

EXPLANATORY STATEMENT

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

Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019

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. Subsection 98(1) 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 (the Chicago Convention) 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 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.

The purpose of the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* (the Regulations) is to amend the *Civil Aviation Safety Regulations 1998* (CASR), primarily to insert the following new CASR Parts:

- Part 103 – Sport and recreation aircraft;
- Part 105 – Parachuting from aircraft; and
- Part 131 – Balloons and hot air airships.

The Regulations also make consequential amendments to the existing Part 91 of CASR, which was made in December 2018 and commences in March 2021.

With the commencement of Part 149 of CASR on 14 July 2019, a formal regime for the regulatory oversight of organisations that administer sport and recreational aviation activities (Approved Self-Administering Aviation Organisations - ASAOs) came into being. Part 149 improves aviation safety through the introduction of a consistent framework for self-administration that requires each organisation to ensure its activities are not likely to have an adverse effect on the safety of air navigation. All activities conducted under Part 103 and Part 105, and sport and recreational activities conducted under Part 131, are subject to ASAO administration.

In addition, Part 131 establishes a scheme for the regulation of commercial aviation activities in hot air balloons.

The Regulations complete the suite of flight operations regulations and work in conjunction with Parts 91, 119, 121, 133, 135 and 138 of CASR that were made in December 2018 and commence on 25 March 2021.

Part 103 of CASR

In conjunction with the proposed Part 103 Manual of Standards (MOS), Part 103 has been designed to be a non-complex rule set that builds on the general operating rules in Part 91 to accommodate the unique characteristics relevant to the operation of Part 103 aircraft. It applies to aircraft that are defined as “Part 103 aircraft” and to the operation of any aircraft used for the towing of a Part 103 aircraft. Part 103 does not apply to the operation of a Part 103 aircraft if Part 132, 133, 135 or 137 applies to the operation. These exclusions continue the previous scheme under applicable 95-series Civil Aviation Orders.

The CASR Part 103 includes rules that:

- set out what aircraft are “Part 103 aircraft”:
A Part 103 aircraft means an aircraft not registered under Part 47 of CASR that is one of the following: a powered parachute, gyroglider, hang glider or powered hang glider, paraglider or powered paraglider, a rotorcraft prescribed by the Part 103 MOS, a weight-shift-controlled aeroplane prescribed by the Part 103 MOS or any other aeroplane prescribed by the Part 103 MOS. The exception is a sailplane (being a powered sailplane, power-assisted sailplane or touring motor glider) which is required to be registered under Part 47 of CASR and is a Part 103 aircraft;
- provide administrative mechanisms for:
 - the registration (termed “listing” to avoid confusion with registration under Part 47) with an ASAO of Part 103 aircraft that are not registered under Part 47,
 - the setting of airworthiness standards (for Part 103 aircraft to which Part 21 of CASR does not apply) by an ASAO and the acceptance of an aircraft against those standards by the ASAO,
 - identification markings for Part 103 aircraft not registered under Part 47;
- define what constitutes a Part 103 activity;
- require a person to hold an authorisation to undertake a Part 103 activity;
- prescribe flight rules for Part 103 aircraft that are additional or different to Part 91 flight rules;
- provide for the instruments, equipment and systems to be fitted to Part 103 aircraft; and
- govern the towing of Part 103 aircraft by other aircraft.

Part 103 modifies the Part 91 rules, where appropriate, to incorporate adjustments specific to Part 103 aircraft. Whilst some Part 91 rules have been expressly disapplied in relation to Part 103, there are Part 91 rules that, whilst not expressly disapplied for Part 103 aircraft (in amendments to regulation 91.030), in practice do not apply due to inherent physical characteristics of Part 103 aircraft. One example is the requirement in regulation 91.075, prohibiting aircraft operations at transonic or supersonic speeds. Such Part 91 requirements are contingent on the aircraft being affected in that manner or capable to perform in that manner. In the example above, Part 103 aircraft cannot physically operate at these speeds. Such Part 91 requirements have not been expressly disapplied because the prohibited conduct cannot be achieved by a Part 103 aircraft.

The requirements of Civil Aviation Orders 95.4, 95.4.1, 95.8, 95.10, 95.12, 95.12.1, 95.32 and 95.55 are to be consolidated in the proposed Part 103 MOS.

Part 105 of CASR

Part 105 applies to all parachute descents from aircraft in Australia conducted using a personnel parachute. The Part does not apply to emergency parachute descents, parachute descents that are not from aircraft and parachute descents from State aircraft.

In conjunction with the proposed Part 105 MOS, the Part consolidates all existing legislative requirements (operations, maintenance, personnel, aircraft and equipment) applicable to parachuting from aircraft. It sets out detailed requirements for the conduct of defined parachuting activities, including training, parachute maintenance and defect reporting, pilot requirements and related activities, as well as parachuting specific operating rules that are additional to the rules of Part 91.

The Part replaces previous rules under regulation 152 of the *Civil Aviation Regulations 1988* and instruments made under that regulation.

The existing legislative instruments that impose requirements in relation to parachuting are instruments CASA 263/02, CASA 36/19, CASA 11/17, CASA 84/18 and Civil Aviation Order 20.16.3. A number of the requirements of these instruments are incorporated within Division 105.C.6 (Miscellaneous requirements), Subpart 105.D (Operational requirements), and Subpart 105.K (Instruments, indicators, equipment and systems). The other requirements are to be included in the proposed Part 105 MOS.

The Regulations continue the application of these instruments after the commencement of Part 105 until the repeal of the transitional Part 149 provisions that currently enable sport aviation bodies to perform aviation administration functions without an ASAO certificate. That date is three years after the day on which Part 149 of CASR commenced, being 13 July 2022.

The Part 105 provisions:

- define certain actions undertaken by a person in relation to parachuting as a parachuting activity, such that those actions can be administered by an ASAO whose approved aviation administration functions include administering parachuting activities;
- include requirements for defect reporting, equipment standards and operational requirements for reserve parachutes (carried by parachutists) and emergency parachutes (carried by pilots of parachuting aircraft or pilots of aircraft administered by an ASAO);
- prescribe the kinds of, and requirements to be met by, aircraft used for the purpose of facilitating a parachute descent;
- prescribe the qualifications, aeronautical experience and flight time requirements that must be met by the pilot-in-command of an aircraft used for the purpose of facilitating a parachute descent. These are, in the main, consistent with the requirements presently specified in the operations manuals of sport aviation bodies, but are expressed as a standardised set of requirements for all parachuting pilots, irrespective of the ASAO to which they are affiliated;
- create a head of power for the Part 105 MOS to prescribe requirements to manage the risk of fatigue in persons exercising a duty in relation to the operation of a parachuting aircraft. These requirements would mitigate the risk of fatigue impairment of persons with such operational duties;
- create a head of power for the Part 105 MOS to prescribe requirements in relation to the loading of a parachuting aircraft. These requirements would mitigate the risk of loss of control of parachuting aircraft that may result from improper loading; and
- bring parachutists, drop zone safety officers and manufacturers and maintainers of reserve and emergency parachutes within the scope of persons subject to drug and alcohol testing by CASA under Subpart 99.C of CASR.

Part 131 of CASR

Part 131 applies to manned free balloons and hot air airships, both being lighter-than-air aircraft capable of controlled free flight. These aircraft are, for the purposes of Part 131, collectively defined as “Part 131 aircraft”. Part 131 also prescribes matters for tethered gas balloons, being

lighter-than-air balloons filled with gas that are intended for tethered flight only. The definitions relevant to Part 131 are set out in the Dictionary to the CASR as well as set out in Part 5 of the *Civil Aviation Regulations 1988* (CAR) – these terms include: airship, balloon, manned free balloon and tethered.

Part 131, in conjunction with the proposed Part 131 MOS, largely consolidates existing requirements contained in CAR, including regulations 259 and 260, as well as a range of Civil Aviation Orders dealing with requirements or exemptions for manned balloon operations. The Part 131 provisions, including the Part 131 MOS, broadly reflect current requirements although some modifications are made to reflect modern legislative and operational best practice.

Part 131, which contains the balloon-specific operational flight rules, and works together with Part 91 to describe all the general operating and flight rules for Part 131 aircraft. Part 131 also details the requirements for the granting of and management of an air operators' certificate (AOC) for balloon transport operations.

Whilst some Part 91 rules have been expressly disappplied in relation to Part 131 (in amendments to regulation 91.030), there are other Part 91 rules that in practice do not apply due to inherent physical characteristics of Part 131 aircraft. Examples include provisions regulating the conduct of aerobatic manoeuvres (regulation 91.185) or flight in icing conditions (regulations 91.705 and 91.710). These Part 91 rules are contingent on the aircraft being affected in that manner or capable to perform in that manner. In these examples, Part 131 aircraft cannot physically conduct aerobatic manoeuvres and also do not have wings or a fuselage that could be affected by frost or ice – therefore, even if these Part 91 requirements have not been expressly disappplied, the prohibited conduct cannot be achieved by a Part 131 aircraft. Similarly, the requirement in regulation 91.075, prohibiting aircraft operations at transonic or supersonic speeds, cannot apply to Part 131 aircraft even though the provision is not expressly disappplied.

Both Part 91 and Part 131 provide that for the purposes of subsection 98 (5A) of the Act, CASA may issue a MOS for the Part. For ease of understanding and compliance with Part 131 rules, any Part 91 rules that also rely on a Part 91 MOS power are disappplied by Part 131 and an equivalent Part 131 MOS power is provided for the relevant rules to be consolidated into the Part 131 MOS.

