

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA 66/24 — Operation of RPA Within 3 Nautical Miles of a Controlled Aerodrome (CASA-Verified Drone Safety App) Instrument 2024

##### Purpose

*CASA 66/24 — Operation of RPA Within 3 Nautical Miles of a Controlled Aerodrome (CASA-Verified Drone Safety App) Instrument 2024* (the **instrument**) approves areas, in the vicinity of certain controlled aerodromes, for the operation of remotely piloted aircraft (**RPA**) under regulation 101.030 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Also, the instrument issues directions under regulation 11.245 of CASR to a remote pilot who is registered, using a CASA-verified drone safety app, to be authorised to operate an RPA in a defined area, which is within an approved area, described on the app.

##### 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.

Paragraph 98(5A)(a) states that the Civil Aviation Safety Authority (**CASA**) may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft.

##### *RPA operations*

Under regulation 101.021 of CASR, an **RPA** is a remotely piloted aircraft, other than the following:

- (a) a balloon;
- (b) a kite;
- (c) a model aircraft.

Under Part 1 of the CASR Dictionary:

***air traffic control service*** has the same meaning as in Annex 11 to the Chicago Convention.

***controlled aerodrome***: an aerodrome is a ***controlled aerodrome*** at a particular time if, at that time, an air traffic control service is provided to aerodrome traffic.

***military aerodrome*** means an aerodrome controlled by a part of the Defence Force.

The designation of controlled aerodromes is made in the *Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument*, as in force from time to time, which is a legislative instrument revised and reissued by CASA approximately every 6 months. Controlled aerodrome information in the Determination in force at any particular time is also published by Airservices Australia (**AA**), ARN 202210 in the *Designated Airspace Handbook*.

For Subpart 101.F of CASR:

**approved area** means an area approved under regulation 101.030 as an area for the operation of RPA.

As far as is relevant, under subregulation 101.030(1), a person may apply to CASA for the approval of an area as an area for the operation of RPA. As far as is relevant, under subregulation 101.030(3), in considering whether to approve an area, CASA must take into account the likely effect on the safety of air navigation of the operation of unmanned aircraft in the area.

Under subregulation 101.072(1) of CASR, the *Part 101 Manual of Standards* (the **Part 101 MOS**) may prescribe requirements relating to the operation of unmanned aircraft in controlled airspace.

Subsection 4.03 (1) of the Part 101 MOS states:

- (1) Subject to this section, a person must not:
  - (a) conduct RPA operations; or
  - (b) fly an RPA;
 in the no-fly zone of a controlled aerodrome.

However, under subsection 4.03 (7), a person may fly a defined unmanned aircraft in the no-fly zone of a controlled aerodrome.

As far as is relevant, for Chapter 4 of the Part 101 MOS, **defined unmanned aircraft** is defined to mean an unmanned aircraft operated in accordance with an approval of an approved area under regulation 101.030.

As far as is relevant, for Chapter 4, **no-fly zone of a controlled aerodrome** is defined to mean any areas and airspace that are below 400 ft, and within 3 nautical miles, in any direction, from the measurement point of any runway of a controlled aerodrome. The term **measurement point** is defined in subsection 1.04 (2) of the Part 101 MOS.

#### *Directions*

Regulation 11.240 of CASR states that Subpart 11.G of CASR provides for the issue by CASA of directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245(1)(a), CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245(2) provides that CASA may issue such a direction:

- (a) only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation; and
- (b) only if the direction is not inconsistent with the Act; and
- (c) only for the purposes of CASA's functions.

Under paragraph 11.250(a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255 of CASR, it is an offence of strict liability to contravene a direction under regulation 11.245.

### *Documents incorporated by reference*

Under subsection 14(1) of the *Legislation Act 2003* (the **LA**), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the LA, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

However, subsection 98(5D) of the Act states 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, even if the other instrument or writing does not yet exist when the legislative instrument is made.

### **Background**

The instrument facilitates the continuation by CASA of its Automated Airspace Authorisation Trial (the **AAAT**), which CASA initiated in 2021 with the cooperation of AA. The initial instrument that facilitated the AAAT is *CASA 31/21 – Area Approval and Direction for Operation of RPA within 3 NM of Controlled Aerodromes using CASA-verified Drone Safety App-Canberra (YSCB), Adelaide (YPAD) and Perth (YPPH)*. There have been various iterations of that instrument since its making, including *CASA 03/24 – Area Approval for Operation of RPA within 3 NM of Controlled Aerodromes using CASA-verified Drone Safety App – Canberra (YSCB), Adelaide (YPAD), Perth (YPPH) and Sydney (YSSY) Instrument 2024 (CASA 03/24)*. CASA 03/24 is repealed at the end of 15 November 2024.

