision, early commencement time, eligible instrument*** (which points to regulation 202.405A), ***IFR, IFR flight, instrument, main commencement time, make, new Regulations*** (which points to subregulation 202.405B(2)), ***old CAR, old Regulations, transition period, VFR, and VFR flight***.

The following definitions have particular significance for the operation of transitional provisions in the Division:

- ***amending Regulations*** means the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*, i.e. these Regulations.
- ***corresponding new provision*** means, in relation to a provision (the ***old provision***) that is being repealed by these Regulations, the provision (or provisions) of the new Regulations that is in relation to a matter covered by the old provision, and has a substantially similar effect in relation to the matter as the old provision. For example, regulation 91.210 of CASR (Towing of things by aircraft) would be the corresponding new provision to regulation 149 of CAR (Towing), because it is in relation to the same matter as the old provision (i.e. towing) and has a substantially similar effect (i.e. towing a thing by an aircraft during a flight is generally prohibited unless CASA has given approval for the towing, or another provision of the regulations permits the towing).

- **early commencement time** means the time when Schedule 2 to these Regulations commences. Schedule 2 commences on the day after the instrument is registered. This definition is used to provide for the transitional provisions included in Schedule 2 to apply during the period from the early commencement time to the main commencement time (called the “transition period”).
- **instrument** means a legislative or administrative instrument made under, or for the purposes of, a provision of these Regulations (including the old Regulations), or the Act, or another instrument made under or for the purposes of these Regulations (including the old Regulations) or the Act. The reference in this definition to an ‘administrative instrument’ is intended to denote an instrument of administrative character, i.e. one that is made in connection with an administrative decision such as the issue of an approval or exemption by CASA.
- **main commencement time** means the time when Schedule 1 to these Regulations commences. Schedule 3 to these Regulations also commences at that time. At the main commencement time, relevant provisions of CAR will be repealed, consequential amendments will be made to CAR and CASR to allow the FOR to function properly, and the transitional provisions in Schedule 3 will take effect. The FOR commence on the same day, immediately prior to the main commencement time.
- **old CAR** means CAR as in force immediately before the main commencement time, and includes CAOs issued under those Regulations. This term is primarily used to identify instruments made under the old CAR that are saved in effect for the purposes of the FOR.
- **old Regulations** means these Regulations (including the old CAR) as in force immediately before the main commencement time. This term encompasses both the CAR and CASR as in force before that time, rather than the term **old CAR** which only encompasses the CAR and CAOs but not CASR.
- **transition period** means the period beginning immediately after the early commencement time and ending immediately before the main commencement time.

Regulation 202.405A – Meaning of **eligible instrument**

This regulation provides for the meaning of **eligible instrument**. An instrument is an **eligible instrument** if the instrument is made under, or for the purposes of, a provision of CAR or CASR (including as in force immediately before the main commencement time) or the Act, and is in relation to a particular person, a particular flight, a particular aircraft, a particular aerodrome, or a particular act, event, case or circumstance. The term is used in transitional provisions included in the Division to identify the kind of instruments that are saved in effect for the purposes of the FOR.

Regulation 202.405B – Meaning and effect of **new Regulations**

This regulation provides for the meaning and effect of the term **new Regulations**.

Subregulation 202.405B(1) provides in summary that, for the purposes of Subdivisions 202.EAA.1.1 to 202.EAA.1.7, it is assumed that the regulations that collectively comprise the FOR commence at the early commencement time. This ensures that the transitional regulations included in Subdivisions 202.EAA.1.1 to 202.EAA.1.7 can refer appropriately to the rules and concepts included in the FOR at the early commencement time despite that the FOR have not commenced.

Subregulation 202.405B(2) provides that the **new Regulations** means CAR and CASR as amended by the regulations that comprise the FOR, and includes Manuals of Standards issued for the purposes of those regulations.

Regulation 202.405C – Relationship with section 7 of the *Acts Interpretation Act 1901*

This regulation provides that nothing in Division 202.EAA.1 limits the effect of section 7 of the *Acts Interpretation Act 1901* (AIA) (as it applies because of paragraph 13(1)(a) of the *Legislation Act 2003*). Section 7 of the AIA provides for various matters related to the legal effect of the repeal or amendment of legislation.

Subdivision 202.EAA.1.2—Requirements for existing AOC holders before main commencement time

Regulation 202.406 – AOC holders to give CASA proposed operations manuals and expositions etc. before main commencement time

This regulation provides for transitional requirements for existing AOC holders to give CASA copies of their proposed expositions, operations manuals and other materials by the main commencement time, and for some existing AOC holders to provide early extracts of their exposition or operations manual by 6 October 2021 (i.e. 60 days before the main commencement time).

Under the FOR, operators are required to have an exposition (Parts 119 and 131 of CASR) or operations manual (Part 138 of CASR) that complies with the applicable requirements of the new Parts, on and from the commencement time. Regulation 202.406 imposes requirements for existing AOC holders to give certain materials to CASA by the main commencement date, as follows:

- Existing operators whose AOC authorises regular public transport operations, charter operations, or aerial work operations in an aeroplane or rotorcraft will be required to provide a copy of their proposed exposition or operations manual prepared for the purpose of compliance with the FOR, and a copy of each authorisation or exemption issued to the operator by CASA that is held by the operator during the transition period.
- Existing operators whose AOC authorises regular public transport operations, charter operations, or aerial work operations in an aeroplane or rotorcraft will also be required to provide a compliance statement using the approved form by the main commencement time. The approved form will provide that the compliance statement must be signed by the operator's chief executive officer, and will need to attest that the proposed exposition or operations manual meets the requirements of the FOR, as applicable.
- Existing operators whose AOC authorises aerial work operations in an aeroplane or rotorcraft (other than aerial work (air ambulance) operations), and who proposes to conduct operations mentioned in subregulation 138.125(1), will be required to provide a copy of their proposed training and checking manual.
- Existing operators whose AOC authorises aerial work operations in an aeroplane or rotorcraft (other than aerial work (air ambulance) operations), and who propose to conduct operations mentioned in subregulation 138.140(1), will be required to provide a copy of their proposed safety management system manual.

Regulation 202.406 also imposes additional requirements for certain existing AOC holders to provide early extracts of their exposition or operations manual to CASA by 6 October 2021, as follows:

- An existing operator whose AOC authorises operations in an aeroplane or rotorcraft will be required to give to CASA an extract from the operator's proposed exposition or operations manual containing a description of the operator's proposed change management process.
- An existing operator whose AOC authorises aerial work operations in an aeroplane or rotorcraft (other than aerial work (air ambulance) operations), and who proposes to conduct

operations involving the carriage of aerial work passengers after the main commencement time, will be required to provide an extract from the operator's proposed operations manual containing a description of the operator's procedures for the carriage of aerial work passengers, which must meet the requirements prescribed by the Part 138 MOS.

Operators whose AOCs authorise aerial application operations using aeroplanes are expected to comply with the requirement to provide a copy of their proposed operations manual, compliance statement, and authorisations and exemptions. However, such operators are not expected to provide an extract of their operations manual containing a description of the operator's proposed change management process (as after commencement, such operators would not be subject to Part 138 of CASR, and the requirements in regulation 138.155 regarding the contents of an operations manual would not apply).

These requirements apply to an operator even if their AOC is suspended during the transition period.

As discussed below in relation to regulations 202.413 and 202.413A, operators must provide CASA with a copy of their proposed exposition or operations manual and compliance statement (if applicable), as well as their training and checking manual (if applicable), in order for CASA to be taken to have approved those documents for the purposes of the FOR, and also in order for the operator's AOC to be taken to authorise equivalent operations under the FOR.

