

Explanatory Statement

Civil Aviation Regulations 1988

CASA 100/21 — Parachute Descents (CASA 263/02) (Australian Skydiving Association) Amendment Instrument 2021

Purpose

The instrument being amended (instrument CASA 263/02) sets out specifications that a person who is a member of Australian Skydiving Association Inc. (the **ASA**) is required to comply with when making a parachute descent. Since CASA 263/02 was made the ASA has developed Operational Regulations that cover the matters CASA requires to be dealt with and that CASA has approved. The purpose of the amendments is to replace the out-of-date specifications in the instrument with the ASA Operational Regulations, by incorporating them by reference as approved by CASA and making a new specification that a parachute descent by a member of the ASA must be made in accordance with the Operational Regulations.

CASA 263/02 is incorporated by reference for the purposes of transitional arrangements established by subregulation 202.502 (1) of the *Civil Aviation Safety Regulations 1998 (CASR)* for sport aviation bodies who administer parachuting activities. Regulation 202.502 is inserted into CASR by item 8 of Schedule 2 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* (the **three-pack regulations**) which also inserts the new Parts into CASR. To the extent that it is applicable, the amended CASA 263/02 enables the ASA to continue its operations under the existing scheme for parachuting activities.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made CASR and the *Civil Aviation Regulations 1988 (CAR)*.

Subregulation 152 (1) of CAR provides that a person must not make a parachute descent if the descent is not authorised in writing by CASA and conducted in accordance with the written specifications of CASA. Subregulation 152 (2) provides that an offence against subsection (1) is a strict liability offence.

Regulation 152 (1) of CAR is repealed by item 33 of Schedule 1 to the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*, which takes effect on 2 December 2021. However, subregulation 202.502 (3), inserted into CASR by the three-pack regulations (and also commencing on 2 December 2021) provides that despite the repeal of regulation 152 of CAR, CASA 263/02 and CASA 36/19 (authorising members of the Australian Parachute Federation Ltd (the **APF**) to make parachute descents) continue in force (and may be dealt with) after commencement of the repeal as if the repeal had not happened.

Under regulation 11.015 of CASR, an approval of this type is an authorisation under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

Regulation 11.055 sets out criteria that apply to the Civil Aviation Safety Authority (**CASA**) when granting an authorisation. Regulation 11.056 provides that an authorisation may be granted subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability if the person breaches a condition of an authorisation.

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

Background

Parachute descents in Australia may be conducted if CASA, under regulation 152 of CAR, has authorised the descents and they are conducted in accordance with CASA's written specifications. As at commencement of this instrument, CASA has issued instruments of authorisation under regulation 152 of CAR to allow 2 established organisations to approve descents in accordance with CASA's written specifications. The 2 organisations are the APF and the ASA.

CASA 263/02 is an instrument made under regulation 152 of CAR, in which CASA authorises persons who are members of the ASA to make parachute descents if the descents are conducted in accordance with the specifications set out in Schedules to the instrument. The matters covered by the specifications include the qualifications required for pilots and parachutists, operational requirements for aircraft and parachute operations, equipment requirements and parachute training requirements. Since the instrument was made the ASA has developed a set of Operational Regulations that govern the ASA's parachuting activities and that have been approved by CASA.

Schedule 2 of the three-pack regulations, which inserts Part 105, dealing with parachuting from aircraft, into CASR, is due to commence on 2 December 2021. At that time, regulation 152 of CAR will be repealed by item 33 of Schedule 1 to the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*. Regulation 202.502 that is inserted into CASR by item 8 of Schedule 2 to the three-pack regulations, provides transitional arrangements for parachute descents that are currently overlooked by parachuting sport aviation bodies, and authorised under the existing scheme that regulates parachuting activities. The updating of CASA 263/02 is necessary to enable the ASA to continue its operations (in accordance with its current rules approved by CASA) under the transitional arrangements. Part 105 does not apply to a parachute descent if it is conducted in accordance with, amongst other requirements, instrument CASA 263/02 as that instrument is in force from time to time. Regulation 202.502 also incorporates instrument CASA 11/17 for the purposes of descents being undertaken by a trainee parachutist or tandem parachutist.

Overview of instrument

CASA 263/02 authorises a person who is a member of the ASA to make a parachute descent in accordance with the specifications set out in Schedules to the instrument. This amending instrument omits the specifications and replaces them with a specification that a parachute descent by the person must be made in accordance with the ASA Operations Regulations

which have been approved by CASA. The ASA Operational Regulations are administered by the ASA, with CASA oversight.

The amending instrument also makes other amendments consequential to the amendment mentioned above, principally the definitions set out in Schedule 9 which provided for terms and phrases occurring in the specifications set out in the instrument. Special terms and phrases occurring in the ASA Operational Regulations are defined in that document.

Instrument CASA 263/02 is incorporated as in force from time to time by regulation 202.502, which comes into force on 2 December 2021. The transitional arrangements under regulation 202.502 will enable the ASA to continue its current operations.