The AAAT applies only in relation to the operation of a nominated RPA with a gross weight of not more than 25 kg.

In the normal course, each RPA operator that wishes to operate an RPA below 400 ft above ground level and within 3 nautical miles of a controlled aerodrome needs to apply to CASA, under subregulation 101.030(1), for an approval to operate an RPA in the area. However, under the AAAT, once CASA has approved the area, a remote pilot who is an RPA operator, or member of the personnel of an RPA operator, may seek to utilise the approval. This is done by using a CASA-verified drone safety app to register to be authorised to operate an RPA in a particular operating area. The operating area is the segment of airspace described on the app, defined by reference to horizontal and vertical limits within the relevant approved area. The airspace authorisation is given in near-real time to an RPA operator using the app, subject to safety constraints. Each airspace authorisation generated by the app states the period during which the authorisation may be utilised, up to a maximum period of 24 hours.

A remote pilot who operates an RPA in accordance with an airspace authorisation must comply with the directions under regulation 11.245 stated in the instrument. In particular, the pilot must, during the RPA operation, comply with any operating limitations, relevant to the operation, which are notified to the pilot on the app in relation to the registration for the authorisation. Also, the pilot must conduct the operation only as an aerial work operation, as defined in regulation 138.010 of CASR.

The AAAT only applies in relation to certain controlled aerodromes (*relevant controlled aerodromes*), which are not military aerodromes, chosen by CASA in consultation with AA. Under CASA 03/24, the AAAT only applied in relation to Adelaide aerodrome, Canberra aerodrome, Perth aerodrome and Sydney aerodrome. In assessing which relevant controlled aerodromes may participate in the AAAT, CASA must be satisfied there will be an acceptable level of aviation safety in relation to operations of RPA in the vicinity of the aerodrome. CASA makes this assessment in conjunction with advice from AA.

For the purpose of continuing the AAAT, on application made by AA, CASA has approved under regulation 101.030 an area, described in the instrument, in the vicinity of each relevant controlled aerodrome for the operation of RPA. The approval applies in relation to all relevant controlled aerodromes, not only the aerodromes covered by CASA 03/24. The approval does not, of itself, enable a remote pilot to operate an RPA in an approved area. Rather, this is dependent on CASA assessing, and determining, in consultation with AA which additional relevant controlled aerodromes are appropriate to participate in the AAAT. In granting the approval, under subregulation 101.030(3), CASA has taken into account the likely effect on the safety of air navigation of the operation of unmanned aircraft in each area.

Also, once a relevant controlled aerodrome becomes a participant in the AAAT, the remote pilot must first be registered, using a CASA-verified drone safety app, to be authorised to operate a nominated RPA in the operating area, within the relevant approved area, described on the app. Also, the remote pilot must, when operating an RPA in the operating area, comply with the directions under regulation 11.245 stated in the instrument.

The term *operating area* is defined in the instrument as follows:

*operating area* means the segment of airspace described on a CASA-verified drone safety app, defined by reference to horizontal and vertical limits within a relevant approved area, in which an RPA may be operated under subsection 4.03 (7) of the Part 101 Manual of Standards.

An operating area is determined by reference to “digital facilities maps” compiled by AA. The maps display polygons that divide the airspace surrounding a relevant controlled aerodrome, to demonstrate the highest altitude in which an RPA may safely be operated in the airspace. The polygons are mathematically derived from historical flight data and applied collision-risk modelling, to achieve an acceptably low level of risk of a collision between an RPA with a manned aircraft in the airspace.

### **Content of instrument**

Section 1 of the instrument states the name of the instrument.

Section 2 of the instrument states the duration of the instrument.

Section 3 of the instrument contains definitions of terms used in the instrument.

Section 4 of the instrument approves each area, in the vicinity of certain controlled aerodromes, in which an RPA may be operated under regulation 101.030. In approving each area, CASA has taken into account the likely effect on the safety of air navigation of the operation of unmanned aircraft in the area.

Subsection 4(3) states that the operation of an RPA by a remote pilot in a relevant approved area is subject to the directions stated in section 5.

Section 5 states the directions, under regulation 11.245, which a remote pilot operating an RPA in an operating area must comply with. In issuing the directions, CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation.

