

## EXPLANATORY STATEMENT

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

*Civil Aviation (Unmanned Aircraft Levy) Regulations 2021*

*Civil Aviation Safety Amendment (Unmanned Aircraft Levy Collection) Regulations 2021*

The *Civil Aviation Act 1988* (**Civil Aviation 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 9(1) of the Civil Aviation 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.

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

The *Civil Aviation (Unmanned Aircraft Levy) Act 2020* (the Levy Act) is a key component of a legislative scheme to impose and collect a levy for cost recovery purposes in relation to regulatory services for the safety of remotely piloted aircraft (RPA) and (from 2022) model aircraft.

Section 8 of the Levy Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed or necessary or convenient for carrying out or giving effect to the Act.

Two sets of related regulations are the subject of this Explanatory Statement.

The *Civil Aviation (Unmanned Aircraft Levy) Regulations 2021* (**Levy Regulations**) made under the Levy Act prescribes the following amounts:

- (a) for levy payable in relation to an RPA that weighs more than 500 grams (a **relevant RPA**)—\$40; and
- (b) for levy payable in relation to an RPA that weighs 500 gram or less—nil; and
- (c) for levy payable in relation to a model aircraft—nil.

The effect of paragraph (a) above is that *micro RPA* (RPA with a gross weight of not more than 250 g) and *very small RPA* (an RPA with a gross weight of more than 250 g, but not more than 2 kg) weighing not more than 500 grams will *not* be subject to the levy.

The *Civil Aviation Safety Amendment (Unmanned Aircraft Levy Collection) Regulations 2021* (**Collection Regulations**) made under the Civil Aviation Act, provide that an application to register an aircraft as a RPA or as a model aircraft must be accompanied by the unmanned

aircraft levy that is for the application. The regulations also provide that an application for permission to operate, or to conduct operations using, an RPA or a model aircraft registered under a law of a foreign country must be accompanied by the unmanned aircraft levy that is for the application.

These 2 sets of regulations are part of an inter-related body of legislation. Because similar expressions must, of necessity, be used in naming the various instruments, to clearly identify them when they are referred to throughout this Explanatory Statement, they have been given a shorthand name, for example “the Levy Regulations”.

The relevant legislation is:

- the *Civil Aviation Act 1988 (Civil Aviation Act)*;
- the *Civil Aviation (Unmanned Aircraft Levy) Act 2020 (the Levy Act)* (commenced on 18 December 2020);
- the *Civil Aviation (Unmanned Aircraft Levy) Regulations 2021 (the Levy Regulations)* (to commence on the day after the instrument is registered);
- the *Civil Aviation Safety Amendment (Unmanned Aircraft Levy Collection) Regulations 2021 (the Collection Regulations)* (to commence on the day after the instrument is registered).

The existing *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations 2019 (the Principal Regulations)* provides for the registration of certain RPA and model aircraft and the accreditation of their operators. The inter-related body of legislation allows a registration levy to be imposed and collected for the purposes of registration. However, the principal regulations also contain transitional provisions whose effect is to delay the application of the levy requirements to model aircraft until 2022, whereas the levy begins to apply to RPA from the day after the instrument is registered.

The essential purpose of this package of two sets of regulations is to ensure appropriate contributions to the cost of unmanned aircraft safety program administration and regulation in order to maintain the integrity and fiscal sustainability of the program over the long term.

### **Consultation**

The Office of Best Practice Regulation (*OBPR*) has assessed that the preparation of a Regulation Impact Statement is not required for the Levy Regulations. CASA, however, prepared a Cost Recovery Implementation Statement (*CRIS*) in accordance with the Australian Government Charging Framework.

In accordance with section 17 of the *Legislation Act 2003*, CASA consulted through the publishing of a draft CRIS. The draft CRIS was posted on the CASA website and publicly available for comment through CASA’s online Consultation Hub. The three-week consultation period closed on 13 September 2020. CASA received and analysed over 292 responses during the consultation period. The respondents were largely supportive of the registration scheme, although there were reservations expressed about the imposition of a levy to cover the cost of regulation. All responses were considered in arriving at the final contents of the proposals.

### **Incorporation by Reference**

No documents have been incorporated by reference.

### **Statement of compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at [Attachment A](#).

**Commencement and making**

Each set of regulations is a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out at Attachment B.

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

The Levy Regulations commence on the day after the instrument is registered.

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

The Collection Regulations commence on the day after the instrument is registered.