Subdivision 202.EAA.1.3—Existing AOCs due to expire

Regulation 202.407 – AOCs due to expire

In summary, this regulation provides that if an AOC would expire during the 6 month period beginning 4 September 2021 and ending on 2 March 2022, then the term of the AOC is extended by 6 months. Where the term of a person's AOC is extended, any authorisations or exemptions that would otherwise expire prior to the old AOC expiry day are also extended to the new AOC expiry day (i.e. 6 months from the old AOC expiry day).

During the extension period, an AOC remains in force to provide CASA additional time to complete the reissue process, which will be undertaken on the basis of the new rules in the FOR. Consistent with current practice, CASA will only reissue an AOC affected by this transitional measure with effect from or after the new AOC expiry date.

The purpose of this arrangement is to 'deconflict' the AOC reissue process from other transition activities that may arise immediately before and after the main commencement time.

Subdivision 202.EAA.1.4—Applications for Australian air transport AOCs made before main commencement time

Regulation 202.408 – Applications for Australian air transport AOCs under new law made before main commencement time

In summary, this regulation provides that a person may apply to CASA for the issue of an Australian air transport AOC under the FOR from 7 June 2021 (but not before that time). If the application meets the requirements in regulation 119.065, then subject to the Act and regulation 119.070, CASA may issue an Australian air transport AOC to the person. An AOC issued subject to this provision comes into force at the later of the main commencement time or a time specified in the AOC, and regulation 119.075 applies in relation to the person.

This regulation only needs to operate during the transition period. After the main commencement time, the FOR will have commenced, and persons may apply for Australian air transport AOCs under regulation 119.065 of CASR.

Note that until the main commencement time, a person may alternatively choose to apply for an AOC under the existing law (referred to as the “old law”). See regulation 202.408A below for how such applications are treated after the main commencement time.

Regulation 202.408A – Applications for AOCs under old law made before main commencement time

This regulation provides for the old law to continue to apply to applications for the issue or variation of an AOC under the old Regulations before the main commencement time. This will be the case if, at the main commencement time, CASA has not made a decision on an application made under the old law.

If CASA ultimately makes a decision to issue an AOC to the applicant, then the transitional provisions in these Regulations applicable to existing AOCs will apply. Note that this includes the transitional requirements for the applicant to give relevant documents to CASA under Regulation 202.406. That requirement needs to be complied with in order for the operator’s exposition or operations manual and other manuals to be taken to be approved by CASA for the purpose of the FOR under regulation 202.413A, and also for their AOC to be taken to authorise equivalent operations under regulation 202.413.

Subdivision 202.EAA.1.5—Applications for balloon transport AOCs made before main commencement time

Regulation 202.409 – Applications for balloon transport AOCs under new law made before main commencement time

In summary, this regulation provides that a person may apply to CASA for the issue of a balloon transport AOC under the FOR from 7 June 2021 (but not before that time). If the application meets the requirements in regulation 131.075, then subject to the Act and regulation 131.080, CASA may issue a balloon transport AOC to the person. An AOC issued subject to this provision comes into force at the later of the main commencement time or a time specified in the AOC, and regulation 131.085 applies in relation to the person.

This regulation only needs to operate during the transition period. After the main commencement time, the FOR will have commenced, and persons may apply for balloon transport AOCs under regulation 131.075 of CASR.

Note that until the main commencement time, a person may alternatively choose to apply for an AOC under the existing law. See regulation 202.408A above for how such applications are treated after the main commencement time.

Subdivision 202.EAA.1.6—Applications for aerial work certificates made before main commencement time

Regulation 202.410 – Applications for aerial work certificates under new law made before commencement time

In summary, this regulation provides in summary that a person may apply to CASA for the issue of an aerial work certificate under the FOR from 7 June 2021 (but not before that time). If the application meets the requirements in regulation 138.035, then subject to the Act and regulation

138.040, CASA may issue an aerial work certificate to the person. An aerial work certificate issued subject to this provision comes into force at the later of the main commencement time or a time specified in the certificate, and regulation 138.045 applies in relation to the person.

This regulation only needs to operate during the transition period. After the main commencement time, the FOR will have commenced, and persons may apply for aerial work certificates under regulation 138.035 of CASR.

Note that until the main commencement time, a person may alternatively choose to apply for an AOC under the existing law. See regulation 202.408A above for how such applications are treated after the main commencement time.

Subdivision 202.EAA.1.7—Applications for instruments (other than AOCs and aerial work certificates) made before main commencement time

Regulation 202.411 – Applications for instruments (other than AOCs and aerial work certificates) under new law made before main commencement time

In summary, this regulation provides that a person may apply to CASA for the issue of an instrument (other than an AOC or aerial work certificate) under the FOR from 7 June 2021 (but not before that time). If the application meets the requirements of the new Regulations, then CASA may issue the instrument to the person. An instrument issued subject to this provision comes into force at the later of the main commencement time or a time specified in the instrument.

This regulation only needs to operate during the transition period. After the main commencement time, the FOR will have commenced, and persons may apply for instruments under relevant provisions of the FOR.

Regulation 202.411A – Applications for instruments (other than AOCs, aerial work certificates and exemptions) under old law made before main commencement time

In summary, this regulation provides for how the old law and the new law applies to applications for the making of an instrument under a provision of the old Regulations that is repealed by these Regulations.

Subregulation 202.411A(1) provides in summary that regulation 202.411A applies if, at the main commencement time, CASA has not made a decision on an application for the making of an instrument under a provision of the old Regulations that is repealed by these Regulations, where the application is for an instrument that authorises a particular activity or thing.

Subregulations 202.411A(2) and (4) have the effect that, if the application was for an instrument that is covered by a savings provision under Division 202.EAA.1 inserted by these Regulations (i.e. it is listed as an item in the table in regulation 202.416 or 202.416A), such that after the main commencement time either the instrument continues in force or a new instrument is taken to be made for the purposes of a provision of the new Regulations, then the old law continues to apply to the application.

For example, regulation 157 of CAR is being repealed by these Regulations. If a person applied for a permit under paragraph 157(4)(b) of CAR for a flight to be made at a lower height than the heights specified in subregulation 157(1), and CASA had not made a decision on the application at the main commencement time, then the old law would continue to apply to the application. If CASA were to issue the instrument, then regulation 202.416A would apply to the permit. Under that regulation, the holder of the instrument would be taken to have an exemption from a

requirement under a provision prescribed by the Part 138 Manual of Standards for the purposes of regulation 138.275 of CASR (minimum height rules), in relation to the circumstances of the flight.

The intent of these subregulations is to allow CASA to continue to process applications for instruments made under the old law, where the instrument is of a kind that is being saved under regulations 202.416 or 202.416A for the purposes of the FOR. If CASA ultimately issues the instrument that was applied for, then regulation 202.416 or 202.416A would apply to that instrument, as applicable. Applicants for instruments under the old law will benefit from continuity of treatment of the application, whilst still receiving the equivalent benefit under the new rules in the FOR.

Subregulation 202.411A(3) provides for the new law to apply to applications for instruments that are not covered by subregulation (4). In summary, if:

- the application was for the making of an instrument that is not covered by regulation 202.416 or 202.416A, and
- under the new Regulations a person may apply for an authorisation in relation to the same kind of activity or thing, and
- the requirements in subregulation 11.030(1) are met in relation to the old application,

then the old application is taken to be an application under the new Regulations for an authorisation in relation to the activity or thing, and the application is taken to meet the requirements in regulation 11.030 and any other requirements relating to the making of the application. The application is also taken to have been made at the main commencement time, and Part 11 of CASR applies in relation to the application.