### **Documents incorporated by reference**

The instrument incorporates the relevant RPA operator's documented practices and procedures. The instrument states the term *documented practices and procedures* has the meaning given by subsection 1.04 (2) of the Part 101 MOS. The term is defined in the subsection to mean, for a certified RPA operator, the written practices and procedures of the operator, as existing or in force from time to time, which have been approved in writing by CASA. Subsection 1.04 (3) states the requirements that apply in relation to the documented practices and procedures.

The documents containing the documented practices and procedures are not publicly, or freely, available. The documents are prepared, and used exclusively, by the relevant RPA operator, and will generally include commercial-in-confidence information about the operator's business. The documented practices and procedures are at the RPA operator-specific level and apply only to the operator and its personnel. The operator must give a copy of the documented practices and procedures, or any approved amendments of the practices and procedures, to the operator's remote pilots under paragraphs 1.04 (3) (d) and (e).

### **Legislation Act 2003**

Paragraph 98(5AA)(a) of the Act states that an instrument issued under paragraph 98(5A)(a) of the Act is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The directions in the instrument apply to a class of persons, being a remote pilot who operates an RPA in an operating area.

Accordingly, the instrument is a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

### **Sunsetting**

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument (in accordance with item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, the instrument will be repealed at the end of 30 November 2026, which will occur before the sunsetting provisions would have repealed the instrument, if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of the instrument.

### **Consultation**

Consultation under section 17 of the LA has not been undertaken in relation to the instrument.

However, in December 2021 and January 2022, CASA conducted a survey of RPA operators about the conduct of the AAAT. The overwhelming majority of the respondents to the survey supported the continuation of the AAAT.

Also, the instrument continues the effect of previous instruments that facilitated the conduct of the AAAT, including CASA 03/24. CASA 03/24 was registered on the Federal Register of Legislation as a notifiable instrument and, accordingly, did not need to be consulted on.

In these circumstances, CASA is satisfied that no further consultation is appropriate, or reasonably practicable, for the instrument for section 17 of the LA.

### **Sector risk, economic and cost impact**

Subsection 9A(3) of the Act states that subject to regarding the safety of air navigation as the most important consideration, in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, 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) that 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 obviates the need for an RPA operator to have to separately apply to CASA for an approval to operate an RPA in the vicinity of a relevant controlled aerodrome. This means the operator avoids having to pay CASA an application fee in relation to such an application. Since the AAAT started in 2021, this has meant a significant cost saving to the remote pilot aircraft system industry. Also, CASA avoids having to spend a lot of time administering the applications and issuing the approvals.

Also, as the instrument replaces an existing instrument (namely, CASA 03/24) with an instrument that achieves the same legislative outcomes, there will be no change to the economic or cost impact on individuals, businesses or the community by the instrument.

### **Impact on categories of operations**

The instrument is likely to have a beneficial impact in relation to some RPA operations, in the vicinity of a relevant controlled aerodrome, conducted by an RPA operator because, for these operations, the operator will not have to separately apply to CASA for an approval to operate an RPA in that area. Also, once a relevant controlled aerodrome becomes a participant in the AAAT, a remote pilot will be able, using a CASA-verified drone safety app, to register to be authorised to operate an RPA in a particular operating area in the vicinity of the aerodrome, without recourse to CASA.

### **Impact on regional and remote communities**

The instrument does not have an impact that is specific to regional and remote communities.

**Office of Impact Analysis (OIA)**

An Impact Analysis (*IA*) is not required for the instrument as the approval, and directions, stated in the instrument are covered by a standing agreement between CASA and OIA, under which an IA is not required for an approval or direction (OIA reference number OIA23-06252).

**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*. The instrument does not directly engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not directly raise any human rights' issues.

**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 16 November 2024 and is repealed at the end of 30 November 2026.

## Statement of Compatibility with Human Rights

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

### **CASA 66/24 — Operation of RPA Within 3 Nautical Miles of a Controlled Aerodrome (CASA-Verified Drone Safety App) Instrument 2024**

The 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 approves areas, in the vicinity of certain controlled aerodromes, for the operation of remotely piloted aircraft (**RPA**) under regulation 101.030 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Also, the instrument issues directions under regulation 11.245 of CASR to a remote pilot who is registered, using a CASA-verified drone safety app, to be authorised to operate an RPA in a defined area, which is within an approved area, described on the app.

#### **Human rights implications**

The 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*. The instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The 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*.

**Civil Aviation Safety Authority**