Separately, Part 131 also introduces the new concepts of “balloon transport operation” (regulation 131.010) and “specialised balloon operation” (regulation 131.020). These concepts replace the current charter, regular public transport and aerial work classifications of operations in regulation 206 of CAR.

A balloon transport operation is a passenger transport operation (itself a defined term made in the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019* to be inserted in the Dictionary to CASR on 25 March 2021) that is conducted in Australia for hire or reward using a Part 131 aircraft. Operators conducting balloon transport operations are required to hold a balloon transport AOC in accordance with Subpart 131.B.

Operators conducting a specialised balloon operation – which is the conceptual equivalent to aerial work operations in a ballooning context – are required to hold a Part 131 approval granted by CASA. These specialised balloon operations include: operations involving the carriage or fitment of specialised instruments, indicators, items of equipment or systems to the Part 131 aircraft that affect the flight characteristics of the aircraft; carrying a load (except for a hang glider) outside the Part 131 aircraft; operating the aircraft for advertising, or making a film or television production solely or predominantly for hire or reward; a flight into or out of Australian territory; or another activity prescribed by the Part 131 MOS.

For the purposes of the Part 149 scheme mentioned above, Part 131 introduces the concept of a “Part 131 recreational activity”, being defined in regulation 131.025 as operating a Part 131 aircraft other than for a balloon transport operation or for a specialised balloon operation. These recreational activities are presently administered by a sport aviation body (the Australian Ballooning Federation (ABF)) in accordance with Civil Aviation Order 95.54.

Subpart 131.R requires persons undertaking a Part 131 recreational activity to hold a “Part 131 pilot authorisation” which is defined in the CASR Part 1 Dictionary as including a commercial pilot (balloon) licence or an authorisation from a Part 131 ASAO that authorises the holder to operate a Part 131 aircraft. The latter authorisation is currently administered by the ABF and issued as a private pilot certificate.

The Part 131 regulations introduce a small number of new requirements for operators of Part 131 aircraft as listed below.

- The rules governing the granting and management of an AOC have been aligned where appropriate with Part 119 (Australian air transport operators – certification and management): Subpart 131.B requires operators conducting balloon transport operations to have an exposition detailing the organisation’s structure, key personnel and procedure for making changes as well as detailing standard operational procedures.
- Some balloon flying activities currently captured as commercial aerial work purposes in regulation 206 of CAR, and requiring the operator to hold an AOC, have been redefined as specialised balloon operations that will only require a CASA approval under regulation 131.035. The exception is balloon flying training, within the meaning of subregulation 5.01(1) of CAR, for the grant of a flight crew licence or rating which will continue to be regulated under the CAR Part 5 provisions subject to later review.
- International operations with balloons are designated as specialised balloon operations requiring a regulation 131.035 approval. This provides a clear process for approving balloon flight record, or around the world balloon flight, attempts.
- Part 131 applies to balloons whether hot air, gas or mixed and includes hot air airships. Current provisions in the CAR and CAOs have very few provisions for balloons other than hot air balloons – notably, hot air airships are only mentioned in CAO 95.54 for private operations.

Additional requirements are intended to be introduced through the Part 131 MOS that will prescribe the detailed, complex and technical material. The MOS will be developed in consultation with industry stakeholders in late 2019 and 2020.

Balloon pilot licensing for the commercial pilot licence (balloon), including an instructor and examiner rating, will be a separate body of policy work to be addressed and consulted in the future. Subpart 131.S has been reserved for that purpose, subject to the future body of policy work. In the meantime, the balloon licensing provisions of CAR and the Civil Aviation Orders (the CAOs) will continue to apply.

The policy for the continuing airworthiness of Part 131 aircraft and the training and authorising of Part 131 aircraft maintenance personnel will be developed in consultation with CASA’s airworthiness and engineering technical experts and the ballooning industry. A Subpart 131.M has been reserved for this purpose, subject to this future body of policy work. In the meantime, the existing maintenance and engineering provisions applicable to balloons in CASR, CAR and CAOs will continue to apply.

Finally, Subpart 131.Z is intended to be a standalone subpart within Part 131 that regulates only tethered gas balloons. No other flight operating rules in Part 131 or Part 91 apply to tethered gas

balloons. These kinds of balloons are not intended for free flight and are used predominantly as a fixed aerial viewing platform. The subpart sets out requirements for operating at night, requirements for fitment of a rapid deflation device, and procedures for handling an escaped balloon. The subpart also prohibits operation of such balloons in cloud. Other particular requirements may be prescribed by CASA in the Part 131 MOS.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, CASA consulted on the proposed changes. The Amendment Regulations were publicly consulted in September 2019 through separate processes for each of Parts 103, 105 and 131. In each case the consultation process has involved a series of consultations with relevant industry stakeholders.

Part 103 consultation

Prior to 2019, significant consultations on Part 103 were conducted in 2006 with CASA publishing a policy framework for Sport and Recreational Aviation Operations under self-administration. A total of 1075 individuals responded to that proposal. Only 10 responses had serious objections to the approach, whilst over 900 responses gave the proposals complete support. Implementation of the Part was paused in favour of early introduction of some of the Part 103 proposals by extending the exemptions and applicable conditions to the existing CARs in the applicable 95-series CAOs. These changes were introduced in 2007.

Subsequent policy development for the proposed Part 103 of CASR focused on:

- modifications to support the three-tier regulatory framework that added the MOS to the Act and CASR; and
- integration of the Part with CASR Parts 61, 91, 131 and 149.

In March 2019 the Aviation Safety Advisory Panel (ASAP) agreed that CASA should conduct direct engagement with industry regarding Part 103. CASA contacted relevant Part 103 industry associations before the consultation period and convened two industry briefing sessions for those associations during the consultation period.

The September 2019 public consultation on the Part 103 provisions attracted 24 responses. The majority of responses expressed support for the Part 103 provisions or suggested minor changes or clarifications. In response to the consultation changes were made to provisions relating to the application of the Part, airworthiness standards and the simulation of Instrument Meteorological Conditions flying.

The Office of Best Practice Regulation (OBPR) has confirmed that the impacts of the Part 103 measures in the Regulations are likely to be no more than minor and that no further analysis in the form of a Regulation Impact Statement is required (OBPR ID: 25640).

Part 105 consultation

Prior to 2019, substantial consultation on Part 105 was conducted in 1998 and 2006 with CASA publishing a policy framework for parachuting operations under self-administration. While the policy development was largely settled, the development of the accompanying draft regulation was incomplete.

Subsequent policy development for the proposed Part 105 of CASR focused on:

- modifications to support the three-tier regulatory framework;
- integration of the Part with CASR Parts 61, 91, 103, 131 and 149;

- the introduction of a framework for the regulatory oversight of fatigue in persons involved in parachuting aircraft operations;
- a framework for the loading of parachuting aircraft; and
- the expansion of the coverage of CASA drug and alcohol testing regime under Part 99 of CASR to include persons undertaking or supervising parachute descents and maintainers of reserve and emergency parachutes.

In March 2019 the ASAP agreed that CASA should conduct direct engagement with industry regarding Part 105. CASA contacted the two parachuting administration bodies prior to the consultation process and provided with advance copies of the draft regulation, with invitations to receive briefings on the regulations from CASA.

The September 2019 public consultation on the Part 105 provisions attracted 15 responses. The responses expressed support for the Part 105 provisions or proposed minor changes. In response to the consultation, changes were made to the definition of major defect in a reserve or emergency parachute and to recognise flight time of a pilot in command under supervision.

The OBPR has confirmed that the impacts of the Part 105 measures in the Amendment Regulations are minor and that no further analysis in the form of a Regulation Impact Statement is required (OBPR ID: 25648).

Part 131 consultation

Following consultations in 2008, and industry collaboration on drafting the new Part in 2015, in March 2019, the ASAP agreed that CASA should conduct direct engagement with industry regarding Part 131. The Part 131 measures were publicly consulted in September 2019. CASA gave prior notice of the consultation process to commercial balloon operators and an advance copy of the consultation draft of the regulations to the ABF. An industry briefing session was convened during the consultation period to provide further information about the draft regulation.

The September 2019 public consultation on the Part 131 provisions attracted 61 responses. A substantial majority of responses expressed concerns that:

- the ballooning rules relied on the application of the Part 91 rules and did not comprise a standalone ruleset for ballooning activities; and
- the requirements to be set out in the Part 131 MOS were not consulted with the draft Regulations.

Work on the Part 131 MOS will take place via a working group of technical experts drawn from industry and CASA in late 2019 and early 2020. This body will also assist CASA to develop additional measures for the Part 131 regulations. Appropriate guidance material will also be developed by CASA to assist industry understanding of the regulatory scheme applicable to Part 131 operations in a holistic manner.

A RIS in relation to Part 131 measures was assessed by the OBPR as compliant with the government's requirements and that the RIS was consistent with best practice (OBPR ID: 25643).

A copy of the RIS for Part 131 is at [Attachment A](#).

CASA has otherwise considered the regulatory impacts of the measures in the course of developing the Regulations.