Authority: Subsection 98(1) of the *Civil Aviation Act 1988* and section 8 of the *Civil Aviation (Unmanned Aircraft Levy) Act 2020*.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

***Civil Aviation (Unmanned Aircraft Levy) Regulations 2021***

***Civil Aviation Safety Amendment (Unmanned Aircraft Levy Collection) Regulations 2021***

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

**Overview of the legislative instruments**

The *Civil Aviation (Unmanned Aircraft Levy) Regulations 2021 (Levy Regulations)* made under the *Civil Aviation (Unmanned Aircraft Levy) Act 2020 (Levy Act)* prescribes the following amounts:

- (a) for levy payable in relation to an RPA that weighs more than 500 grams (a **relevant RPA**)—\$40; and
- (b) for levy payable in relation to an RPA that weighs 500 gram or less—nil; and
- (c) for levy payable in relation to a model aircraft—nil.

The effect of paragraph (a) above is that *micro RPA* (RPA with a gross weight of not more than 250 g) and many *very small RPA* (an RPA with a gross weight of more than 250 g, but not more than 2 kg – but for levy purposes, not more than 500 grams) will *not* be subject to the levy.

The *Civil Aviation Safety Amendment (Unmanned Aircraft Levy Collection) Regulations 2021 (the Collection Regulations)* made under the *Civil Aviation Act 1988 (Civil Aviation Act)*, provide that an application to register an aircraft as a RPA or as a model aircraft must be accompanied by the unmanned aircraft levy payment for the application. The regulations also confer the same obligations on an application for an RPA or a model aircraft registered under a law of a foreign country.

The growing use of RPA in Australia directly correlates with a significant increase in RPA safety incidents reported to the Australian Transport Safety Bureau since 2012. The most concerning occurrences are interference with other aircraft and loss of RPA control, indicating a risk for the safety of conventionally piloted aircraft and for people on the ground.

On 31 July 2018, the Senate Standing Committee on Rural and Regional Affairs and Transport tabled its report - *Current and future regulatory requirements that impact on the safe use of remotely piloted aircraft systems, unmanned aerial systems and associated systems*. The report expressed support for a mandatory RPA registration regime, to which the Government Response, tabled on 27 November 2018, agreed.

Under section 101.021 of the *Civil Aviation Safety Regulations 1998 (CASR)*, an **RPA** is a remotely piloted aircraft, other than a balloon, a kite or a model aircraft. Under regulation 101.022 of CASR, there four types of RPA (a fifth type, namely a large RPA, generally weighing more than 150 kg, is treated in the same way as a conventionally piloted aircraft and is not relevant to the package of regulations):

Under the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations 2019*, an aircraft is regarded as a model aircraft if it:

- is operated for sport or recreational purposes (and is not more than 150 kg); or
- has a gross weight of not more than 7 kg, and is being operated in connection with the educational, training or research purposes of: (a) a school in relation to which there is an approved authority under the *Australian Education Act 2013*; or (b) a higher education provider within the meaning of the *Higher Education Support Act 2003*.

Under the current regulations, a model aircraft that weighed 250 g or less (and, by definition, engaged in sport or recreation or the educational etc. purposes mentioned above), would not attract any registration or accreditation obligations. If it weighed more than 250 g, it would attract both registration and accreditation obligations. Registration and accreditation requirements will not apply to model aircraft or model aircraft pilots until at least 1 March 2022, with further amendments to the current regulations before that time likely.

## **Human rights implications**

### **THE LEVY REGULATIONS**

The Levy Regulations engage the following human rights but without imposing unacceptable limitations, as follows:

- the right to work and rights at work under Article 6 of the International Covenant on Economic, Social and Cultural Rights (*ICESCR*);
- the right to enjoyment of just and favourable conditions of work, including safe and healthy working conditions under Article 7 of the ICESCR; and
- the right to life under Article 6 of the International Covenant on Civil and Personal Rights (*ICCPR*).

### **Article 6 of the ICESCR**

Article 6 of the ICESCR protects the right to work and rights at work.

The Levy Regulations are part of a body of legislation (including two existing Acts of Parliament) to impose a levy for the registration of a relevant RPA and, (from 2022) relevant model aircraft. The regulations prescribe:

- (a) for levy payable in relation to an RPA that weighs more than 500 grams (*relevant RPA*)—\$40; and
- (b) for levy payable in relation to an RPA that weighs 500 gram or less—nil; and
- (c) for levy payable in relation to a model aircraft—nil.