The intent of this subregulation is to ensure that, where before the main commencement time a person applies for an instrument that is not covered by regulation 202.416 or 202.416A, and CASA has not made a decision on the application by the main commencement time, the applicant would not need to submit a new application under the FOR. Rather, the application would be taken to be an equivalent application under the FOR for the activity or thing.

Although such an application would be taken to meet any requirements for the equivalent new kind of application, CASA may still ask the applicant to provide more information or documents, undertake a test or interview, demonstrate a service or facility, or verify a statement made by the applicant by statutory declaration under regulations 11.035 to 11.047 of CASR.

Regulation 202.411B – Applications for exemptions under old law made before main commencement time

This regulation provides similarly to regulation 202.411A, but in relation to applications for exemptions from compliance with a requirement under a provision of the old Regulations that is being repealed by these Regulations, or under a provision of an instrument made under, or for the purposes of, the old Regulations or the Act.

Similarly to regulation 202.411A, if the application was for an exemption that is covered by a provision of the Division that either continues the exemption in force after the main commencement time or provides that a new exemption is taken to be made for the purposes of a provision of the new Regulations (ie the instrument is covered by regulation 202.416 or 202.416A), then the old law continues to apply to the application.

Otherwise, if:

- there is a corresponding new provision in relation to the old provision for which the exemption was sought, and
- an application may be made under the FOR for an exemption from compliance with the corresponding new provision, and
- the requirements mentioned in subregulations 11.165(2) and (3) are met in relation to the old application,

then the old application is taken to be an application for an exemption in relation to the corresponding new provision, and the application is taken to meet the requirements in regulation 11.165 in relation to the corresponding new provision. The application is also taken to have been made at the main commencement time, and Part 11 of CASR applies in relation to the application.

Schedule 3—Transitional provisions commencing at main commencement time

Civil Aviation Safety Regulations 1998

Item 1 Before Subpart 202.EB

This item inserts Subdivisions 202.EAA.1.8 to 202.EAA.1.15 before Subpart 202.EB. These provisions will be inserted at the main commencement time, ie immediately after the FOR commence. The subdivisions are described in more detail below.

Subdivision 202.EAA.1.8—Main translation rules for old instruments

Each of the provisions in this Subdivision apply in relation to an instrument (called an “old instrument”) made under, or for the purposes of, a provision of these Regulations (including the old Regulations) or the Act if the old instrument:

- is in force immediately before the main commencement time and continues in force immediately after that time, including as a result of the operation of a transitional provision in Division 202.EAA.1, or
- is made, or is taken to be made, after the main commencement time as a result of the operation of a transitional provision in Division 202.EAA.1.

As noted above, “instrument” is defined to mean a legislative or administrative instrument made under, or for the purposes of, a provision of these Regulations (including the old Regulations), or the Act, or another instrument made for the purposes of these Regulations (including the old Regulations) or the Act.

For the purpose of this Subdivision, old instruments would include AOCs, CAOs, approvals and other authorisations, directions, airworthiness directives, and other legislative and administrative instruments that continue in force after commencement (including due to a transitional provision in these Regulations) or are made or taken to be made after the main commencement time as a result of the operation of a transitional provision in Division 202.EAA.

Regulation 202.412 – References in old instruments to old Regulations

This regulation provides that, subject to Division 202.EAA.1, if an old instrument refers to a provision of the old Regulations that is repealed by these Regulations, and there is a

corresponding new provision in relation to the old provision, then after the main commencement time the reference to the old provision is taken to be a reference to the corresponding new provision.

The intent of this provision is to allow old instruments to continue to have effect as appropriate, even if they contain references to provisions of the old Regulations that have been repealed. If there is a corresponding new provision (defined to mean a provision (or provisions) of the new Regulations that is in relation to a matter covered by the old provision, and has a substantially similar effect in relation to the matter as the old provision), the old instrument should be read as if it referred instead to the corresponding new provision.

Regulation 202.412A – References in old instruments to old terminology

This regulation provides to the effect that, subject to Division 202.EAA.1, if an old instrument refers to a legacy term included in Column 1 of the table in subregulation (2), then that reference is taken instead to be a reference to the new, updated or equivalent term in Column 2 of the table. For example, a reference in an old instrument to a manned balloon is taken to be a reference to a manned free balloon.

This provision is intended to achieve the outcome that if an old instrument is not updated before the main commencement time to reflect the new terminology used in the FOR, the original effect of a reference in the old instrument to a legacy term should be preserved.

Regulation 202.412B – References in old instruments to kinds of aircraft

This regulation provides to the effect that, subject to Division 202.EAA.1, if an old instrument refers to an aircraft of the kind listed in Column 1 of the table in subregulation (2), then after the main commencement time, it is taken instead to be a reference to an aircraft of the kind listed in Column 3 of the table. The kind of aircraft that the reference is taken to refer to after the main commencement time depends on the kind of operation or activity that an aircraft is used for conducting, as described in Column 2. The effect of this transitional provision applies only in relation to the relevant aircraft to the extent that the aircraft is used for the purpose of conducting the operation or activity of the kind mentioned in Column 2 of the table.

The kinds of aircraft listed in Column 1 of the table are old kinds of aircraft provided for in subregulation 2(6) of CAR. That subregulation is being repealed by item 12 of these Regulations.

This provision is intended to achieve the outcome that if an old instrument is not updated before the main commencement time to reflect the new terminology used in the FOR, the original effect of a reference in the old instrument to a kind of aircraft should be preserved.

For example, assume an old instrument includes a reference to a ‘charter aircraft’. If, after the main commencement time, an operator were to use an aircraft to conduct a non-scheduled air transport operation, a medical transport operation, or a balloon transport operation, then the operator would be required to read a reference in the old instrument to ‘charter aircraft’ as if it applied to that kind of aircraft.

Regulation 202.412C – References in old instruments to kinds of operations

This regulation provides to the effect that, subject to Division 202.EAA.1, if an old instrument refers to an operation of the kind listed in Column 1 of the table in subregulation (2), then after the main commencement time, in relation to an operation or activity conducted by an aircraft, the reference is taken instead to be a reference to an operation of the kind listed in Column 3. The

kind of operation that the reference is taken to refer to depends on the kind of operation or activity that is conducted by the aircraft as described in Column 2.

The kinds of operations listed in Column 1 of the table are old kinds of operations provided for in subregulation 2(7) of CAR. That subregulation is being repealed by item 12 of these Regulations.

Similar to regulation 202.412B, this provision is intended to preserve the effect of a reference in an old instrument to a kind of operation. It does this by providing for such a reference to be taken to be a reference to the equivalent kinds of operations or activities provided for under the FOR.

For example, assume an old instrument includes a reference to an aircraft used to conduct a ‘charter operation’. If, after the main commencement time, an operator were to use an aircraft to conduct a medical transport operation the operator would be required to read a reference in the old instrument to ‘charter operation’ as if it referred instead to ‘medical transport operation’.

If the application of this rule would result in an aircraft used for conducting a medical transport operation being subject to both a requirement that applies in relation to an air ambulance operation as well as a requirement that applies to a charter operation, and the requirements apply in relation to the same matter, then the old instrument has effect after the main commencement time in relation to the aircraft as if the requirement applicable to an aerial work operation does not apply. The intent of this measure is to ensure aircraft used to conduct medical transport operations are subject to the higher standards of requirements applicable to aircraft used to conduct charter operations.