Incorporation by Reference

In accordance with paragraph 15J(2)(c) of the *Legislation Act 2003* and subsection 98(5D) of the Act, the Regulations apply, adopt or incorporate matters contained in the following instruments, which are detailed further below:

Part 103

- Part 103 MOS

Part 105

- Part 105 MOS
- Instrument CASA 263/02
- Instrument CASA 36/19
- Instrument CASA 11/17
- Instrument CASA 84/18
- Civil Aviation Order 20.16.3
- Civil Aviation Order 95.54

Part 131

- Part 131 MOS
- Aircraft flight manual instructions
- Aeronautical Information Publication (AIP).

Subsection 98(5D) of the Act permits a non-legislative instrument to be incorporated as in force or existing at a particular time or from time to time, including a non-legislative instrument that does not exist when the legislative instrument is made.

Each incorporated document is described below for the 3 new Parts inserted into CASR by the Regulations, together with the manner of incorporation and how the document may be obtained.

Documents incorporated by reference for the Part 103 provisions

Part 103 MOS:

When made, the Part 103 MOS is a legislative instrument that prescribes matters for purposes stated in the Regulations. The Regulations incorporate the Part 103 MOS as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*. When made, the Part 103 MOS will be freely available on the Federal Register of Legislation.

Documents incorporated by reference for the Part 105 provisions

Part 105 MOS:

When made, the Part 105 MOS is a legislative instrument that prescribes matters for purposes stated in the Regulations. The Regulations incorporate the Part 105 MOS as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*. When made, the Part 105 MOS will be freely available on the Federal Register of Legislation.

CASA 263/02:

CASA 263/02 is a legislative instrument that authorises and provides specifications for members of the Australian Skydiving Association to make parachute descents if, and only if, the descents are conducted in accordance with the prescribed specifications in the instrument. CASA 263/02 is incorporated as in force from time to time for the purposes of subregulation 202.502(1) of CASR, and immediately before the commencements of the amending regulations for the purposes of subregulation 202.502(3) of CASR. CASA 263/02 is freely available on the Federal Register of Legislation at: <https://www.legislation.gov.au/Details/F2005B02749>.

CASA 36/19:

CASA 36/19 is a legislative instrument that provides an authorisation for the making of parachute descents by the Australian Parachute Federation Ltd. CASA 36/19 is incorporated as in force from time to time for the purposes of subregulation 202.502(1) of CASR, and immediately before the commencements of the amending regulations for the purposes of subregulation 202.502(3) of CASR. CASA 36/19 is freely available on the Federal Register of Legislation at: <https://www.legislation.gov.au/Details/F2019N00064>.

CASA 11/17:

CASA 11/17 is a legislative instrument that provides a direction to aircraft engaged in parachute training operations by member organisations of the Australian Skydiving Association. CASA 11/17 is incorporated as in force from time to time for the purposes of subregulation 202.502(1) of CASR. CASA 11/17 is freely available on the Federal Register of Legislation at: <https://www.legislation.gov.au/Details/F2017L00093>.

CASA 84/18:

CASA 84/18 is a legislative instrument that provides a direction for the conduct of parachute training operations. CASA 84/18 is incorporated as in force from time to time for the purposes of subregulation 202.502(1) of CASR. CASA 84/18 is freely available on the Federal Register of Legislation at: <https://www.legislation.gov.au/Details/F2018L01650>.

Civil Aviation Order 20.16.3

Civil Aviation Order 20.16.3 is a legislative instrument that regulates the carriage of persons on air service operations. It is incorporated as in force immediately before 25 March 2021. Civil Aviation Order 20.16.3 is freely available on the Federal Register of Legislation at: <https://www.legislation.gov.au/Details/F2009C00628>.

Civil Aviation Order 95.54

Civil Aviation Order 95.54 is a legislative instrument that applies to manned balloons, either free or tethered, and hot air airships used solely in private operations for recreational purposes. It is incorporated as in force for a period of 3 years after the day on which the *Civil Aviation Legislation Amendment (Part 149) Regulations 2018* commence. Civil Aviation Order 95.54 is available on the Federal Register of Legislation at: <https://www.legislation.gov.au/Details/F2006C00329>.

Documents incorporated by reference for the Part 131 provisions

Part 131 MOS:

When made, the Part 131 MOS is a legislative instrument that prescribes matters for purposes stated in the Regulations. The Regulations incorporate the Part 131 MOS as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003*. When made, the Part 131 MOS will be freely available on the Federal Register of Legislation.

Aircraft flight manual instructions:

“Aircraft flight manual instructions”, for an aircraft, is defined for the CASR Dictionary by the *Civil Aviation Safety Amendment (Operations Definitions) Regulations 2019*.

The aircraft flight manual instructions for a Part 131 aircraft comprise: the flight manual for the aircraft; checklists of normal, abnormal and emergency procedures for the aircraft; and any operating limitation, instructions, markings and placards relating to the aircraft. The instructions comprise information required to safely operate the specific aircraft. Instructions are incorporated as they exist from time to time, in accordance with subsection 98(5D) of the Act and consistent with the definition of “flight manual” in clause 37 of Part 2 of the CASR Dictionary.

The aircraft flight manual instructions for an aircraft are proprietary to the owner of the aircraft design (usually the manufacturer). The incorporated requirements of the aircraft flight manual instructions are at the aircraft-specific level, and instructions are required to be provided to owners/registered operators of aircraft. These documents are often publicly available, posted on the manufacturer’s website, or made available free of charge. In some cases a fee may be charged by persons who have a proprietary interest in the documents. Where available, and by prior arrangement, CASA will make aircraft flight manual instructions for a Part 131 aircraft available for inspection at any CASA office.

Aeronautical Information Publication (AIP):

The AIP is published by Airservices Australia as an Aeronautical Information Service provider, under the *Air Services Regulations 1995*, to disseminate information relevant to aviation participants on matters essential to safe air navigation that are of lasting relevance. Some parts of the AIP are underpinned by legislative instruments, while other parts are not. In accordance with subsection 98(5D) of the Act, the AIP is incorporated into the Regulations as the AIP exists and is published by Airservices Australia from time to time. The AIP is freely available on the AA website www.airservicesaustralia.com/aip/aip.asp.

Criminal law issues

The Regulations provide for 135 offences of strict liability, which are outlined in the Statement of Compatibility with Human Rights at Attachment B.

Consistent with the principles set out in the Attorney-General’s [A Guide to Framing Commonwealth Offices, 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 offences are considered reasonable, necessary and proportionate to the objective of ensuring aviation safety. In this regard, the offences are regulatory in nature, in other words their aim is to insist on reasonable compliance with regulated safety standards by those conducting activities which are otherwise intrinsically or potentially unsafe unless such high standards of compliance are met. Not having to prove fault in the relevant circumstances aims to provide a strong deterrent. To this extent, and in this context, they

are consistent with other safety-focussed regulatory regimes and do not unreasonably or impermissibly limit the presumption of innocence. The offences are designed to achieve the legitimate objective of ensuring the integrity of the overall aviation safety regulatory scheme by promoting compliance and deterring non-compliance.

The rationale is that people who owe general safety duties should be expected to be aware of their duties and obligations. In the context of the rules for the conduct of the parachuting, sport and recreational aviation activities, and ballooning activities, a defendant to a prosecution can reasonably be expected to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

For strict liability offences in the Regulations, the prosecution will have to prove only the conduct of the accused. 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.

The Regulations also contain 14 provisions that reverse the evidential burden of proof in relation to prescribed defences to strict liability offences (“offence-specific defences”). Consistent with section 4.3.1 of the AGD Guide, the provisions have been included in the Regulations because they relate to matters that are peculiarly within the knowledge of a defendant and/or would be significantly more difficult and more costly for the prosecution to disprove than for the defendant to establish the matter.

Details and justification of the offence-specific defences are provided in the Statement of Compatibility with Human Rights at Attachment B.

In practice, any enforcement action contemplated by CASA is subject to the provisions of CASA’s “just culture” policy as set out in CASA’s Regulatory Philosophy.

Statement of Compatibility with Human Rights

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

Commencement and making

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Regulations are set out at Attachment C.

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

The provisions of the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* commence on 25 March 2021 concurrently with Part 91. The deferred commencement will provide time to prepare for the commencement of the Regulations.

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

Regulation Impact Statement

Regulatory Requirements for Ballooning to be included in Part 131 of the Civil Aviation Safety Regulations

1 Summary

The Australian commercial charter and aerial work balloon industry is relatively small with only 25 businesses operating commercial hot air balloons employing approximately 100 licensed commercial balloon pilots. The recreational ballooning industry has almost 200 private pilots, there are approximately 440 registered balloons in Australia and approximately 50 balloon maintenance authority holders.

The Australian commercial ballooning industry has not experienced any fatal flying accidents over the last 20 years. However, in 2013 there was a ground fatality. The last fatal flying accident was in October 1989 when a charter balloon flight collided with a powerline resulting in the deaths of a passenger and the pilot. In August 1989 there was a mid-air collision between two commercial balloons resulting in the deaths of 13 individuals.

Whilst there have been no fatal flying accidents over the last 20 years there have been a number of safety occurrences that have highlighted the safety risk of charter balloon operations.

The regulatory requirements currently applying to the commercial ballooning industry are relatively light, particularly when compared to businesses operating other types of aircraft that carry fare paying passengers, such as fixed wing aeroplanes or helicopters, who are either currently or will be required to have an exposition, a safety management system and a training and checking organisation.