The purpose of the levy is to require the payment of the unmanned aircraft levy for RPA registration and to set a \$40 levy on RPA weighing over 500 grams. This will be an impost on those commercial operators of relevant RPA weighing more than 500 grams, and such an impost might be viewed as affecting the right to work in the commercial use of these RPA. If a levy has not been paid where required, the application for registration would not be taken as having been made. In turn, a person commits an offence of strict liability, attracting 50 penalty units, if an RPA is required to be registered and it is not registered.

As explained below, the registration of these RPA will contribute to the overall safety of RPA operations, in the same way as the piloted-aircraft registration scheme does by facilitating the identification of remotely piloted aircraft involved in accidents or incidents that may require CASA enforcement or regulatory follow-up. In addition, funds raised from the levy will be used

in the surveillance and safety regulation of RPA and (from 2022) model aircraft. This proactive safety activity will contribute to the business continuity of relevant commercial operations and the reduction of accidents and incidents that could give rise to legal and commercial liability.

In addition, in the context of commercial operations or search, rescue, medical or other community-based emergency operations, the unmanned aircraft levy is a relatively small sum of money and designed to underpin the safety focus of the unmanned aircraft registration scheme. The levy, from 2022, for model aircraft has not yet been determined.

The levy for RPA is, therefore, considered to be a reasonable, necessary and proportionate requirement in the context of an unmanned aircraft registration scheme for aviation safety.

### **Article 7 of the ICESCR**

Article 7 of the ICESCR protects the right to enjoyment of just and favourable conditions of work, including safe and healthy working conditions.

The RPA and model aircraft registration scheme underpinned by the levy will promote this right by requiring relevant commercial users of RPA and (from 2022) relevant model aircraft, to register their aircraft and their operations in the context of completing an associated safety-focused accreditation course. The learning derived from this course is expected to increase the responsible, informed and safe use on RPA and relevant model aircraft and contribute to the reduction of aviation safety infringements. This will benefit all operators, piloted aircraft, and people and property on the ground.

### **Article 6 of the ICCPR**

Article 6 of the ICCPR protects the right to life.

Under human rights law, countries and agents of the country must not deprive a person of life arbitrarily or unlawfully. In particular, countries also have a duty to take appropriate steps to protect the right to life.

The serious misuse of RPA and relevant model aircraft can have lethal consequences. This instrument promotes the right to life because the registration scheme will increase the responsible, informed and safe use on RPA and relevant model aircraft. The consequential reduction of serious aviation safety infringements will be to the benefit of all operators, piloted aircraft, and people on the ground who might otherwise be exposed to serious injury from unregulated and unregistered use of these aircraft.

## **THE COLLECTION REGULATIONS**

These regulations insert new subregulations into regulation 47.097 of CASR to provide that applications to register a RPA, or (from 2022) a model aircraft, must be accompanied by the unmanned aircraft levy for the application, which CASA may, in certain circumstances, waive or refund. They also insert new regulation 101.099A into CASR to provide that an application for permission to operate, or to conduct operations using, an RPA, or (from 2022) a model aircraft, registered under a law of a foreign country must be accompanied by the unmanned aircraft levy that is for the application, and which CASA may, in certain circumstances, waive or refund.

The same considerations as set out for the Levy Regulations, also apply for the Collection Regulations. The Collection Regulations engage the same human rights but without imposing unacceptable limitations, namely:

- the right to work and rights at work under Article 6 of the International Covenant on Economic, Social and Cultural Rights (*ICESCR*);

- the right to enjoyment of just and favourable conditions of work, including safe and healthy working conditions under Article 7 of the ICESCR; and
- the right to life under Article 6 of the International Covenant on Civil and Personal Rights (*ICCPR*).

### **Article 6 of the ICESCR**

Article 6 of the ICESCR protects the right to work and rights at work.

The Collection Regulations are part of the body of legislation (including two existing Acts of Parliament) to impose a levy for the registration of a relevant RPA and, (from 2022) relevant model aircraft. Registration of an RPA (from 30 September 2020) or of a relevant model aircraft (from 2022), will be mandatory but must, to be a valid application, be accompanied by the requisite amount of levy (as set out above for each RPA). This will be an impost on commercial operators of relevant RPA which might be viewed as a barrier to employment and therefore negatively affecting the right to work in the commercial use of these RPA. However, this limitation is reasonable, necessary and proportionate to achieve the goal of enhanced aviation safety.

The purpose of the levy is to require the payment of the unmanned aircraft levy for RPA registration and to set a \$40 levy on RPA weighing over 500 grams.