For example, assume an old instrument included a requirement that certain maintenance must be conducted at least every 100 hours of flight time for all aeroplanes used to conduct aerial work operations (including air ambulance operations), and at least every 50 hours of flight time for all aeroplanes used to conduct charter operations. If after the main commencement time an operator used an aeroplane to conduct a medical transport operation, then the operator would need to comply with the requirement that applies in relation to a charter operation as if it applied in relation to a medical transport operation. The requirement that applies in relation to an aerial work (air ambulance) operation would not apply.

Subdivision 202.EAA.1.9—AOCs

This Subdivision provides for measures intended to assist existing operators to transition from the old rules to the FOR, including by:

- providing for existing AOCs to authorise equivalent operations under the FOR, without operators needing to apply to vary their AOC or obtain a new one
- deeming operators’ proposed operations manuals, expositions and training and checking manuals prepared for the purpose of compliance with the FOR to be automatically approved upon receipt by CASA.

Regulation 202.413 – Old AOCs taken to authorise operations etc.

In summary, this regulation provides for the deeming of old AOCs – i.e., AOCs in force immediately before the commencement time and which continue in force after that time, and AOCs issued under the old law after the main commencement time in accordance with regulation 202.408A – as authorising equivalent operations under the FOR.

Subregulation 202.413(1) provides that regulation 202.413 applies in relation to an operator who is the holder of an AOC if the old AOC authorises the operator to conduct an operation or activity of a kind mentioned in column 1 of an item in the table in subregulation (2), and the old AOC is

either in force immediately before the main commencement time and continues in force (including as a result of the operation of a transitional provision in Division 202.EAA.1) immediately after that time, or is issued after the main commencement time as a result of the operation of a provision of Division 202.EAA.1 (i.e. regulation 202.408A).

Subregulation 202.413(2) sets out a table that provides to the effect that, if an old AOC authorises an operation listed in column 1 of the table, then from the later of the main commencement time or the time when the operator gives CASA the compliance material mentioned in column 2 of the table in subregulation 202.413A(1), either the old AOC is taken to authorise the relevant new kind of operations, or for a certificate or approval is taken to have been issued to the operator, as follows:

- if the old AOC authorises regular public transport operations, it is taken to authorise scheduled air transport operations and non-scheduled air transport operations
- if the old AOC authorises charter operations, other than in a manned free balloon or hot air airship, the AOC is taken to authorise non-scheduled air transport operations
- if the old AOC authorises charter operations in a manned free balloon or hot air airship, it is taken to authorise balloon transport operations
- if the old AOC authorises aerial work (air ambulance) operations, it is taken to authorise medical transport operations
- if the old AOC authorises aerial work operations other than aerial application operations, air ambulance operations or aerial work operations in a manned free balloon or hot air airship, then the operator is taken to have been issued an aerial work certificate authorising the relevant aerial work operations under regulation 138.040
- if the old AOC authorises aerial work operations in a manned free balloon or hot air airship, then the operator is taken to have been issued an approval under regulation 135.035 to conduct a specialised balloon operation.

The operation of this transitional provision is dependent upon the operator providing their compliance material as required under regulation 202.413A(1). If an operator does not submit the compliance material before the main commencement time, then their AOC will not authorise the relevant equivalent kind of operations, or a certificate or approval will not be taken to have been issued to the operator to authorise those operations, until they submit the compliance material to CASA.

Subregulations 202.413(3) to 202.413(6) provide for the terms and conditions applicable to AOCs, aerial work certificates and approvals to conduct specialised balloon operations that are taken to authorise operations or to have been issued to an operator under subregulation (1). In summary:

- for AOCs to which any of column 1 of item 1, 2 or 4 of the table apply, the authorisation to conduct the operations mentioned in column 2 of the item is subject to the conditions in regulation 119.080 and the conditions of the old AOC
- for AOCs to which column 1 of item 3 of the table applies, the authorisation to conduct the operations mentioned in column 2 of the item is subject to the conditions in regulation 131.090 and the conditions of the old AOC
- if the AOC holder is taken to have been issued an aerial work certificate under item 5, then the aerial work certificate is subject to the conditions in regulation 138.050 and any terms or conditions of the old AOC, and the aerial work certificate ceases to be in force on the day the old AOC expires
- if the AOC holder is taken to have been issued an approval under regulation 131.035 to conduct a specialised balloon operation, then the approval is taken to have been granted

on the condition that any terms or conditions of the old AOC are complied with, and the approval ceases to be in force on the day the old AOC expires.

Subregulations 202.413(3) to 202.413(6) also provide, for the avoidance of doubt, that the provisions related to conditions for issue of the AOC, or aerial work certificate (i.e. regulations 119.070, 131.080, and subregulation 138.040(1)), and provisions providing for the deemed approval of expositions and operations manuals (i.e. regulations 119.070, 131.085, and 138.045), do not apply. Subregulation (6) also provides that subregulation 11.056(2) – which requires a condition imposed under regulation 11.056 to be set out in or attached to an authorisation – does not apply to a condition imposed on an approval to conduct a specialised balloon operation that is taken to have been granted under this regulation.

Subregulation 202.413(7) provides for the effect of suspension of an old AOC for the purpose of this regulation. In summary, if an old AOC has been suspended and the suspension is in force immediately before the main commencement time, then:

- regulation 202.413 applies to the old AOC and operates in the same way despite the suspension, but
- if as a result of the regulation the old AOC is taken to authorise an operation, or an aerial work certificate or approval to conduct a specialised balloon operation is taken to be issued, then the suspension continues in force in relation to the old AOC, or the authorisation is taken to be suspended, as applicable.

Regulation 202.413A – Operations manuals, expositions and training and checking manuals taken to be approved

This regulation provides for the deeming of operators' proposed expositions, operations manuals, and proposed training and checking manuals as approved by CASA, subject to the operator providing copies of the relevant documents to CASA, and in some cases a compliance statement.

Subregulation 202.413A(1) includes a table that has effect in relation to an operator. In summary:

- Under item 1, if an existing AOC holder whose AOC authorises charter operations, regular public transport operations, or aerial work (air ambulance) operations gives CASA their proposed exposition and a compliance statement that meets the requirements in subregulation 202.406(2), then CASA is taken to have approved the operator's proposed exposition under regulation 119.075.
- Under item 2, if an existing AOC holder whose AOC authorises aerial work operations (other than air ambulance operations) in an aeroplane or rotorcraft gives CASA their proposed operations manual and a compliance statement that meets the requirements in subregulation 202.406(2), then CASA is taken to have approved the operator's proposed operations manual under regulation 138.045.
- Under item 3, if an operator who was previously required to give CASA a training and checking manual under CAO 82.1, and who after the main commencement time is required under regulation 138.125 to have a training and checking system, gives CASA their proposed training and checking manual, then CASA is taken to have approved the operator's proposed training and checking manual under regulation 138.045.
- Under item 4, if an existing AOC holder whose AOC authorises charter operations in a manned free balloon or hot air airship gives CASA their proposed exposition, then CASA is taken to have approved the operator's proposed exposition under regulation 131.085.

Items 1, 2 and 4 apply both to an operator who is the holder of an AOC that is in force immediately before the main commencement time, and to an operator who, after the main commencement time, holds an AOC that is taken to authorise equivalent kinds of operations

under the FOR, or holds an aerial work certificate that is taken to have been issued to the operator as a result of the operation of regulation 202.413. This ensures that the deemed approval of expositions and manuals applies both to existing AOC holders, and to persons who apply for an AOC under the old law and are granted the AOC after the main commencement time (i.e. pursuant to regulation 202.408A).