As part of a regulatory reform process, CASA has reviewed the requirements applying to private/recreational and commercial ballooning. As part of the review CASA is now proposing to amend the Civil Aviation Safety Regulations 1998 (CASR) to apply relevant regulatory provisions to balloon operations and to create a new Part 131 of CASR that sets out regulatory requirements that are specific to balloon operations.

Whilst most of the regulatory requirements that currently apply to private/recreational and commercial ballooning will be transitioned to the CASR without significant change, CASA is proposing to require commercial balloon operators to adopt an exposition that sets out the operator's procedures for all aspects of its flying operations. This is estimated to have an industry wide (25 operators) upfront cost of approximately \$62 500. The benefit of an exposition is that it will provide a single source of information for the balloon operators' operational procedures.

Negative feedback was received from affected businesses during the public consultation of the proposed regulations due to the consultation not containing the subordinate Manual of Standards (MOS) that sets out many detailed regulatory requirements. However, this inclusion was not required and CASA is already legally obligated under Part 11 of CASR to consult on any new (or amended) MOS. The plan for this to occur in 2020 was outlined in the public consultation documents. CASA will setup an industry technical working group to help develop the Part 131 MOS and address any concerns about the administration of the proposed requirements.

2 Background/Problem

The Australian commercial balloon industry is relatively small with only 25 businesses operating commercial hot air balloons and employing approximately 100 licensed commercial balloon pilots¹. However, these operators carry about 140 000 passengers a year on scenic flights. The recreational ballooning industry has almost 200 private pilots (some of whom may also hold a commercial licence), there are approximately 440 registered balloons in Australia and approximately 50 balloon maintenance authority holders.

The regulatory requirements applying to the commercial ballooning industry are relatively light, particularly when compared to businesses operating other types of aircraft that carry fare paying passengers, such as fixed wing aeroplanes or helicopters, who are either currently or will be required to have an exposition, a safety management system and a training and checking organisation.

Balloon activity in Australia also includes an active sport and recreational sector administered by the Australian Balloon Federation Inc (ABF) currently under a deed of agreement with CASA, but intended to be administered under CASR Part 149 in the future. There are currently 252 members of the ABF, of which 192 are private pilots.

International context

CASA has considered the existing standards and future directions of several international aviation regulators, the US Federal Aviation Administration, the European Union Aviation Safety Agency (EASA), Transport Canada and the New Zealand CAA. Whilst the operational requirements, pilot licensing and airworthiness requirements are broadly comparable, there are some differences, particularly in terms of operator approval.

The requirements of the FAA and EASA are more liberal or less restrictive in terms of not requiring a specific operator approval. Whilst the EASA standards do not require a specific approval to be issued, operators wishing to engage in commercial passenger transport must declare to the competent authority their capacity and means to discharge the responsibilities associated with the operation of the balloon. Operators are required to have a management system and to conduct operations in accordance with their declared operations manual and are subject to surveillance from the relevant authority. CASA has considered the FAA and EASA approach for both passenger carrying and aerial work operators, but careful consideration is needed to ensure that such an approach is consistent with CASA's regulatory philosophy and the Minister's statement of expectations that highlights having protection for fare paying passengers.

The UK CAA, Transport Canada and NZ CAA require commercial balloon operators to be approved. *The UK requires an AOC, Transport Canada requires a Special Flight Operations Certificate and NZ CAA requires the business to be approved as a commercial adventure*

¹ As of July 2019 there were 114 individuals issued with a commercial balloon pilot licence. Based on a 2018 survey and audit of commercial balloon operators CASA estimates that 100 are employed by a commercial balloon operating business.

operator. The NZ CAA recently introduced Civil Aviation Rule Part 115 that put additional requirements on commercial adventure operators and subjects them to the same audits and expectations like those placed on small aircraft operators.

The NZ Transport Accident Investigation Commission found that Part 115 *is a good mechanism for balloon operators to improve the safety of operations, and for the CAA to maintain appropriate oversight of the industry.*²

2.1 Safety risk

The private recreational balloon sector has had no fatal accidents in modern times. Over the period from May 2011 to August 2019 there were only nine accidents or incidents reported to the ATSB for private ballooning.

The Australian commercial ballooning industry has not experienced any fatal flying accidents over the last 20 years. However, in 2013 there was a ground fatality caused by a scarf becoming entangled in an inflation fan. The last fatal flying accident was in October 1989 when a charter balloon flight collided with a powerline resulting in the deaths of a passenger and the pilot. In August 1989 there was a mid-air collision between two commercial balloons resulting in the deaths of 13 individuals.

Whilst there have been no fatal flying accidents over the last 20 years there have been a number of safety occurrences that have highlighted the safety risk of passenger balloon operations. Over the period from January 2000 to October 2019 there were:

- 245 safety occurrences
- 36 serious incidents
- 38 accidents.

Appendix A provides further information on definition of safety occurrences.

The three most common types of occurrences were collisions with terrain, striking power-lines and hard landings (Table 1).

Table 1: Frequency of occurrence type

Type of occurrence	Number
Terrain Collisions	62
Power-line Strikes	30
Hard Landing	27
Weather	24

² CAA response: TAIC Final Report into the Carterton Balloon Accident October 2013

Collisions with Terrain

These types of occurrences are the result of the balloon striking an object, for example a tree, a building, or a pole. To provide an example of the type of Collision with Terrain occurrence resulting in injuries to passengers:

During the cruise, the weather conditions deteriorated, so the pilot conducted a precautionary landing. The pilot could not control the balloon's rate of descent and the basket struck a tree and powerlines before the pilot could activate the smart vent and land the balloon. Two passengers suffered serious injuries and several passengers suffered minor injuries. The balloon was seriously damaged.

There are also collisions with terrain that do not result in injuries. To provide an example of the type of Collision with Terrain occurrence that did not result in injuries:

During the landing phase the balloon encountered a 12 kt wind which resulted in the basket impacting the corner of some steel framework located in the middle a paddock. This caused the basket to swing around the structure and stop 15 metres away. The top frame of the basket sustained minor damage.

Whilst collisions with terrain are the most common type of safety occurrence, in general they do not result in injuries, with injuries only occurring in approximately 10% of these types of occurrences. However, as indicated by the above examples they often result in varying degrees of damage to the balloon.

Striking power-lines

Of particular concern from the safety occurrence data was the number of reported power-line strike accidents/incidents. An example of a power-line strike is the following:

During descent, the balloon's basket struck a powerline, dislodging it from the support pole.

There were a reported 34 strikes of powerlines with either the basket or envelope of the balloon and a further 4 near-misses. Further ATSB research indicates that the actual number of powerline strikes for all aviation activities could be 40% higher than the reported number (ATSB 2012).

The striking of powerlines is of particular concern due to the potentially serious safety outcomes. An analysis of US balloon accidents over the period 2000 to 2011 reveals that of the 15 fatal accidents 6 were the result of striking powerlines (NTSB 2012). There was also an accident in New Zealand in 2012 as the result of a balloon striking power-lines that resulted in 11 deaths (TAIC 2012).

The analysis of international fatal accidents combined with the fact that the last fatal accident in Australia was the result of a power-line strike indicates that the 34 power-line strikes within Australia over the last 20 years is a significant safety risk for the commercial balloon industry. In

comparison to striking other obstacles, powerline strikes are more likely to result in an onboard fire, which is particularly dangerous

Hard landings

Analysis of the hard landings indicates whilst they are less prevalent than collisions with terrain, they are far more likely to result in injuries to passengers, with approximately 85% of occurrences resulting in injuries. An example of a hard landing is provided in the following summary:

About 45 minutes into the flight, ..., the balloon experienced a sudden wind change with associated turbulence. The pilot decided to land immediately rather than continue over rising and heavily vegetated terrain. The resulting landing was hard and fast and 11 passengers were injured, with four of them receiving serious injuries.

Weather and pilot decision making

Analysis of the safety occurrences indicates that often accidents or incidents are linked to weather conditions, in particular, weather conditions that the pilot was not expecting. An example of a weather-related occurrence is provided in the following summary:

While on approach to land ... the pilot inadvertently landed the hot air balloon on the roof of a house. The pilot reported that a forced landing was necessary due to weather instability at the time.

Safety Risk Summary

Analysis of the international accident data and the Australian safety occurrence data, indicates that the primary cause of accidents or incidents is pilot decision making, often in response to weather conditions. Globally, a common type of fatal balloon accident is wind causing the balloon to contact an object such as powerlines during the take-off or landing phase. These accidents can be attributed to the balloon pilot's decision to operate the balloon given particular weather conditions, the selection of take-off and landing location and their control inputs during the pre-accident phase of flight (in particular whether to ascend, or descend, to avoid an obstacle for example). Another weather condition that can be a hazard to balloon operations is the formation of fog after sunrise.

1. Objective

The primary objective is to revise and update the existing regulatory requirements with the intention of proposing options that are beneficial to society by reducing the risk of balloon accidents, and in particular those accidents that result in injuries. The factors that need to be considered in proposing options for change are safety, regulatory impact and alignment with international standards.