The growing use of RPA in Australia directly correlates with a significant increase in reported RPA safety incidents to the Australian Transport Safety Bureau since 2012. The most concerning occurrences are interference with other persons and loss of RPA control, indicating a risk for the safety of conventionally piloted aircraft and for people on the ground.

The registration of these RPA will contribute to the overall safety of RPA operations in the same way as the piloted-aircraft registration scheme does by facilitating the identification of remotely piloted aircraft involved in accidents or incidents that may require CASA enforcement or regulatory follow-up. In addition, funds raised from the levy will be used in the surveillance and safety regulation of RPA and (from 2022) model aircraft. This proactive safety activity will contribute to the business continuity of relevant commercial operations and the reduction of accidents and incidents that could give rise to legal and commercial liability.

In addition, in the context of commercial operations or search, rescue, medical or other community-based emergency operations, the RPA levy is a relatively small sum of money and designed to underpin the safety focus of the unmanned aircraft registration scheme. The levy, from 2022, for model aircraft, has not yet been determined.

If a levy has not been paid where required, the application for registration would not be taken as having been made. In turn, a person commits an offence of strict liability, attracting 50 penalty units, if an RPA is required to be registered and it is not registered.

The Collection Regulations will also empower CASA, in exceptional circumstances, and on behalf of the Commonwealth, to waive or refund all or part of the levy, either on receipt of an application for waiver or refund, or on its own initiative. Under subsection 9A(1) of the Civil Aviation Act, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration. Waiver or refund, though clearly limited to exceptional circumstances ultimately pertaining to aviation safety, will provide some mitigation of the levy's engagement with relevant human rights.

The requirement for a registration application to be accompanied by the requisite amount of levy is, therefore, considered to be a reasonable, necessary and proportionate requirement in the context of an unmanned aircraft registration scheme to enhance aviation safety.

#### **Article 7 of the ICESCR**

Article 7 of the ICESCR protects the right to enjoyment of just and favourable conditions of work, including safe and healthy working conditions.

The RPA and model aircraft registration scheme underpinned by the levy will promote this right by requiring relevant commercial users of RPA and (from 2022) relevant model aircraft, to register their aircraft and their operations in the context of completing an associated safety-focused accreditation course. The learning derived from this course is expected to increase the responsible, informed and safe use on RPA and relevant model aircraft, and contribute to the reduction of aviation safety infringements. This will benefit all operators, piloted aircraft, and people and property on the ground.

#### **Article 6 of the ICCPR**

Article 6 of the ICCPR protects the right to life.

The serious misuse of RPA and relevant model aircraft can have lethal consequences. The registration scheme, coupled with the accreditation scheme, is expected to increase the responsible, informed and safe use on RPA and relevant model aircraft. Registered aircraft will be identifiable, the learning derived from accreditation will increase safety knowledge, and funding derived from the scheme will help to support CASA's proactive surveillance and safety regulation of unmanned aircraft. The expected consequential reduction of serious aviation safety infringements will be to the benefit of all operators, piloted aircraft, and people on the ground who might otherwise be exposed to the risk of serious injury from unregulated and unregistered use of these aircraft.

#### **Conclusion**

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



## ATTACHMENT B

### **Details of the *Civil Aviation (Unmanned Aircraft Levy) Regulations 2021*; and the *Civil Aviation Safety Amendment (Unmanned Aircraft Levy Collection) Regulations 2021***

These details explain the regulations in the *Civil Aviation (Unmanned Aircraft Levy) Regulations 2021* (the **Levy Regulations**) and the *Civil Aviation Amendment (Unmanned Aircraft Levy Collection) Regulations 2021* (the **Collection Regulations**).

## LEVY REGULATIONS

### **Part 1 – Preliminary**

#### Regulation 1 - Name

This regulation provides that the title of the instrument is the *Civil Aviation (Unmanned Aircraft Levy) Regulations 2021*

#### Regulation 2 - Commencement

This regulation provides that the instrument commences on the day after the instrument is registered.

#### Regulation 3 - Authority

This regulation provides that the Levy Regulations are made under the Levy Act.

#### Regulation 4 - Definitions

This regulation provides the definitions for the instrument.

### **Part 2 – Amount of unmanned aircraft levy**

#### Regulation 5 - Amount of unmanned aircraft levy

This regulation provides the levy payable in a manner consistent with subsection 6(1) of the Levy Act. The prescribed unmanned aircraft levy amount is:

- (a) for levy payable in relation to an RPA that weighs more than 500 grams—\$40; and
- (b) for levy payable in relation to an RPA that weighs 500 gram or less—nil; and
- (c) for levy payable in relation to a model aircraft—nil.