Subregulation 202.413A(2) provides that in determining if an AOC is in force immediately before the main commencement time for the purposes of an item in the table in subregulation (1), disregard if the AOC is suspended at that time. This ensures that an operator can benefit from the deemed approval of expositions and manuals even if their AOC is suspended immediately before commencement of the FOR. Any deemed approval would have no effect on a suspension.

Subdivision 202.EAA.1.10—Applications for AOCs made after main commencement time

Regulation 202.414 – Applications for AOCs made after main commencement time

This regulation provides that, subject to Division 202.EAA.1, the new Regulations apply in relation to an application for an AOC made after the main commencement time.

Subdivision 202.EAA.1.11—Applications for aerial work certificates made after main commencement time

Regulation 202.415 – Applications for aerial work certificates made after main commencement time

This regulation provides that, subject to Division 202.EAA.1, the new Regulations apply in relation to an application for an aerial work certificate made after the main commencement time.

Subdivision 202.EAA.1.12—Old instruments other than AOCs

Regulation 202.416 – Approvals taken to be granted

Subregulation 202.416(1) provides that if:

- a flight of an aircraft occurs after the main commencement time, and
- an instrument (the *old instrument*) mentioned in column 2 of an item in the table applies in relation to the flight, or would have applied in relation to the flight if these Regulations had not been made, and
- the old instrument is an eligible instrument (as defined in regulation 202.405A, discussed above), and
- the old instrument is in force immediately before the main commencement time, or is made, or is taken to be made, after the main commencement time as a result of the operation of a provision in Division 202.EAA.1,

then for the purposes of the provision mentioned in column 3 of the item, after the main commencement time, an approval under regulation 91.045 for the activity or thing mentioned in column 4 of the item is taken to be granted to the person mentioned in column 5 of the item in relation to the flight.

The table in subregulation (1) contains items that each identify an old instrument, the provision of the new regulations for which an approval under regulation 91.045 is taken to be granted, the

approved activity or thing which the approval is for, and the person to whom the approval is taken to be granted.

For example, under item 1 of the table, if a person was the holder of an old instrument that provides for an approval under subregulation 99AA(3) of the old CAR for the holder to conduct a flight as a VFR flight in class A airspace, and the old instrument would have applied to a flight after the main commencement time if the amendment Regulations had not been made, then the pilot in command of the aircraft for the flight would be taken to have been granted an approval under regulation 91.045 for the purpose of paragraph 91.285(1)(b) to conduct the flight as a VFR flight in class A airspace.

Subregulation 202.416(2) provides that for the purposes of regulation 11.056 (Authorisation may be granted subject to conditions), the approval under regulation 91.045 is taken to have been granted on the condition that any terms or conditions of the old instrument are complied with.

Subregulation 202.416(3) provides that the approval under regulation 91.045 ceases at the earliest of the following:

- the day (if any) specified in the old instrument
- the second anniversary of the day the old instrument was made that occurs after the main commencement time
- if the operator of the aircraft is the holder of an AOC and the old instrument applies in relation to the operations authorised by the AOC – the day the operator’s AOC expires
- if the operator of the aircraft is the holder of an aerial work certificate and the old instrument applies in relation to the operations authorised by the aerial work certificate – the day the operator’s aerial work certificate expires
- if the operator of the aircraft is the holder of a Part 141 certificate and the old instrument applies in relation to the operations authorised by the Part 141 certificate – the day the operator’s Part 141 certificate expires.

The inclusion of this expiry regime is intended to ensure old instruments are only continued in effect for a period of time after the commencement of the FOR. In many cases the effect of this provision would be to align the expiry of the approval with the expiry of the operator’s AOC, aerial work certificate or Part 141 certificate.

Note that if a person who is the holder of an AOC, aerial work certificate or Part 141 certificate holds an old instrument which is expressed to apply in relation to that person’s private operations rather than the operations authorised by the certificate, then paragraphs 202.416(3)(c), (d) or (e) would not apply in relation to the approval.

Subregulation 202.416(4) provides that subregulation 11.056(2) (conditions to be set out) does not apply in relation to the approval.

Subregulation 202.416(5) provides to the effect that if the old instrument has been suspended and the suspension is in force immediately before the commencement time, then subregulation (1) applies despite the suspension, but the approval taken to be granted under subregulation (1) is taken to be suspended for the same period as the old instrument.

Regulation 202.416A – Exemptions taken to be granted

This regulation provides for persons covered by certain old instruments identified in the table to be taken to have been granted an exemption from certain new requirements that would apply to the flight under the FOR, subject to compliance with the terms and conditions of the old instrument. The policy intent is to allow operators and pilots who hold certain kinds of approvals,

authorities, permissions, or exemptions, or who are subject to certain kinds of directions made by CASA, to be able to continue to operate consistently with the relevant instrument for a period of time after the main commencement time despite that the requirements for a flight may have changed under the FOR.

Subregulation 202.416A(1) provides that this regulation applies to a flight of an aircraft that occurs after the main commencement time if:

- an instrument (the *old instrument*) mentioned in column 2 of an item in the table applies in relation to the flight, or would have applied in relation to the flight if these Regulations had not been made, and
- the old instrument is an eligible instrument (as defined in regulation 202.405A, discussed above), and
- the old instrument is in force immediately before the main commencement time, or is made, or is taken to be made, after the main commencement time as a result of the operation of a provision in Division 202.EAA.1, and
- after the main commencement time, a requirement (the *new requirement*) mentioned in column 3 of the item applies in relation to the flight.

The table in subregulation (1) contains items that each identify a subject, an old instrument, and a new requirement.

Subregulation 202.416A(2) provides that a person who would (apart from this subregulation) contravene an offence provision of CAR or CASR if the new requirement is not met in relation to the flight is taken, after the main commencement time, to have been granted an exemption (the *new exemption*) under Division 11.F.1 from the new requirement for the flight.

For example, under item 6 of the table in subregulation (1), if:

- CASA had given an operator of an aircraft a permit under paragraph 157(4)(b) of the old CAR for a flight over a city, town or other populous area during an aerial work operation to be made under a lower height than 1,000 ft, and
- the permit would have applied in relation to a flight if the amending Regulations had not been made, and
- the permit was in force immediately before the main commencement time, and
- after the FOR, a requirement under a provision prescribed by the Part 138 Manual of Standards for the purposes of 138.275 would apply in relation to the circumstances of the flight,

then under subregulation (2), a person who would otherwise contravene the requirement under the provision prescribed by the Part 138 Manual of Standards for the purposes of regulation 138.275 would be taken to have been granted an exemption from the requirement.

Subregulation 202.416A(3) provides that for the purposes of regulation 11.205, the new exemption is taken to have been granted on the condition that any terms or conditions of the old instrument are complied with.

Subregulation 202.416A(4) provides that the new exemption ceases at the earliest of the following:

- the day (if any) specified in the old instrument
- the second anniversary of the day the old instrument was made that occurs after the commencement time

- if the operator of the aircraft is the holder of an AOC and the old instrument applies in relation to the operations authorised by the AOC – the day the operator’s AOC expires
- if the operator of the aircraft is the holder of an aerial work certificate and the old instrument applies in relation to the operations authorised by the aerial work certificate – the day the operator’s aerial work certificate expires
- if the operator of the aircraft is the holder of a Part 141 certificate and the old instrument applies in relation to the operations authorised by the Part 141 certificate – the day the operator’s Part 141 certificate expires.

Subregulation 202.416A(5) provides that subregulation 11.056(2) (conditions to be set out) and regulations 11.225 (publication of exemptions) and 11.230 (when exemptions cease) do not apply in relation to the new exemption.