2. Options

2.2 Option 1: Status Quo

Approval of the operator

The current regulatory requirements that apply to businesses seeking to operate balloons for commercial passenger carrying (charter) and aerial work operations are primarily contained in the *Civil Aviation Act 1988*, *Civil Aviation Regulations 1988* and the *Civil Aviation Orders*. A charter and aerial work operator must be issued with an Air Operator's Certificate (AOC) by CASA. To apply for an AOC an applicant must provide an operations manual that outlines the operational procedures of the business including:

- Key personnel being a CEO and a Chief Pilot;
- The employment of suitably qualified pilots with a commercial balloon licence and relevant endorsements;
- Balloons equipped with the necessary safety equipment;
- Management of the continuing airworthiness and maintenance of the balloon(s); and
- Management of pilot fatigue and a drug and alcohol management plan.

CASA undertakes initial entry control before issuing an AOC, with assessment of the operator's operations manual a central part of the approval process. Ongoing surveillance by CASA ensures continuing compliance with the regulatory requirements and all pilots and ground crew of an operator are required to comply with the operations manual.

Pilot licensing

Safety of commercial ballooning is in part ensured by the business employing qualified commercial balloon pilots. The current regulations specified in Part 5 of the Civil Aviation Regulations, and Civil Aviation Order 40.7 (as amended in 2019), outline the requirements for commercial balloon pilot licensing. To obtain a commercial balloon licence an applicant must hold a private balloon certificate (issued not by CASA but by the Australian Ballooning Federation – see a later paragraph for specific information) and have logged at least 75 hours of experience flying a balloon in private operations, have completed 8 hours of training, passed two theory examinations and a flight test with an examiner.

The initial commercial licence authorises a pilot to fly a Class 1 balloon with an envelope capacity of up to 260 000 cubic foot and carry up to 7 passengers in charter operations as pilot in command. After obtaining an initial commercial licence a pilot can progress and obtain approval to operate larger balloons by meeting training and experience requirements. Commercial balloon pilots are required to undertake a balloon flight review with a flight instructor every two years in order to maintain their licence.

CASA does not issue private balloon licences, rather the initial training for a balloon pilot authorisation is conducted by the Australian Ballooning Federation (ABF) in accordance with

slightly modified international standards. The ABF grants successful students a private pilot certificate (PPC). All private pilot certificate holders must also undertake a balloon flight review every two years.

Airworthiness and Maintenance

All balloons, whether operated privately or commercially, are subject to the same airworthiness inspection schedule (annually or every 100 hours of flight, whichever comes first).

The operations manual of a charter balloon operator must contain processes for how the operator will maintain the airworthiness of the balloon(s) and who will undertake maintenance. CASA may issue balloon maintenance authorities to individuals, including pilots, after assessing their practical skills and theoretical knowledge. Some commercial balloon operators also hold a CAR 30 Certificate of Approval for a workshop to conduct in-house balloon maintenance.

Option 2: Changed Organisational Requirements

Under Option 2 all commercial balloon operators who carry fare paying passengers will be required to have an exposition, which at the discretion of the operator can be either a single document or suite of documents, that describes the way in which the organisation operates and the procedures it uses to meet the requirements of the regulations. The exposition is required to set out all of the balloon operator's procedures and how staff employed by the operator must undertake their activities. The exposition must also include arrangements for the management of the continuing airworthiness of the balloons operated by the business.

Commercial balloon operators who undertake aerial work operations, such as flying special shape balloons for advertising purposes, and do not carry fare paying passengers, will no longer be required to obtain, or maintain, an Air Operator's Certificate. Instead, these operators will require an approval to conduct the activity which will be contingent on the specification of appropriate flight crew qualifications and experience and necessary operating procedures for the proposed activity. However, there will be no requirement for an ongoing operations manual, as per the status quo under Option 1, or an exposition as required for fare-paying passenger carrying operations under Option 2.

2.3 Option 3: Balloon Pilot Licensing reforms

Option 3 is a package of pilot licensing changes that would involve the following:

- Obtaining an initial licence would be altered to provide some flexibility for pilots to meet their licence requirements by accruing points from either supervised training or pilot in command experience of a smaller balloon; and
- Ongoing licence reviews would be altered to increase the number of reviews but enable the chief pilot of the business to undertake the review in addition to a flight instructor or a flight examiner.

Option 3 would enable a pilot, after obtaining an initial commercial licence with a 140 000 cubic foot endorsement, to increase this endorsement by 10 000 foot increments after accruing sufficient points. The points can be obtained by either supervised training, or piloting a smaller balloon as pilot in command or by a combination of both. The points could be obtained by the following formula:

- 1 hour of supervised training = 100 points
- 10 hours of pilot in command experience = 100 points.

There would be a passenger limit imposed for inexperienced pilots. Pilots could not carry more than 10 passengers as pilot in command until they have obtained 100 hours of pilot in command experience operating in fare-paying passenger carrying operations.

Ongoing licensing requirements

Under option 3 the biennial flight review would become an annual flight review and could be conducted by either the chief pilot of the commercial balloon operating business or a flight instructor or a flight examiner (as previously stated).

3. Impact analysis

Impacted Operators

There are currently 25 businesses that hold an AOC to conduct commercial passenger carrying operations using a balloon. There are no businesses that solely conduct balloon aerial work operations. The recreational ballooning industry is not significantly affected by the new regulations.

Option 2 impact

Exposition

In order to meet the exposition requirement, operators are able to use their existing manuals provided they identify which documents comprise their exposition.

However, operators will need to review these manuals to confirm compliance with the new CASR Part 131 regulations and identify this compliance for CASA. The amendments will include an approved change management process. CASA will assist operators by providing a mapping document that outlines where existing requirements are specified in Part 131.

The change management process allows operators to make certain changes without notifying CASA. This will reduce the time that operators interact with CASA for manual amendments, which is approximately once per year for the average operator.

Where an operator elects to utilise a single document as an exposition, CASA is proposing to provide a sample exposition and an online tool to assist operators in drafting a single document exposition.

Based on five days of full-time effort to transition a current manual suite to the new regulatory requirements, the exposition requirement is estimated to cost each operator approximately \$2500 when based on a wage rate of \$62.50 per hour or \$500 per day (Table 2). The estimate of five days of full-time effort is based on the feedback from other aviation organisations that have implemented the exposition requirement.

Table 2: Exposition Cost

Full-time effort (days)	Cost per operator	Number of operators	Total Cost
5	\$2500	25	\$62,500

Overall cost impact and third-party impacts

CASA has considered the potential third-party impacts of Option 2; the passengers of commercial operators and any change in the availability of flights or their price which these passengers would incur. CASA's assessment is that Option 2 will have no impact on the price or availability of balloon flights. A typical price for a balloon flight is in the range of \$330 to \$400. With an estimated 140 000 passengers carried each year by the industry, an average ticket price of \$330 would equate to an annual revenue of \$46m. Given that the cost of option 2 is a one-off \$60 000 cost, this is insignificant compared to the total annual revenue of commercial ballooning.

Benefits: safety and administrative efficiency

The benefit of the exposition is that it ensures that the balloon operating business has appropriately documented their operating procedures in a clear and concise form for staff to access. These operational procedures are important for staff to follow to ensure the safe operation of commercial balloons. One example might be procedures for a pilot to follow in poor weather, including guidance on when to decide not to fly, and decision-making when there are unexpected weather conditions at a preferred landing location.

One particular benefit of the exposition is that it provides staff with information as to where to find relevant information and how to undertake particular tasks. The aim is to ensure that staff are more likely to be informed of standard operational procedures and therefore more likely to follow them. The expositions in which these procedures are published are regulated by CASA, and intended to achieve safe outcomes.

However, recognising that different businesses do operate differently, CASA has not mandated that expositions must be constructed as singular documents and has instead permitted businesses, at their discretion, to use a singular document or identify a group of documents as their exposition.

Operational flexibility

In addition to the safety benefits outlined above, Part 131 will also be drafted as more outcomes focused, thereby providing greater operational flexibility to both private and commercial balloon operators. While the savings are difficult to estimate, CASA anticipates that the reasonable reductions in red tape, due to the flexibility in the new rules, could occur for some operators.

Commercial operators who only operate balloons in the aerial work sector will no longer be required to obtain, or maintain, an Air Operator's Certificate. Previous research has indicated that obtaining an AOC can cost an operator approximately \$70 000 and take approximately 12 months. Currently there are no businesses that only undertake aerial work operations using a balloon, however, this relaxation in the regulatory requirement may result in businesses specialising in balloon aerial work operations in the future.

2.3.1 Option 3

2.3.2 Obtaining an Initial Balloon Pilot Licence

The overall impact of the initial licence requirements in Option 3 would be:

- increased flexibility for applicants to substitute supervised training for pilot in command flying of a smaller balloon;
- reduced total experience requirements; and
- shorter duration to obtain a licence.

Option 3 will allow flexibility for applicants to reduce the amount of experience required by completing more supervised training. Applicants can reduce the experience requirements at the ratio of 10 hours of experience to 1 hour of training. The flexibility will allow businesses to shorten the time that it will take to have a pilot become qualified by investing more in training, rather than waiting for the applicant to gain experience flying smaller balloons.

There is, however, some difficulty observing a direct comparison between the current requirements and Option 3 because the classification system used for the licences will also be changed at the same time. The licence based on distinct envelope sizes would be replaced with a system based on progression by 10 000ft increments. This will allow increased flexibility for a pilot to progress on a graduated basis.

To highlight the exact impact for a particular type of balloon the example of the most commonly held licence and the one which has been identified by the balloon industry as being the most important to them is the licence with a 260 000ft endorsement.