The purpose of this provision is to specify the unmanned aircraft levy payable and ensure that commercial and professional users of RPA contribute to the cost of the registration scheme and the associated regulatory effort for safety oversight activities.

## COLLECTION REGULATIONS

#### Regulation 1 - Name

This regulation provides that the title of the instrument is the *Civil Aviation Safety Amendment (Unmanned Aircraft Levy Collection) Regulations 2019*.

## Regulation 2 - Commencement

This regulation provides that the instrument commences the day after the instrument is registered.

## Regulation 3 – Authority

This regulation provides that the Collection Regulations are made under the *Civil Aviation Act 1988*.

## Regulation 4 – Schedules

This regulation provides for the following Schedule of amendments to the *Civil Aviation Safety Regulations 1998*.

## **Schedule 1—Amendments**

### ***Civil Aviation Safety Regulations 1998***

#### **Item 1 - After paragraph 11.030(1)(d)**

A new paragraph (e) is inserted after paragraph 11.030(1)(d) of CASR, to provide that “if unmanned aircraft levy is payable for the application—that levy has been paid.” The effect of the amendment is that an application for registration of an RPA or a model aircraft is not taken to have been made unless the relevant unmanned aircraft levy has first been paid.

#### **Item 2 - At the end of regulation 47.097**

New subregulations (4) to (6) are inserted at the end of regulation 47.097 and relate to the payment of unmanned aircraft levy and the waiver or refund of unmanned aircraft levy.

Regulation 47.097 was inserted into CASR by the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations 2019* to provide for applications to be made to CASA for the registration of an RPA or a model aircraft.

Subregulation 47.097(4) provides that an application to register an aircraft as an RPA or as a model aircraft under Division 47.C.2 of the *Civil Aviation Safety Regulations 1998* must be accompanied by the unmanned aircraft levy (if any) for the application.

Subregulation 47.097(5) provides that CASA may, on behalf of the Commonwealth, waive the payment of unmanned aircraft levy under subregulation 47.097(4), or refund levy that has been paid, under that subregulation, if CASA is satisfied that there are exceptional circumstances justifying the waiver or refund.

Subregulation 47.097(6) provides that the waiver or refund may be of the whole or part of the levy and may be made by CASA on its own initiative, or on written application in the approved form by the applicant for the registration.

CASA will exercise this “exceptional circumstances” discretion (and the one mentioned in the next item) on a case-by-case basis, but consistently across similar matters. This will allow the development of guidelines on what might constitute “exceptional” circumstances for the purposes of the regulations and the exercise of the discretion in its legislative context. That context includes the essential purpose of the relevant body of legislation, which, as noted above, is to

ensure appropriate contributions to the cost of unmanned aircraft safety program administration and regulation in order to maintain the integrity and fiscal sustainability of the safety program over the long term.

In this context, it is likely that, for a circumstance to be considered “exceptional” it would be one in which it was demonstrably contrary to the intent of the legislation and the public interest in aviation safety to charge the levy or the full levy amount. On this basis, it is likely that few circumstances pertaining to use of RPA or model aircraft would reasonably be considered to be “exceptional”.

A refusal of an application to consider circumstances to be “exceptional” would be subject to administrative review by the Administrative Appeals Tribunal (*AAT*) on the basis that the decision was, ultimately, one made under the *Civil Aviation Act 1988* which empowered the making of the regulations, and which, by virtue of s31 of the Act (Review of decisions) was, therefore, a reviewable decision (*Re Seaview Lord Howe Pty Ltd and Civil Aviation Authority* (1995) 38 ALD 422).

### **Item 3 After regulation 101.099**

A new regulation 101.099AA is inserted after regulation 101.099 of CASR, which provides the unmanned aircraft levy provisions for foreign registered RPA and model aircraft.

Subregulation 101.099AA(1) provides that an application under Chapter 13 of the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* for permission to operate, or to conduct operations using, an RPA or model aircraft registered under a law of a foreign country must be accompanied by the unmanned aircraft levy (if any) for the application.

Subregulation 101.099AA(2) provides that CASA may, on behalf of the Commonwealth, waive the payment of unmanned aircraft levy under subregulation 101.099AA(1), or refund levy that has been paid under that subregulation, if CASA is satisfied that there are exceptional circumstances justifying the waiver or refund.

Subregulation 101.099AA(3) provides that the waiver or refund may be of the whole or part of the levy, and may be made by CASA on its own initiative, or on written application in the approved form by the applicant for the registration.

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