

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Infrastructure, Transport, Regional Development and
Local Government

Civil Aviation Amendment (Part 149 Deferral) 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 accidents and incidents.

Subsection 98(1) of the Act provides 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 carrying out of, and giving effect to, the provisions of the Convention on International Civil Aviation 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 98(1) further provides that the Governor General may make regulations prescribing fees in relation to services, applications or requests under the Act, regulations, and Civil Aviation Orders.

The Act also confers on the Civil Aviation Safety Authority (CASA) the function of conducting the safety regulation of civil air operations for Australia including by developing and promulgating appropriate, clear and concise aviation safety standards and issuing certificates, licences, registrations and permits.

Part 149 of the *Civil Aviation Regulations 1998* (CASR) prescribes matters in relation to approved self-administering aviation organisations (ASAOs). Part 149 of the CASR includes the following key mechanisms:

- a requirement for organisations to hold an approval - an approved self-administering aviation organisation (ASAO) certificate - listing its approved aviation administration functions;
- organisations to satisfy certain requirements for the issue of an ASAO certificate, including that the applicant organisation can perform its proposed aviation administration functions safely, its key personnel have the required qualifications and experience, and that the organisation has developed an exposition which specifies the scope of operations and activities performed by the ASAO how the ASAO intends to comply with the proposed Regulations and associated Manual of Standards;
- requirements for organisations to maintain an appropriate structure to manage their approved functions and for organisations to ensure key personnel positions are filled by qualified, experienced and competent persons;
- requirements for an organisation to develop and maintain an exposition, including a safety management system and audit and surveillance system;
- regulatory requirements governing ASAO authorisations and enforcement and the timely provision of information and documents to CASA to ensure the safety of air navigation; and

- a process, to ensure the maintenance of procedural fairness, for CASA review of internal ASAO review decisions in respect of ASAO-issued authorisations.

The *Civil Aviation Amendment (Part 149 Deferral) Regulations 2022* (the Regulations) amends four provisions in Part 202 (Transitional regulations) of CASR that have the effect of extending the transition period for sport aviation bodies transitioning to become the holder of a Part 149 ASAO Certificate, from 13 July 2022 to 2 December 2023. This would allow those sport aviation bodies additional time to transition to be the holder of a Part 149 ASAO Certificate.

Regulation Impact Statement

A Regulation Impact Statement was prepared for the *Civil Aviation Legislation Amendment (Part 149 Deferral) Regulations 2018* legislation (OBPR ID: 21149) and CASA informed OBPR of the revised transition date with an assessment made that no amendment to the original RIS was required.

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:

- consider the economic and cost impact on individuals, businesses and the community of the standards; and
- 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 economic and cost impact of the instrument has been determined by:

- the identification of individuals and businesses affected by the instrument; and
- consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and
- a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government; and
- a valuation of the impact the different requirements 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; and
- consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The requirements of the Regulations relate to organisations that are currently in the process of transitioning to being the holder of a Part 149 certificate. An extension to the timeframe for organisations to complete this task will not adversely affect the safety of air navigation as most of

the existing sport aviation organisations have been operating to a regulatory scheme that has been in place for more than 60 years. CASA has assessed that there is no economic and cost impact of the Regulations because it would delay, by more than 15 months, the requirement to hold a Part ASAO 149 Certificate.

Impact on regional and remote communities

There will be no impact on regional and remote communities.

Consultation

There was no public consultation on the amendment to the Regulations. CASA considers public consultation was not necessary, because (a) one sport aviation body requested additional time to transition to a Part 149 ASAO Certificate, (b) on 5 October 2021, CASA informed sport aviation bodies of the proposal to extend the transition period, and they responded positively to that proposal. Further, in accordance with section 17 of the *Legislation Act 2003*, CASA conducted a public consultation on the originating policy being delayed by the Regulations. The public consultation was conducted during the period from 22 August to 21 October 2016. CASA received 76 submissions in response to the consultation.

Incorporation by Reference

No documents have been incorporated by reference.

Commencement and making

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

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

The provisions in Schedule 1 commence on the day after registration on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

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

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

Details of the proposed *Civil Aviation Amendment (Part 149 Deferral) Regulations 2022*

Section 1 - Name of Regulations

This section provides that the title of the Regulations would be the *Civil Aviation Amendment (Part 149 Deferral) Regulations 2022*.

Section 2 - Commencement

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

Section 3 - Authority

This section provides that the Regulations would be 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 would 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 would have effect according to its terms.

Schedule 1 - Amendments

Item [1] Subregulations 202.419T(3) (Application of Part 61 in relation to pilot certificates), 202.502(4) (Transitional—parachute descents authorised by CASA) and 202.503(2) (Transitional—manned free balloons).

Item 1 omits “the day that is 3 years after the day on which the Civil Aviation Legislation Amendment (Part 149) Regulations 2018 commenced”, and substitutes that with “1 December 2023.”

Item [2] Subregulation 202.861(2) (Transitional—aviation administration functions performed by certain sport aviation bodies).

Item 2 omits “the day that is 3 years after the commencement day”, and substitutes that with “1 December 2023”.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Civil Aviation Amendment (Part 149 Deferral) 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 149 of the *Civil Aviation Safety Regulations 1998* (CASR) prescribes matters in relation to approved self-administering aviation organisations (ASAOs).

The *Civil Aviation Amendment (Part 149 Deferral) Regulations 2022* (the Regulations) amends four provisions in Part 202 (Transitional regulations) of CASR that would have the effect of extending the transition period for sport aviation bodies transitioning to become the holder of a Part 149 ASAO Certificate, from 13 July 2022 to 2 December 2023. This would allow those sport aviation bodies additional time to transition to be the holder of a Part 149 ASAO Certificate.

Human rights implications

The Regulations do not engage with any human rights.

Conclusion

The Amendment Regulations are compatible with human rights because they do not affect the protection of human rights in any way different to the existing regulations.