2.3.2.1 The 260 000ft example

In addition to experience requirements, the existing licensing regulations require approximately 26 hours of specific training to obtain a licence with an endorsement to fly a 260 000ft balloon. This training is estimated to cost approximately \$815 per hour (Table 3) resulting in a total of

\$21,190 for the 26 hours. Whilst the flight time is one hour it is assumed that there is a further two hours of preparation before and after the one hour flight.

2.3.3 Table 3: Current endorsement training cost for obtaining an initial balloon licence per 1 hour of flight time

	<i>Cost per hour</i>	<i>Time</i>	<i>Total cost</i>
Instructor	\$80	3	\$240
Trainee pilot	\$62.50	3	\$188
Ground support (1 person)	\$62.50	3	\$188
Balloon running costs	\$200	1	\$200
Total per training flight			\$815

Under Option 3 the cost of obtaining an initial balloon licence would allow for the carriage of fare paying passengers during the endorsement training. If the applicant was to undertake the 12 hours of dual/co-pilot experience, fare paying passengers may be carried during these flights. This would effectively permit the training to be incorporated into fare paying passenger flights with minimal cost. The cost would be the opportunity cost of carrying one fare paying passenger estimated at \$350 per flight and the trainee pilot's time estimated at \$62.50 per hour for 3 hours, a total of \$538 (Table 4) or \$6,450 for the 12 hours of flight training time.

2.3.4 Table 4: Estimated endorsement training cost for obtaining an initial balloon licence per 1 hour of flight time under Option 2

	<i>Cost per hour</i>	<i>Time</i>	<i>Total cost</i>
Lost Passenger revenue	\$350	1	\$350
Trainee pilot	\$62.5	3	\$188
Total			\$538

Obtaining an initial licence under Option 3 is estimated to save approximately \$15,000 per licence applicant. That is, the difference between the cost of the current system at \$21,190 and the proposed system at \$6,450. On average over each of the last 5 years, 4.4 new commercial balloon pilot licences were issued. Based on 4.4 new commercial pilots per year the annual industry saving will be approximately \$65,000.

2.3.5 Ongoing licence review requirements

Option 3 would replace the current biennial flight review with annual flight reviews and therefore will double the number of reviews undertaken. The current biennial flight review is estimated to cost \$868 on average, excluding possible lost passenger revenue (Table 5). The \$868 cost reflects the opportunity cost of time for the pilot, instructor, one ground crew and the balloon operating costs. The total annualised cost for the 200 commercial pilots would be \$86,750.

2.3.6 Table 5: Current biennial flight review cost per 1 hour of flight time

	<i>Cost per hour</i>	<i>Hours</i>	total cost
Instructor pilot	\$80	3	\$240
Review pilot	\$80	3	\$240
Ground support (1 person)	\$62.50	3	\$188
Balloon running costs	\$200	1	\$200
Total			\$868

Introducing an annual review will double the frequency of reviews and therefore double the industry cost. The increased frequency will increase the annual industry cost by \$86,750.

2.3.7 Overall cost impact and third-party impacts

Option 3 is estimated to have a net cost of approximately \$22,000 per year (Table 6).

CASA has considered the potential third-party impacts being the potential change in the availability or price of commercial flights. CASA's assessment is that Option 3 will have no impact on the price or availability of balloon flights. Given that the annual cost of option 3 is \$22 000, this is insignificant compared to the total annual revenue of commercial ballooning estimated at approximately \$46m.

2.3.8 Table 6: Option 3 - Overall Change in Annual Compliance Costs

	<i>Expected cost impact</i>
Initial licensing changes	-\$65,000
Annual Review option	+\$86,750
Total	+\$22 000

Benefits: safety and administrative efficiency

The initial licensing requirements in Option 3 are intended to be at least safety neutral. Whilst there are reductions in the amount of experience required, there are improvements in the quality of the training that new pilots must undertake. Importantly, the measure was previously supported, prior to 2015, by the industry members that are responsible for training new pilots and who directly observe the importance of training and experience requirements in determining the competency of student pilots.

The ongoing licence review requirements of Option 3 are intended to improve safety. The reviews will increase the frequency at which a pilot's competency will be assessed by an experienced pilot. This assessment of competency is likely to increase the likelihood that only competent pilots will be operating commercial balloons. This is intended to reduce the likelihood of incidents and accidents, thereby addressing the problems identified above in the Safety Risk Summary section.

Another important safety reason for the annual review is that it provides the pilot with the opportunity to learn and develop new skills from the experienced review pilot. It also acts as a mechanism for the dissemination of information on flight technique and potentially alerts the chief pilot of the business to pilot issues that could be systemic within a business.

It is likely that Option 3 will address, in part, the common accidents identified as pilot decision making accidents, often in response to weather conditions. The annual review will increase the frequency at which safety procedures, such as pilot decision making in changed weather conditions, are discussed and practiced. Whilst CASA recognises that this will not reduce the risk of accidents to zero, CASA believes it will have a positive impact in some cases. At a minimum, it is likely that sharing of information from the flight instructor/chief pilot will be a good training opportunity for pilots to learn safer piloting techniques.

4. Consultation

Formal Consultation

CASA has consulted with the balloon industry on a protracted basis over more than a decade, although it should be noted that work on Part 131 was subject to significant pauses during this time. A notice of proposed rule-making was published in 2008 with the requirements outlined in Options 2 and 3. The licensing options were consulted with industry again in 2012.

From the 2012 consultation the initial licence requirements, outlined in Option 3, were supported by the affected businesses, including the then Professional Ballooning Association of Australia (representing commercial balloon operators), the Australian Ballooning Federation (representing non-commercial balloon operators i.e. private pilots) and affected businesses contacted by CASA. However, the changes to the ongoing licence review requirements were supported by some businesses, but opposed by others.

An example of the view from one commercial pilot opposed to the proposal:

[CASA] asked about the cost of implementing annual flight reviews. Very little information was given on the nature of the annual check-flight and the conditions under which it is to be conducted and therefore makes an accurate costing very difficult.

The costs of an annual review will also vary significantly from operator to operator but the base figure would be in the order of \$4,500 for travel, accommodation and instructor time, ground crew, vehicle and aircraft time. If for any reason the pilot needed to miss a day's commercial flying in order to complete the review, the cost would be increased by up to a further \$9,000 due to a loss in revenue.

These figures would go up even more if the check flight was cancelled due to inclement weather. This is far in excess of the costs to operators of other small aircraft. There are currently approximately 100 commercial balloon pilots registered with the Australian Balloon Federation who will be affected by this requirement.

An example of the view from one commercial pilot in support of the proposal:

Why do small operations have to give up a full basket of passengers? The idea that the cost to conduct an annual review will be in the thousands of dollars is in my opinion a complete nonsense.

Am I to assume that business is so good in the single pilot ballooning industry that every good day is full of paying passengers?

Speaking as someone who has done more training and checking in both the private and commercial ballooning world than most and rarely been paid – and as a balloonist who is an active commercial pilot working in my company – I have managed to conduct over thirty hours of private instruction in the past year.

Surely there are days when a balloon pilot can fly in the afternoon or on days when the company has no bookings?

Pilots can even be reviewed on a commercial flight – surely there is one day a year you don't have bookings when another chief pilot is flying?

Is there not a day when pilots could fly a small balloon when a commercial flight is cancelled?

This is one day a year – I fly for fun on at least 7 days per year – in all of my 20 years I do not think there would have been less than 30 days a year that I could not comply with this suggested review.

In response to the 2012 consultation feedback CASA decided not to proceed with the licensing changes outlined in Option 3 in 2019 because it lacked unanimous industry support.

Consultation in 2019

CASA decided to consult again with industry in 2019 with the Option 2 requirements and also a requirement for a safety management system and a training and checking organisation (which had been discussed at industry working groups in 2014-2015), but without the pilot licensing changes or any changes to airworthiness or maintenance standards. The feedback to this consultation was generally negative with a number of stakeholders:

- Requesting further information about what would be included in the Part 131 Manual of Standards, as CASA only provided a draft of the CASR Part and not the Part 131 Manual of Standards;
- Objecting to the fact that all of the requirements for ballooning are not included in Part 131 – an approach endorsed by CASA's Standards Consultative Committee in 2008;
- Requesting that changes to pilot licensing and balloon airworthiness and maintenance be included in any future changes, i.e. that the proposed changes not be introduced until these other matters could also be introduced; and
- Questioning the requirement for a safety manager, particularly in small businesses.

Overall there was no specific negative feedback on the requirement for an exposition, a training and checking organisation or a safety management system, other than the specific concern about the dedicated safety manager requirement and how that would work for small operators.

CASA has acknowledged that the safety manager role will be a new requirement. However, it can be performed by an existing staff member on a part-time basis. There should be no need for the small business to employ a dedicated employee for the role.

Due to the volume of negative consultation feedback that resulted in a low level of engagement with the significantly new requirements such as training and checking systems and safety management systems (including the requirement for a Safety Manager), and noting that these requirements were planned to be subject to delayed commencement dates beyond March 2021 in any case, CASA decided to remove these new significant requirements from the initial making of CASR Part 131 and conduct a further public consultation on these regulatory requirements

and the future Part 131 MOS. The result is that the only significantly new requirement is that of the exposition.

CASA will address the other concerns raised by stakeholders by forming an industry technical working group to assist with development of the Part 131 MOS. However, after consultation with other agencies, CASA will not address the requirement for ballooning to be regulated under a single standalone Part 131. As a result, some operational rules for balloons that apply equally to all forms of aircraft will be incorporated into CASR Part 91.