Subregulation 202.416A(6) provides to the effect that if the old instrument has been suspended and the suspension is in force immediately before the commencement time, then subregulation (1) applies despite the suspension, but the exemption taken to be granted under subregulation (2) is taken to be suspended for the same period as the old instrument.

Regulation 202.416B – Directions taken to be issued

This regulation provides for certain kinds of directions made under CAR provisions that are being repealed by these Regulations to have effect after the main commencement time as if the directions were issued under subregulation 11.245(1) of CASR.

Subregulation 202.416B(1) provides that this regulation applies if:

- CASA issued under a direction under one of the following provisions of the old CAR: subregulation 92(2), paragraph 174A(1A)(a) or (2)(e), subregulation 177(1), subregulation 207(2) or (3), subregulation 209(1), subregulation 221(1), subregulations 235(2) or (7), subregulation 244(2), subregulation 245(1), subregulation 251(3) or (6), or subregulation 252(1), and
- the direction is an eligible instrument, and
- the direction is in force immediately before the commencement time, or is made, or is taken to be made, after the main commencement time as a result of the operation of a provision of Division 202.EAA.1.

Subregulation 202.416B(2) provides that the direction has effect, after the main commencement time, as if the direction were issued by CASA under subregulation 11.245(1).

Subregulation 202.416B(3) provides that the direction ceases to be in force at the earlier of the day (if any) specified in the direction as the day on which the direction ceases to be in force, or the second anniversary of the day the direction was issued that occurs after the main commencement time.

Subregulation 202.416B(4) provides that subregulation 11.245(2) (conditions on the issue of a direction by CASA) is taken to be satisfied in relation to the direction.

Subregulation 202.416B(5) provides that this regulation 11.250 (period of effect of direction) does not apply in relation to the direction.

Regulation 202.416C – Effect of old exemptions

This regulation provides for a person who was granted an exemption from compliance with a provision of the old Regulations by CASA under regulation 11.160, or who is subject to an

exemption from compliance with a provision of the old Regulations that continued in effect under regulation 202.011, 202.011B or 202.011F of the old Regulations, to be taken to have been granted an exemption under Division 11.F.1 from compliance with a corresponding new provision in relation to the old provision.

Subregulation 202.416C(1) provides that this regulation applies in relation to a person if:

- either:
 - CASA granted the person an exemption (the *old exemption*) under regulation 11.160 from compliance with a provision (the *old provision*) under the old Regulations, or
 - the person is subject to an exemption (the *old exemption*) from compliance with a provision (the *old provision*) under the old Regulations, and
- the old exemption is an eligible instrument, and
- the old exemption is in force immediately before the main commencement time, or is granted after the main commencement time as a result of the operation of Division 202.EAA.1, and
- the old provision is repealed by these Regulations, and
- after the main commencement time, there is a corresponding new provision in relation to the old provision.

Subregulation 202.416C(2) provides that the person is taken, after the main commencement time, to have been granted an exemption (the *new exemption*) under Division 11.F.1 from compliance with the corresponding new provision.

Subregulation 202.416C(3) provides that for the purposes of regulation 11.205, the new exemption is taken to have been granted on the condition that any terms or conditions of the old exemption are complied with.

Subregulation 202.416C(4) provides that the new exemption ceases at the earliest of the following:

- the day (if any) specified in the old exemption
- the second anniversary of the day the old exemption was granted that occurs after the main commencement time
- if the person is the holder of an AOC and the old exemption applies in relation to the operations authorised by the AOC – the day the person’s AOC expires
- if the person is the holder of an aerial work certificate and the old exemption applies in relation to the operations authorised by the aerial work certificate – the day the person’s aerial work certificate expires
- if the person is the holder of a Part 141 certificate and the old exemption applies in relation to the operations authorised by the Part 141 certificate – the day the person’s Part 141 certificate expires.

Subregulation 202.416C(5) provides that subregulation 11.056(2) (conditions to be set out) and regulations 11.225 (publication of exemptions) and 11.230 (when exemptions cease) do not apply in relation to the new exemption.

Subregulation 202.416C(6) provides to the effect that if the old exemption has been suspended and the suspension is in force immediately before the commencement time, then subregulation (1) applies despite the suspension, but the exemption taken to be granted under subregulation (2) is taken to be suspended for the same period as the old exemption.

Subdivision 202.EAA.1.13—Applications for instruments other than AOCs and aerial work certificates

Regulation 202.417 – Applications for instruments (other than AOCs and aerial work certificates) made after main commencement time

This regulation provides that subject to Division 202.EAA.1, the new Regulations apply in relation to an application for an instrument (other than an AOC or an aerial work certificate) that is made after the main commencement time.

Subdivision 202.EAA.1.14—Other general transitional matters

Regulation 202.418 – Flight training and checking

This regulation empowers CASA to make a written determination to recognise training or checking completed by a person before the main commencement time for the purpose of satisfying the new requirements related to training and checking in the FOR.

Subregulation 202.418(1) provides for when this regulation applies. In summary, the regulation applies in relation to a flight of an aircraft if:

- after the main commencement time, a training and checking requirement under the FOR (including a requirement under a Manual of Standards issued for any of the FOR Parts) applies in relation to the flight, and
- CASA has made a determination that specifies:
 - a new training or checking event that is in relation to a person, and
 - an old training or checking event that is in relation to the same person, and
- the flight occurs before the time (if any) specified in the determination in relation to the new event.

Subregulation 202.418(2) provides that, after the main commencement time, for the purposes of CAR and CASR or an instrument made under or for the purposes of CAR and CASR, the new training and checking event is taken to have happened in relation to the person.

Subregulation 202.418(3) provides that CASA may make a written determination for the purposes of this regulation. A determination made for the purpose of this regulation is a legislative instrument under subsection 98(5AA) of the Act.

Subregulation 202.418(4) provides that in this regulation, a training and checking event includes any of the following: satisfactory completion of training or education (however described); successful completion of a check, a test, a flight review or an assessment of competency (however described); obtaining a qualification or certificate; completing experience; completing a flight or series of flights; and successfully participating in a training and checking system (however described). This list is inclusive rather than exhaustive.

For example, paragraph 121.475(2)(1) provides a requirement, applicable to the operator of an aeroplane for a flight that is a Part 121 operation, that each flight crew member must meet the recurrent training and checking requirements under subregulation 121.570(1) for the flight. That subregulation provides that a flight crew member meets those requirements if, amongst other things, the flight crew member holds a valid Part 121 proficiency check under regulation 121.575.

A flight crew member might not have completed a Part 121 proficiency check at the main commencement time, but could be current with their existing proficiency check conducted to meet the requirement in paragraph 8B.2 of *Civil Aviation Order 82.0 Instrument 2014* (a CAO 82.0 proficiency check). To address this, CASA could, by written determination, specify for the purpose of this regulation:

- as a new event in relation to a flight crew member for a flight of an aeroplane that is a Part 121 operation, successful completion of a Part 121 proficiency check for an operator and an aeroplane, and
- as an old event in relation to a flight crew member for a flight of an aeroplane that is a Part 121 operation, successful completion of a CAO 82.0 proficiency check in relation to a type of aeroplane and an operator
- as the expiry time in relation to the new event, a period of 15 months from completion of the old event.

If this were done, the result would be that a flight crew member on an aeroplane for a flight that is a Part 121 operation had, before the main commencement time, successfully completed a CAO 82.0 proficiency check for an operator and a type of aeroplane, then the pilot would be taken to have successfully completed a Part 121 proficiency check for the operator and the aeroplane, for the period of 15 months after completion of the CAO 82.0 proficiency check.

Regulation 202.418A – Flights in progress

This regulation provides that if a flight of an aircraft begins before the main commencement time but has not ended by that time, then despite these Regulations, the old Regulations continue to apply in relation to the flight.

Regulation 202.418B – Manuals of Standards may deal with other transitional matters

This regulation provides, for the avoidance of doubt, that a Manual of Standards made for a part under CASR may provide for matters of a transitional nature (including prescribing any saving or application provisions) relating to a provision of the Manual of Standards.

Subdivision 202.EAA.1.15—Miscellaneous transitional provisions

Regulation 202.419 – Statistical returns

This regulation applies if before the main commencement time, a person was directed to give information under subregulation 132(1) of the old CAR in relation to an aircraft, the direction is an eligible instrument, the direction is in force immediately before the main commencement, and after the main commencement time, the direction has not been complied with. The direction continues to have effect after the main commencement time as if it had been given by CASA under regulation 117.020 (discussed above) in relation to the aircraft. For the purposes of subregulation 117.020(4), the person must comply with the direction within 60 days after the main commencement time.

Regulation 202.419A - Reports

This regulation provides that if before the main commencement time a person was required (the **old requirement**) to give a traffic report under subregulation 132(2) of the old CAR, and as at the main commencement time the old requirement has not been complied with, then after the main commencement time the person is taken to have been given a direction under regulation 117.025 to prepare and provide a traffic report. For the purposes of subregulation 117.020(4), the person must comply with the direction within 60 days after the main commencement time.

Regulation 202.419B – Protection of information

This regulation provides that regulation 117.030 applies in relation to disclosures of information in accordance with regulations 117.020 and 117.025 (including those provisions as applied by regulations 202.419 and 202.419A) that happen after the main commencement time (whether the information was obtained or disclosed before or after the main commencement time).

Regulation 202.419C – Special flight permits

This regulation applies if:

- before the main commencement time, CASA or an authorised person issued a special flight permit for an aircraft to a person under regulation 21.197 of CASR, and directed that any of paragraphs 133(1)(a), (c) and (d) and regulation 139 of the old CAR do not apply to the aircraft, and
- the permit and direction are in force immediately before the main commencement time.

After the main commencement time, CAR and CASR have effect in relation to such a permit and direction as if:

- a reference in the direction to paragraph 133(1)(a) of the old CAR were instead a reference to paragraph 91.145(2)(c)
- a reference in the direction to paragraph 133(1)(c) of the old CAR were instead a reference to paragraph 91.145(2)(d)
- a reference in the direction to regulation 139 of the old CAR were instead a reference to Division 91.C.3.

Regulation 202.419D – Special flight authorisations

This regulation applies if before the main commencement time, a special flight authorisation (the **old authorisation**) for the operation of an aircraft was issued under regulation 135A of the old CAR, and was in force immediately before the main commencement time. After the main commencement time, a special flight authorisation (the **new authorisation**) is taken to be in force in relation to the aircraft under regulation 91.970 for flight of the aircraft in Australian territory. For the purpose of paragraph 91.970(3)(c), the new authorisation is taken to have been granted on the condition that any terms or conditions of the old authorisation are complied with. The new authorisation ceases on the day specified in the old authorisation, or if no day is specified, on the second anniversary of the day the old authorisation was given that occurs after the main commencement time.

Regulation 202.419E – Foreign state aircraft

This regulation applies in relation to a flight in Australian territory by a state aircraft of a foreign country that occurs after the main commencement time if:

- before the main commencement time, CASA had given permission or an invitation (the **old permission**) for the flight under regulation 136 of the old CAR
- the old permission is an eligible instrument, and
- the old permission is in force immediately before the main commencement time.

For the purposes of subregulation 91.975(1), after the main commencement time, the operator of the aircraft is taken to have been granted an approval under regulation 91.045 for the flight. The approval is taken to have been granted on the condition that any terms or conditions of the old permission are complied with. Subregulation 11.056(2) does not apply in relation to the approval.

The approval ceases on the day specified in the old permission, or if no day is specified, on the second anniversary of the day the old permission was given that occurs after the main commencement time.

Regulation 202.419F – Discharge of firearms in aircraft

Subregulation 202.419F(1) provides that this regulation applies in relation to a flight of an aircraft involved in an aerial work operation that occurs after the main commencement time if:

- before the main commencement time, CASA had given permission (the old permission) under subregulation 144(3) of the old CAR for a person to discharge a firearm while on an aircraft involved in an aerial work operation; and
- the old permission is an eligible instrument; and
- the old permission is in force immediately before the main commencement time.

Subregulation 202.419F(2) provides that for the purposes of subregulation 91.165(2), after the main commencement time, the person is taken to have been granted an authorisation (the *new authorisation*) to discharge the firearm while on the aircraft.

Subregulation 202.419F(3) provides that for the purposes of regulation 11.056, the new authorisation is taken to have been granted on the condition that any terms or conditions of the old permission are complied with.

Subregulation 202.419F(4) provides that subregulation 11.056(2) does not apply in relation to the new authorisation.

Subregulation 202.419F(5) provides that the new authorisation ceases at the earlier of the day specified in the old permission, or the second anniversary of the day the old permission was given that occurs after the main commencement time.

Subregulation 202.419F(6) provides that subregulations (7) to (10) apply if the operator and the pilot in command of the aircraft for the flight are subject to a requirement (the *new requirement*) under a provision prescribed by the Part 138 Manual of Standards for the purposes of paragraph 138.432(2)(b) in relation to the discharge of a firearm while on the aircraft.

Subregulation 202.419F(7) provides that for the purposes of regulation 138.432, after the main commencement time, the operator and the pilot in command of the aircraft for the flight are each taken to have been granted an exemption (the *new exemption*) under Division 11.F.1 from the new requirement in relation to the flight.

Subregulation 202.419F(8) provides that for the purposes of regulation 11.205, the new exemption is taken to have been granted on the condition that any terms or conditions of the old permission are complied with.

Subregulation 202.419F(9) provides that the new exemption ceases at the earliest of the day specified in the old permission, the second anniversary of the day the old permission was given that occurs after the main commencement time, or if the operator is the holder of an aerial work certificate and the old permission applies in relation to the operations authorised by the aerial work certificate, the day the operator's aerial work certificate expires.

Subregulation 202.419F(10) provides that subregulation 11.205(2) (conditions to be set out) and regulations 11.225 (publication of exemption) and 11.230 (when exemptions cease) do not apply in relation to the new exemption.

Regulation 202.419G - Instrument approach and departure procedure

Subregulation 202.419G(1) provides that this regulation applies if before the main commencement time, CASA had issued a determination (the *old determination*) under paragraph 178(6)(b) or paragraph 178(6)(c) of the old CAR in relation to an instrument approach procedure or instrument departure procedure, the old determination is an eligible instrument, and the old determination is in force immediately before the main commencement time.

Subregulation 202.419G(2) provides that the old determination continues to have effect, after the main commencement time, as if the determination were an instrument issued under regulation 201.025 for the purposes of subparagraph (a)(ii) of the definition of *authorised instrument approach procedure* or *authorised instrument departure procedure* in Part 1 of the Dictionary, as applicable.

Subregulation 202.419G(3) provides that the new instrument ceases to be in force at the earlier of the day specified in the old determination, or the second anniversary of the day the old determination was issued that occurs after the main commencement time.

Regulation 202.419H - Existing RVSM approvals

Subregulation 202.419H(1) provides that this regulation applies in relation to an operator of an aircraft if:

- the operator held an RVSM operational approval (the *old operational approval*) under regulation 181M of the old CAR
- the old operational approval covers the aircraft
- the old operational approval is in force immediately before the main commencement time, and
- an RVSM airworthiness approval (the *old airworthiness approval*) under regulation 181G of the old CAR is in force for the aircraft immediately before the main commencement time.

Subregulation 202.419H(2) provides that for the purposes of regulation 91.655, the operator of the aircraft is taken, after the main commencement time, to hold an approval (the *new approval*) under regulation 91.045 for the aircraft to be flown in RVSM airspace.

Subregulation 202.419H(3) provides that the new approval ceases at the earliest of the day specified in the old operational approval, the day specified in the old airworthiness approval, the second anniversary of the day the old operational approval or old airworthiness approval was given that occurs after the commencement time, the day the operator's AOC expires (if applicable), or the day the operator's aerial work certificate expires (if applicable).

Regulation 202.419J – Applications for RVSM operational approval

This regulation applies in relation to an operator if:

- before the main commencement time, the operator applied for a RVSM operational approval under regulation 181L of the old CAR
- as at the main commencement time, the application has not been finally determined, and
- the requirements in paragraphs 181M(1)(a) to (c) of the old CAR would have been satisfied in relation to the aircraft (assuming that regulation 181M had not been repealed by the amending Regulations).

At the main commencement time, the application is taken to have been made under regulation 91.045 for the aircraft to be flown in RVSM airspace for the purposes of subparagraph 91.655(2)(a)(i).

Regulation 202.419K – Operations manuals

This regulation applies if before the main commencement time, CASA had given a direction under subregulation 215(3) of the old CAR in relation to an operator's operations manual, and the direction is an eligible instrument, and the direction is in force immediately before the main commencement time. The direction continues to have effect as if it had been given by CASA under subregulation 119.105(1) in relation to an operator's exposition (for an Australian air transport operator), under subregulation 138.068(1) in relation to the operator's operations manual (for an aerial work operator), or under subregulation 131.115(1) in relation to the operator's exposition (for a balloon transport operator). The direction ceases to be in force on the day the operator's AOC or aerial work certificate expires, as applicable.

Regulation 202.419L – Fuel records applies in relation to a record that was required to be maintained under regulation 220 of the old CAR immediately before the main commencement time. Regulation 220 of the old CAR continues to apply in relation to the record for a period of 6 months, despite the repeal of that provision.

Regulation 202.419M – Light sport aircraft applies if before the main commencement time, for the purposes of subregulation 262APA(7) of the old CAR, a person was appointed by CASA to perform the functions of the manufacturer in relation to the continuing airworthiness of an aircraft, and the appointment is in force immediately before the main commencement time. For the purpose of subregulation 91.900(4), after the main commencement time the person is taken to be an authorised person.

Regulation 202.419N – Operating requirements for light sport aircraft

Subregulation 202.419(1) provides that this regulation applies if before the main commencement time, CASA had determined (the *old determination*) one or more additional operating limitations in relation to an aircraft under subregulation 262APA(4) of the old CAR, and the old determination is an eligible instrument, and is in force immediately before the main commencement time.

Subregulation 202.419(2) provides that the old determination has effect after the main commencement time as if it had been issued by a direction by CASA under subregulation 11.245(1) in relation to the aircraft.

Subregulation 202.419(3) provides that the direction ceases to be in force at the earlier of the day specified in the old determination, or the second anniversary of the day the old determination was issued that occurs after the main commencement time.

Subregulation 202.419(4) provides that subregulation 11.245(2) is taken to be satisfied in relation to the direction.

Subregulation 202.419(5) provides that regulation 11.250 (period of effect of direction) does not apply in relation to the direction.

Regulation 202.419P – Reviewable decisions

This regulation provides that, despite the amendments of regulation 297A of the old CAR made by these Regulations, that regulation, as in force immediately before the main commencement

time, continues to apply after the main commencement time in relation to a decision made before the main commencement time.

Regulation 202.419Q – Authorised persons and identity cards

This regulation is a transitional provision that provides for the saving of appointments made under regulation 6 of CAR and identity cards issued under regulation 6A. Those provisions are repealed by item 13 of these Regulations, and amendments are made by items 270 to 274 to amend regulation 201.001 and insert a new regulation 201.002. Regulations 201.001 and 201.002 will now provide for a consolidated set of provisions related to CASA appointing authorised persons for the purposes of CAR and CASR and issuing identity cards.

Subregulation 202.419Q(1) provides that this regulation applies if before the main commencement time, a person was appointed (the *old appointment*) under paragraph 6(1)(a) or (b) of the old CAR to be an authorised person in relation to a provision of CAR, and the old appointment is in force immediately before the main commencement time.

Subregulation 202.419Q(2) provides that for the purpose of these Regulations, after the main commencement time, the person is taken to be an authorised person under regulation 201.001 in relation to either the provision of CAR, or if the provision is repealed by these Regulations, the corresponding new provision (if any).

Subregulation 202.419Q(3) provides that for the purposes of subregulation 201.001(4), a person taken to be an authorised person under subregulation (2) of this regulation is appointed on the conditions of the person's old appointment.

Subregulation 202.419Q(4) provides that to avoid doubt, subregulations 201.001(2) and (3) do not apply in relation to a person taken to be an authorised person under subregulation (2) of this regulation.

Subregulation 202.419Q(5) provides that if before the main commencement time an identity card was issued under subregulation 6A(1) of the old CAR to an authorised person in relation to one or more provisions (the *old provision*) of CAR, and the identity card was in the possession of the authorised person immediately before the main commencement time, then for the purposes of CAR and CASR, after the main commencement time the identity card is taken to have been issued to the person under regulation 201.002, and to specify the provision of CAR or the relevant corresponding new provision.

Regulation 202.419R – Applications for certificates of airworthiness

This regulation provides that despite the amendment of regulation 21.173 by Schedule 1 to these Regulations, the owner of an aircraft that is registered with one of the bodies listed in the regulation is eligible to apply for a certificate of airworthiness for the aircraft. This regulation is repealed at the end of 2 December 2024. The listed bodies are:

- Australian Sport Rotorcraft Association Incorporated
- The Gliding Federation of Australia Incorporated
- Sports Aviation Federation of Australia Limited
- Recreational Aviation Australia Limited.

Regulation 202.419S – Applications for experimental certificates

This regulation provides that despite the amendment of regulation 21.192 by Schedule 1 to these Regulations, the owner of an aircraft that is registered with one of the bodies listed in the

regulation is eligible to apply for an experimental certificate for one or more of the purposes mentioned in regulation 21.191. This regulation is repealed at the end of 2 December 2024. The listed bodies are:

- Australian Sport Rotorcraft Association Incorporated
- The Gliding Federation of Australia Incorporated
- Sports Aviation Federation of Australia Limited
- Recreational Aviation Australia Limited.

Regulation 202.419T – Application of Part 61 in relation to pilot certificates

This regulation applies if immediately before the commencement of Schedule 1 to these Regulations, a person held a pilot certificate granted by Recreational Aviation Australia Limited, Australian Sport Rotorcraft Association Incorporated, or The Gliding Federation of Australia Incorporated. Despite the amendment of Part 61 made by Schedule 1 to these Regulations, that Part continues to apply in relation to the person and the pilot certificate as if those amendments had not been made. This regulation is repealed at the end of the day that is 3 years after the day on which the *Civil Aviation Legislation Amendment (Part 149) Regulations 2018* commenced (that is, the end of 14 July 2022).