Regulation 202.502 will self-repeal at the date identified as the end of the transitional period for Part 149 (Approved Self-administering Aviation Organisations).

CASA has assessed the impact the instrument will have on aviation safety and is satisfied that it will promote the safety of parachuting activities conducted by members of the ASA.

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument makes amendments consequential on the development by ASA of their ASA Operational Regulations, and the approval of the ASA Operational Regulations by CASA.

Documents incorporated by reference

Under subsection 14 (1) of the *Legislation Act 2003* (the *LA*), unless the contrary intention appears, a legislative instrument may incorporate any matter contained in a legislative instrument, as in force from time to time.

Under subsection 14 (2) of the *LA*, unless the contrary intention appears, a legislative instrument may not incorporate any matter contained in an instrument or other writing as existing from time to time. Paragraph 98 (5D) (a) of the Act provides that, despite section 14 of the *LA*, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

For the purposes of paragraph 15J (2) (c) of the *LA*, the *Operational Regulations*, issued by the ASA is incorporated as it exists on 17 November 2021. The document details the safety and training requirements and the duties and responsibilities of members of the ASA who conduct parachuting activities. The document is available for free at the web address: [http://www.skydivingmelbourne.com.au/files/adblryjext/Op-Regs-ASA---17-November-2021-FINAL-Approval-\(2\).pdf](http://www.skydivingmelbourne.com.au/files/adblryjext/Op-Regs-ASA---17-November-2021-FINAL-Approval-(2).pdf)

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences on the day after it is registered.

Section 3 sets out that CASA 263/02 is amended as set out in the applicable items in Schedule 1.

Schedule 1

Items 1, 2 and 4 omit a repeal provision that is no longer needed and make related machinery changes.

Item 3 amends the authorisation of a member of the ASA under regulation 152 of CAR to provide that the person is authorised to make parachute descents if the descents are conducted in accordance with the specification in Schedule 1.

Item 5 amends the heading to Schedule 1.

Item 6 substitutes clause 1.1 in Schedule 1 of CASA 263/02 with a specification providing that a member of the ASA who is making a parachute descent must conduct the parachute descent in accordance with the ASA Operational Regulations. A definition of ASA Operational Regulations is inserted by item 9 of Schedule 1. The definition incorporates the Operational Regulations as they are in force on 17 November 2021. The version incorporated is approved by CASA.

Item 6 also inserts new clause 1.2 into Schedule 1. Clause 1.2 provides that a member of the ASA must not commence a parachute descent unless each person who performs a function incidental or preparatory to the descent is a member of the ASA or agrees to be bound by the ASA Operational Regulations and complies with the ASA Operational Regulations.

Item 7 omits Schedules 2 to 8.

Item 8 omits, from Schedule 9, definitions of terms that are no longer used in the instrument.

Item 9 inserts a definition of *ASA Operational Regulations*, being a document dated 17 November 2021, published by the ASA. The instrument is incorporated as in force at that time.

Item 10 is a multiple amending item that omits, from Schedule 9, the definitions listed in the table. These are definitions of terms no longer used in the instrument.

Legislation Act 2003

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument amends instrument CASA 263/02, which was registered as a legislative instrument and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the Legislation Act.

Consultation

The ASA was provided with a copy of the instrument and expressed no concerns. As the amended CASA 263/02 does not impact any other operations and gives legal force to existing requirements in the ASA Operational Regulations, no further consultation is considered necessary.

CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

The instrument makes machinery changes to an existing instrument and there will be no, or no significant, change to the economic or cost impact on individuals, businesses or the community.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for instruments of this type (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on the day after it is registered and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

CASA 100/21 — Parachute Descents (CASA 263/02) (Australian Skydiving Association) Amendment Instrument 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 legislative instrument

The instrument amends instrument CASA 263/02. CASA 263/02 is an instrument made under regulation 152 of the *Civil Aviation Regulations 1988*, in which CASA authorises persons who are members of the Australian Skydiving Association Inc. (the **ASA**) to make parachute descents if the descents are conducted in accordance with the specifications set out in Schedules to the instrument. The matters covered by the specifications include the qualifications required for pilots and parachutists, operational requirements for aircraft and parachute operations, equipment requirements and parachute training requirements. Since the instrument was made the ASA has developed a set of Operational Regulations that govern the ASA's parachuting activities and that have been approved by CASA. The amendments omit the current specifications and replace them with the specification that a parachute descent must be made in accordance with the ASA Operational Regulations. The ASA Operational Regulations are administered by the ASA, with CASA oversight.

Instrument CASA 263/02 is incorporated as in force from time to time by regulation 202.502 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Regulation 202.502 is inserted into CASR by item 8 of the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*, which comes into force on 2 December 2021. To the extent that they are applicable, the transitional arrangements under regulation 202.502 will enable the ASA to continue its current operations. Regulation 202.502 will self-repeal at the date identified as the end of the transitional period for Part 149 (Approved Self-administering Aviation Organisations) of CASR.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority