

EXPLANATORY STATEMENT

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

Civil Aviation Act 1988

Civil Aviation Safety Amendment (Parts 47 and 101) Regulations 2022

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. That subsection 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* (Chicago Convention) relating to safety and in relation to the safety of air navigation, being regulations with respect to any other matters for 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.

Part 47 of the *Civil Aviation Safety Regulations 1988* (CASR) sets out how aircraft including unmanned aircraft are registered, and how registration marks are assigned to aircraft. It also sets out how dealer's marks are assigned to manufacturers, distributors, and dealers of aircraft.

Part 101 of the *Civil Aviation Safety Regulations 1988* (CASR) contains the rules governing all unmanned aircraft activities. It prescribes the rules for the use of unmanned moored balloons and kites, unmanned free balloons, unmanned rockets, remotely piloted aircraft (RPA), model aircraft, and pyrotechnic displays.

The purpose of the *Civil Aviation Safety Amendment Civil Aviation Safety Amendment (Parts 47 and 101) Regulations 2022* (the Regulations) is to implement model aircraft registration as intended by the Australian Government and to address some ambiguities in the existing drone registration and operator accreditation regulations.

In particular, the Regulations amend the *Civil Aviation Safety Regulations 1998* (CASR) to:

- change the commencement date for model aircraft registration and operator accreditation from 1 March 2022 to 1 July 2022
- move the transitional registration incentive period to follow the new commencement date
- align the model aircraft registration provisions with the remotely piloted aircraft provisions, so that model aircraft can only be registered separately, and for the registration to expire after 12 months
- clarify that a person must be 16 years of age to undertake a course of training and an examination to obtain an accreditation to operate certain unmanned aircraft, noting that Part 101 of CASR presently requires that a person must be at least 16 years of age to be eligible to apply for the accreditation. In this respect, section 39 of the *Age Discrimination Act 2004* does not make unlawful anything done by a person in direct compliance with a

regulation or any other instrument covered by Schedule 1 of the Act. Item 15B of *Schedule 1—Laws for which an exemption is provided by subsection 39(1)* refers to the CASR.

- remove registration requirements for remotely piloted or model aircraft test flights that currently impact on aircraft innovation, development, and manufacturing:
 - including how the Part 101 *Manual of Standards* (MOS) would provide for:
 - conditions that would qualify a test flight to be one which does not require the RPA or model aircraft to be registered
 - information to be recorded about a test flight of RPA or model aircraft that is not required to be registered.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, CASA conducted public consultation on the Regulations during the period 5 to 18 November 2021.

CASA received 159 submissions in response to the consultation. Many submissions were not supportive of the Regulations that is partly machinery to the collection of a registration levy. Many respondents also confused the restriction imposed on the accreditation examination to persons over 16 years of age with a ban on children operating model aircraft. Part 101 of CASR will continue to allow for operations of a model aircraft by persons under 16 years of age providing they are supervised by an accredited adult.

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared for the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft - Registration and Accreditation) Regulations 2019*. Part 101 of CASR (OBPR id: 24246) and the Regulations are consistent with the policy outlined in that RIS.

Statement of Compatibility with Human Rights

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out in [Attachment B](#).

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

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

ATTACHMENT A

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Civil Aviation Safety Amendment (Parts 47 and 101) Regulations 2022

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

Overview of the Disallowable Legislative Instrument

Part 101 of the *Civil Aviation Safety Regulations 1998* (CASR) regulates the operation of remotely piloted aircraft (RPA), model aircraft and rockets. The *Civil Aviation Safety Amendment (Parts 47 and 101) Regulations 2022* (the Regulations) amend a small number of provisions in Part 101 of CASR to implement model aircraft registration as intended by the Australian Government and to address some ambiguities in the existing model aircraft registration and operator accreditation regulations.

The Regulations:

- clarify that a person must be 16 years of age to undertake a course of training and an examination to obtain an accreditation to operate certain unmanned aircraft, noting that Part 101 of CASR presently requires that a person must be at least 16 years of age to be eligible to apply for the accreditation
- amend the commencement date for model aircraft registration and operator accreditation from 1 March 2022 to 1 July 2022
- amend the transitional registration incentive period to follow the revised commencement date
- align the registration provisions for model aircraft with the registration provisions of remotely piloted aircraft (RPA).

The Regulations also remove the requirement to register certain RPA and model aircraft for the limited purposes of conducting test flights.

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).

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 paragraph 14(3) and following of the ICCPR.

The presumption of innocence in paragraph 14(2) of the ICCPR 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 is one new offence of strict liability introduced by 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 new strict liability offence introduced by the Regulations, under subregulation 101.099B(4), is where a person operates, or conducts an operation using, an RPA or a model aircraft for the purposes of a test flight and the person is subject to a requirement prescribed in the Part 101 *Manual of Standards* for the flight and the person does not comply with the requirement. The penalty for this offence is 50 penalty units.

Reasonableness, necessity and proportionality

Consistent with the principles set out in the Attorney-General's *A Guide to Framing Commonwealth Offences, 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 offence is considered reasonable, necessary and proportionate to the objective of ensuring aviation safety

Regulation 101.99B(1) provides the Part 101 *Manual of Standards* may prescribe the circumstances in which: (a) an RPA or a model aircraft that is not required to be registered under Division 47.C.1, and is not registered under Division 47.C.2, may be operated for the purposes of a test flight; or (b) an aircraft that is registered as a model aircraft under Division 47.C.2 may be operated as an RPA for the purposes of a test flight.

Those circumstances may include safety of flight matters, to ensure an aircraft that is test flown does not pose a danger to persons. Accordingly, the offence is regulatory in nature and its aim is to insist on reasonable compliance with regulated safety standards by those conducting activities which are otherwise intrinsically or potentially unsafe unless high standards of compliance are met. Not having to prove deliberate fault in the relevant circumstances aims to provide a strong deterrent. To this extent, and in this context, the offence is consistent with other safety-focused regulatory regimes and does not unreasonably or impermissibly limit the presumption of innocence. The offence is designed to achieve the legitimate objective of ensuring the safety and integrity of the aviation system for the benefit of the aviation community and the public.

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.

In addition, the offence is also proportionate in that the penalty attracted falls at the lower end of the penalty scale, with the offence not exceeding 50 penalty units. The framing of the offence is consistent with the guidance set out in the AGD Guide.

Any limitation on the right to a fair trial and fair hearing is necessary, reasonable and proportionate in order to the safety and integrity of the aviation system for the benefit of the aviation industry and the public.

ATTACHMENT B

Details of the *Civil Aviation Safety Amendment (Parts 47 and 101) Regulations 2022*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Civil Aviation Safety Amendment (Parts 47 and 101) Regulations 2022*.

Section 2 - Commencement

This section provides that the Regulations commence on the day after the instrument is registered.

Section 3 - Authority

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

Section 4 - Schedule(s)

This section provides that each instrument that is specified in a Schedule to the instrument will be amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument will have effect according to its terms.

Schedule 1 - Amendments

Item 1 Subregulation 47.015(1) (Requirement for aircraft to be registered)

Item 1 inserts at the end of subregulation 47.015(1), paragraph (n) to provide that an RPA or a model aircraft (other than a large RPA or an aircraft prescribed for the purposes of subregulation 47.096(2)) need not be registered if it is being operated only, (i) for the purposes of a test flight; and (ii) in circumstances applicable to the aircraft and the test flight that are prescribed by the Part 101 *Manual of Standards* for the purposes of subregulation 101.099B(1).

Item 2 Subregulation 47.098(2)(b) (Registration of certain RPA and model aircraft)

Item 2 repeals subregulation 47.098(2)(b) and substitutes it with text to reflect the repeal of regulation 47.099A, so that if CASA registers an RPA or model aircraft, it can only “(b) issue a certificate of registration for the aircraft to the registration holder of the aircraft.”

Item 3 Subregulation 47.098(2) (note)

Item 3 repeals the note to subregulation 47.098(2), to reflect that a certificate of registration cannot be issued to cover more than one aircraft.

Item 4 Regulations 47.099 and 47.099A

Item 4 repeals the regulations and substitutes a new regulation 47.099, providing a simpler registration period, so that registration of an aircraft begins at the time when the aircraft is registered; and ends at the end of the period of 12 months beginning from the day when the registration begins, unless sooner cancelled.

Item 5 101.024 Types of model aircraft

Item 5 inserts after regulation 101.023 the definition of giant model aircraft. Item 5 moves the definition of *giant model aircraft* from regulation 101.380 to the area of Part 101 where other unmanned aircraft definitions are placed. It substitutes the term “weight” for “mass” as the first step to a future harmonisation of weight terminologies for unmanned aircraft across Part 101.

Item 6 Regulation 101.099B Test flights of certain RPA and model aircraft—circumstances and requirements prescribed by the Part 101 Manual of Standards

Item 6 outlines the circumstances and conditions under which aircraft may be operated for test flights while not registered which would be prescribed in the Part 101 *Manual of Standards*. The regulation is a strict liability offence which prescribes a penalty of 50 penalty units being a penalty for operating such an aircraft outside conditions allowing for flight without registration.

Item 6A Subregulation 101.374E(3)

Item 6A inserts after subregulation 101.374E(3), subregulation (3A) that clarifies a person must be at least 16 years old to undertake a course of training and an examination for an accreditation to operate certain types of unmanned aircraft.

Item 7 Regulation 101.380 (definition of *giant model aircraft*)

Item 7 repeals the definition (including the note) of *giant model aircraft*.

Item 8 Subregulation 101.405(1) (note)

Item 8 amends the reference in the note from regulation 101.380 to regulation 101.024, to address the movement of the definition (including the note) of *giant model aircraft*.

Item 9 Subregulation 202.229(1) (paragraphs (a) and (b) of the definition of model aircraft stage 1 application day)

Item 9 amends the commencement date of the registration system from 1 March 2022 to 1 July 2022.

Item 10 Subregulation 202.229(1) (paragraph (b) of the definition of model aircraft stage 1 application day)

Item 10 amends the model aircraft stage 1 application day from 1 September 2022 to 1 February 2023.

Item 11 Subregulation 202.229(1) (paragraphs (a) and (b) of the definition of model aircraft stage 2 application day)

Item 11 amends the model aircraft stage 2 application day from 30 May 2022 to 30 September 2022.

Item 12 Subregulation 202.229(1) (paragraph (b) of the definition of model aircraft stage 2 application day)

Item 12 amends the model aircraft stage 2 application day from 30 November 2022 to 30 May 2023

Item 13 Subregulation 202.229(1) (definition of RPA application day)

Item 13 repeals the redundant definition of *RPA application day*.

Item 14 Subregulation 202.229(2)

Item 14 repeals the now redundant matters in the subregulation.

Item 15 Subregulation 202.229(3)

Item 15 amends the date in the subregulation from 1 March 2022 to 1 July 2022.

Item 16 Subregulation 202.229(4)

Item 16 repeals the subregulation.

Item 17 Subregulation 202.230 (1) (note)

Item 17 repeals the subregulation.

Item 18 Subregulation 202.231(1) (note)

Item 18 amends the date in the note from 1 March 2022 to 1 July 2022.

Item 19 Subregulation 202.231(2) (note)

Item 19 amends the date in the note from 30 May 2022 to 30 September 2022.

Item 20 Subregulation 202.231(3) (note)

Item 20 repeals the note.

Item 21 Paragraph 202.232(1)(a)

Item 21 amends the date in the paragraph from 26 April 2022 to 26 August 2022.

Item 22 Paragraph 202.232(1)(b)

Item 22 amends the reference in the subparagraph to reflect updated subparagraph numbering.

Item 23 Subregulation 202.232(2)

Item 23 amends the reference in the subparagraph to reflect updated subparagraph numbering.

Item 24 Subregulation 202.232(2) (table items 1 to 4)

Item 24 repeals the table items, and substitutes them with new dates.

Item 25 Subregulation 202.232(2) (notes 1 and 2)

Item 25 repeals the notes, substitutes it with a note that explains that the registration of an aircraft as a model aircraft under Division 47.C.2 on or after 1 September 2022, or any later day, generally ends 12 months after the day on which the aircraft begins to be so registered.

Item 26 Subregulation 202.232(3)

Item 26 amends the date in the subregulation from 1 March 2022 to 1 July 2022.

Item 27 Subregulation 202.232(3) (example)

Item 27 amends the date in the example from 15 March 2022 (14 days later than 1 March 2022)”, to “15 July 2022 (14 days later than 1 July 2022)”.

Item 28 Regulation 202.463 (note to the definition of model aircraft stage 1 application day)

Item 28 amends the date in the regulation from 1 March 2022 to 1 July 2022.

Item 29 Regulation 202.463 (note to the definition of model aircraft stage 2 application day)

Item 29 amends the date in the note from 30 May 2022 to 30 September 2022.

Item 30 Regulation 202.463 (definition of RPA application day)

Item 30 repeals the definition (including the note).

Item 31 Regulation 202.465

Item 31 repeals the regulation.

Item 32 Subregulation 202.466(1) (note 2)

Item 32 amends the date in the subregulation from 1 March 2022 to 1 July 2022.

Item 33 Subregulation 202.466(5) (notes 1 and 2)

Item 33 repeals the notes, and substitutes with a new note explaining the model aircraft stage 2 application day is 30 September 2022 (or a later day).

Item 34 Part 1 of the Dictionary (paragraph (b) of the definition of certificate of registration)

Item 34 repeals the paragraph, and substitutes it with a new paragraph defining a certificate of registration, in relation to an aircraft registered under Division 47.C.2, to be a certificate issued under paragraph 47.098(2)(b).

Item 35 Part 1 of the Dictionary (definition of giant model aircraft)

Item 35 omits the words ‘regulation 101.380’ and substitutes them with ‘regulation 101.024.’