5. Implementation and Review

The changes outlined in Option 2 will be formally implemented by making Part 131 of CASR and a Part 131 MOS. The Part 131 MOS will contain the operational requirements for commercial and recreational ballooning, currently contained in a number of existing regulations and Civil Aviation Orders. The requirements will not be altered in any significant way in their transition from the existing legislation to Part 131. Minor changes will be made to better reflect specific aspects of ballooning operations.

The commencement date will be 25 March 2021, which aligns to the commencement of other operational rules in CASR (notably Part 91) and will allow operators to transition to the new rules over an extended time period.

Prior to implementation in March 2021, CASA plans to conduct an extensive education, training and communication program for both affected industry personnel and internal staff. This will be supplemented by the development and distribution of appropriate support tools to assist with the introduction of the initiatives, including sample materials that will reduce operator costs to update their documentation.

Review

CASA will monitor and review the new regulations on an ongoing basis during the transition phase, with careful consideration given to the feedback from the regulated organisations and their members and CASA will make any necessary changes to internal processes or the regulatory requirements.

The key information that CASA will be collecting during the transition is feedback from the regulated organisations as to the reasonableness of the requirements and whether the requirements reflect the original intent.

An important way that CASA will monitor the effectiveness of regulations, including safety performance, is surveillance of the organisations to ensure that they are implementing their processes documented in their exposition.

CASA will continue to monitor accident and incident data, including from the ATSB. This data will help inform any future changes required to the regulations, CASA procedures or the manuals or expositions of organisations.

The regulatory changes will be subject to a post-implementation review in 2025, which is one year after the end of the compliance date for all provisions. Prior to 2025 there will be on-going monitoring of the performance of the balloon operators to assess how the new regulations are performing. This monitoring will be undertaken through the CASA field officers and CASA's industry oversight programs

The new arrangements would be subject to CASA's internal policy of reviewing regulatory changes 2 years after they are fully implemented to assess whether the implementation of the regulations was effective.

6. Conclusion

The implementation of Part 131 is intended to enhance operational flexibility and aviation safety by being more outcome based and less prescriptive. Part 131 also aims to improve the focus of Australian balloon transport operators on the potential for human and organisational factors to cause accidents, and in so doing, further improving the system of aviation safety for operators and the travelling public.

A Part 131 MOS will be developed in consultation with industry and will contain complex and technical requirements that are likely to be subject to change due to technological developments or have a level of complexity that would be inappropriate to contain within regulations (as per the Aviation Safety Regulatory Review).

It is proposed that Part 131 will commence on 25 March 2021, in line with other operational Parts of CASR.

7. References

ATSB (2012) *Under reporting of aviation wirestrikes*, Australian Transport Safety Bureau, Canberra

NTSB (2012) *National Transportation Safety Board Accident Synopses - by month*, Washington, DC

TAIC (2012) *Transport Accident Investigation Commission Interim Report 12-001*, Wellington New Zealand

Appendix A: Definitions

The safety occurrences reported are from the Australian Transport Safety Bureau (ATSB) and are based on ATSB definitions. Safety occurrences consist of accidents, serious incidents and incidents.

The terms accident, serious incident and incident are defined by the *Transport Safety Investigation Act 2003* (TSI Act) and the associated *Transport Safety Investigation Regulations 2003* (TSI Regulations) administered by the ATSB.

The TSI Act contains a scheme for the mandatory reporting of occurrences that are classified as Immediately Reportable Matters (accidents & serious incidents) and Routine Reportable Matters (incidents).

The TSI Regulations define what is an ‘immediately reportable matter’ and a ‘routine reportable matter’. An immediately reportable matter includes (but not limited to) any aircraft operation resulting in the death or serious injury of a person, and/or serious damage to the aircraft.

A routine reportable matter includes, but is not limited to, an aircraft operation resulting in an injury to a person, when flight into terrain is narrowly avoided, an aircraft system failure, and/or a weather phenomenon resulting in difficulty controlling the aircraft.

Statement of Compatibility with Human Rights

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

Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019

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

The Legislative Instrument (the Regulations) amends the *Civil Aviation Safety Regulations 1998* (CASR) to introduce new Parts 103, 105 and 131, as well as consequential amendments to existing Part 91 that was made in 2018 and commences in March 2021.

Part 103 provides a regulatory framework for operations in ‘Part 103 aircraft’. Specifically, the Part provides for the ‘listing’ of such aircraft, certification and markings requirements, flight rules, instruments, indicators, equipment and system and their requirements, airworthiness requirements, towing of Part 103 aircraft requirements and additional requirements in relation to a ‘Part 103 activity’. Non-compliance with a number of the stated requirements in Subparts 103.B to 103.Z is an offence of strict liability under the Regulations.

Part 105 provides a regulatory framework for parachuting operations from an aircraft, including: rules for parachute descents; requirements for pilots of aircraft operated to facilitate a parachute descent; general and prescriptive requirements for such aircraft; and requirements for dealing with parachute defects. Non-compliance with a number of the stated requirements in Subparts 105.C to 105.N is an offence of strict liability under the Regulations.

Part 131 provides a regulatory framework for operations of manned free balloons and tethered gas balloons including: certification and management of Part 131 commercial operators; operational procedures for Part 131 aircraft; Part 131 aircraft performance; requirements for instruments, indicators, equipment, systems, flight crew and other operational safety-critical personnel; recreational activities in Part 131 aircraft; and operational requirements for tethered gas balloons. Non-compliance with a number of the stated requirements in Subparts 131.B to 131.Z is an offence of strict liability under the Regulations.

Human rights implications

The Regulations engage the following right:

- the fair trial rights in Articles 2 and 14 of the *International Covenant on Civil and Political Rights* (ICCPR).

Fair trial rights

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 Article 14(3) and following of the ICCPR.

The presumption of innocence in Article 14(2) 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.

Of a total of 143 offence provisions, 129 offence provisions specified in the Regulations are strict liability offences; 21 strict liability offences in Part 103, 34 strict liability offences in Part 105, and 74 strict liability offences in Part 131. In addition, five strict liability offence provisions in existing Part 91 of CASR are amended to apply in relation to the aviation activities regulated in new Parts 103, 105 and 131.

Strict liability offences engage the presumption of innocence through the imposition of liability without the need to prove fault. The requisite threshold applying to a “reasonable possibility” as to the existence of a matter is relatively low. The defence of honest and reasonable mistake, as set out in section 9.2 of the Criminal Code, will be available to the defendant for all the strict liability offence provisions. If relied upon, this is an evidential burden on the defence to prove, on the balance of probabilities, that the accused had an honest and reasonable mistaken belief of fact which, if those facts existed, would not have constituted an offence.

The strict liability offences relate to administrative and safety requirements that must be adhered to by regulated individuals and operators involved in the aviation industry to ensure the integrity of the aviation safety system and the safety of the public. The offences are regulatory in nature and framed to ensure that the administration of aviation activities by operators and pilots in command of aircraft, and other listed individuals, would not be likely to have an adverse effect on aviation safety.

The strict liability offences are also proportionate in that they fall at the lower end of the scale, not exceeding 50 penalty units.

The strict liability offences in this instrument are therefore considered reasonable, necessary and proportionate to the objective of ensuring aviation safety.

On this basis, the limitation on the right to the presumption of innocence is reasonable, necessary and proportionate to achieving the legitimate safety regulatory objectives of the Regulations.

Reversal of burden of proof provisions

A total of 14 offence provisions impose a reversed evidential burden of proof on the accused in relation to defences. The fact elements that are the subject of the reversals of the burden of proof can be found in the table below. The reversed burden must pursue a legitimate aim and be reasonable, necessary and proportionate to that aim.

The burden of proof has been reversed to establish a defence to an offence provision once the prosecution discharges the legal and evidential burden of proof in establishing the offence. The burden of adducing or pointing to evidence must only suggest a reasonable possibility that the matter exists or does not exist. This is in accordance with subsection 13.3(6) of the Criminal Code.

A reversed burden of evidential proof is not inconsistent with the presumption of innocence if it is within reasonable limits that take into account the importance of the objective being sought and maintain the defendant’s right to a defence. The reversed burden must pursue a legitimate aim and be reasonable, necessary and proportionate to that aim.

Aim

The aim of CASA and its regulatory framework is to uphold aviation safety, and the reversed burden provides the accused with an opportunity to present evidence that their actions did maintain aviation safety, although not in the manner prescribed by the offence provision. The provisions reversing the burden of proof pursue this aim as they are each attached to a defence to a strict liability offence in circumstances where the defence relates to a safe aviation practice. In this way the reversed burden of evidential proof, in establishing an exemption to the offence, maintains the defendant’s right to a defence.

Reasonableness, necessity and proportionality

The provisions imposing a reversed burden of proof are reasonable as they provide the defendant with the opportunity to adduce evidence of specific aviation practices, of a kind contemplated by the offence provisions, that are safe or otherwise permitted despite contravening the offence provision.

The provisions imposing a reversal of the evidential burden of proof are proportionate for either or both of the following reasons, depending on the particular provision:

- the relevant information or evidence is peculiarly within the knowledge of the defendant
- it is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

The table below identifies each offence provision, who holds the evidential and legal burden of proof, and the reason for its being, whether it is peculiar within the knowledge of the defendant, or it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

Table 1 – Reverse onus of proof provisions

Provision	Onus of proof	Justification
Subpart 103.C Subpart 103.C provides offence provisions regulating requirements for undertaking a Part 103 activity. This Subpart contains one reverse onus of proof provision.		
Subregulation 103.040(2) disapplying requirement to be authorised to undertake a Part 103 activity in specified circumstances	Prosecution – offence (legal and evidential) Defendant – exemption (evidential), on the grounds of otherwise being authorised to undertake the activity under regulation 103.020 of CASR, or under the CASR or the <i>Civil Aviation Regulations 1988</i>	Due to the range of possible provisions under which a person could be authorised, and the potential range of persons including persons potentially acting under delegated authority, whether or not a person is so authorised to conduct any particular Part 103 activity is likely to be a matter that is substantially within the peculiar knowledge of the defendant. For the same reason, it will also be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
Subpart 103.D This Subpart provides offence provisions regulating flight rules for Part 103 aircraft. This Subpart contains one reverse onus of proof provision.		
Subregulation 103.060(5) disapplying requirements for pilot in command to ensure persons specified are securely restrained	Prosecution – offence (legal and evidential) Defendant – exemption (evidential), on grounds related to the restraint of	Whether or not the management of the restraint of persons in a particular operation is in accordance with requirements under

	persons carried on an aircraft being operated to facilitate a parachute descent, in accordance with regulation 105.105 of CASR	<p>regulation 105.105 of CASR (in the context of facilitating a parachute descent) is a matter that is peculiarly within the knowledge of the defendant.</p> <p>It is also significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.</p>
<p>Subpart 105.C</p> <p>Division 105.C.5—Search and rescue services and emergency and survival equipment</p> <p>This Division provides offence provisions regulating reserve parachute and emergency parachute equipment requirements and defective reserve parachutes and defective emergency parachutes. This Division contains one reverse onus of proof provision.</p>		
Subregulation 105.060(2) provides that the offence provision subregulation 105.060(1) does not apply if the person is a tandem parachutist or trainee parachutist	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential)</p>	<p>The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>Consistent with the general justification above, the exemption from the offence only applies to a tandem parachutist or trainee parachutist since it is unlikely that they will have particular knowledge of whether the reserve parachute they are equipped with is defective.</p>
<p>Subpart 105.D</p> <p>This Subpart provides offence provisions regulating operational requirements for parachuting activities, restraint of persons other than flight crew members, compliance with safety directions and restrictions on aircraft occupants for descents by trainee parachutists and tandem parachutists. This Subpart contains one reverse onus of proof provision.</p>		
Subregulation 105.115(3) provides that the offence provision subregulation 105.115(2) does not apply if the aircraft is a manned free balloon and the pilot in command holds an authorisation from a Part 105 approved self-administering organisation (ASAO)	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential)</p>	<p>The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>In particular, whether the pilot in command holds an authorisation from a Part 105</p>

		ASAO is within the knowledge of the pilot in command and is not a document within CASA's control.
<p>Subpart 131.D</p> <p>Division 131.D.4—Flight rules</p> <p>Subpart 131.D provides for the operational procedures for a Part 131 aircraft. This Subpart contains two reverse onus of proof provisions.</p>		
Subregulation 131.310(2) disappplies the offence provision subregulation 131.310(1) requiring that a pilot in command of a Part 131 aircraft ensure that a thing dropped from the aircraft is not likely to endanger the safety of any person or property	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential), for dropping a thing of a kind prescribed in the Part 131 MOS</p>	Whether or not a defendant has dropped a particular thing that is prescribed in the Part 131 MOS is likely to be peculiarly within the knowledge of the defendant. It is also likely to be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.
Subregulation 131.355(3) provides that the offence provision subregulation 131.355(2) requiring the higher aircraft to give way to a lower aircraft does not apply if the other aircraft is a hot air airship	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential), for the pilot in command of a hot air airship</p>	Whether or not a defendant's aircraft is a hot air airship may be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
<p>Subpart 131.R</p> <p>Subpart 131.R provides for the authorisation requirements for Part 131 recreational activities. This Subpart contains one reverse onus of proof provision.</p>		
Subregulation 131.580(2) disappplies the offence provision subregulation 131.580(1) requiring a person who undertakes a Part 131 recreational activity to hold a Part 131 pilot authorisation that authorises the person to undertake the activity.	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential), for a person who is otherwise permitted under the CASR or CAR to conduct the activity</p>	Due to the range of circumstances under which a person could be permitted to conduct any particular Part 131 recreational activity, whether or not a particular defendant is otherwise permitted to conduct the activity is likely to be a matter that is substantially within the peculiar knowledge of the defendant. For the same

		reason, it will also be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
<p>Subpart 91.C</p> <p>Division 91.C.9—Special flight operations</p> <p>This Division sets out requirements for pilots in command and aircraft conducting certain kinds of operations, such as air displays, aerobatic manoeuvres, dropping things from aircraft, and persons to not be carried in certain parts of aircraft. This Division contains two reverse onus of proof provisions.</p>		
<p>Subregulation 91.200(2A) provides that the offence provision subregulation 91.200(1) does not apply if the aircraft is being operated to facilitate a parachute descent and the requirements prescribed by the Part 105 MOS are met</p>	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential), if the aircraft is being operated to facilitate a parachute descent and requirements prescribed by the Part 105 MOS are met</p>	<p>The matter to be established is peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>Consistent with the general justification above, whether or not an aircraft is being operated to facilitate a parachute descent, in accordance with the Part 105 MOS, is within the peculiar knowledge of the operator and the pilot in command, and not readily ascertainable by CASA.</p>
<p>Subregulation 91.205(1A) disapplies the offence provision subregulation 91.205(1) if the requirements, relating to flying in formation set out in the Part 91 MOS, are met in relation to the flight. The amendment in the Regulations extends the disapplication to formation flying by Part 103 aircraft</p>	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential), if circumstances prescribed by the Part 91 Manual of Standards apply in relation to the formation flying by Part 103 aircraft</p>	<p>Whether or not a particular formation flying activity by Part 103 aircraft meets the requirements in the Part 91 MOS is a matter peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.</p> <p>Consistent with the general justification above, conducting formation flying in accordance with the existing requirements of subregulation 91.205(1) or alternatively, on reliance of the subregulation 91.205(1A) exemption and other</p>

		requirements set out in the Part 91 MOS, is within the knowledge of the pilot and may be difficult for CASA to establish.
<u>Subpart 91.D</u> Subdivision 91.D.4.2—Air traffic services This Subdivision prescribes operational requirements for aircraft subject to air traffic control (ATC), in prohibited or restricted areas, and in air defence identification zones (ADIZ). This Subpart contains one reverse onus of proof provision.		
Subregulation 91.275(1A) disapplies the offence provision 91.275(1) prohibiting a pilot in command to enter an ADIZ. The amendment in the Regulations extends the disapplication to entrance to an ADIZ by a Part 131 aircraft if the pilot informs the authority controlling the ADIZ as soon as practicable	Prosecution – offence (legal and evidential) Defendant – exemption (evidential), in relation to a Part 131 aircraft if the pilot in command lands the aircraft in the ADIZ and informs the authority controlling the area as soon as practicable	Whether or not a defendant has informed the authority controlling the area as soon as practicable will be peculiarly within the knowledge of the defendant and be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
<u>Subpart 91.D</u> Subdivision 91.D.4.3—Cruising levels and minimum heights This Subdivision prescribes operational requirements for aircraft flown at specified VFR cruising levels or specified IFR cruising levels, unless particular circumstances apply. This Subdivision contains one reverse onus of proof provision.		
Paragraph 91.285(2)(d) disapplies the offence provision subregulation 91.285(1) requiring the pilot in command of an aircraft for a VFR flight to fly at a specified VFR cruising level for the track. The amendment in the Regulations extends the disapplication to gliders in soaring flight	Prosecution – offence (legal and evidential) Defendant – exemption (evidential), in relation to an aircraft that is a glider (a Part 103 aircraft) in soaring flight	Whether or not a defendant's glider is in soaring flight is peculiarly in the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
<u>Subpart 91.D</u> Subdivision 91.D.4.4—Avoiding collisions in the air This Subdivision sets out the right of way rules for avoidance of collisions in flight, and particular rules for overtaking, take-off and landing. This Subdivision contains one reverse onus of proof provision.		

Subregulation 91.335(5A) disapplies the offence provision and requirement of paragraph 91.335(2)(b) that a pilot must fly the aircraft to the right of the other aircraft while overtaking. The amendment in the Regulations extends the disapplication to ridge or hill soaring by gliders	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential), in relation to a Part 103 aircraft that is a glider engaged in ridge or hill soaring, where the pilot flies the aircraft so that it passes between the ridge or hill and the other aircraft</p>	Whether or not a defendant's glider was, at the relevant time, engaged in ridge or hill soaring, and whether it passes between the ridge or hill and another aircraft, is peculiarly in the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.
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Subpart 91.D

Subdivision 91.D.4.6—Avoiding collisions at or in the vicinity of aerodromes

This Subdivision sets out rules for aircraft taxiing or towing on the movement area of an aerodrome, aircraft operating on the manoeuvring area of the aerodrome, joining circuit patterns, and pilot communication to avoid collisions. This Subdivision contains one reverse onus of proof provision.

Subregulation 91.385(2) disapplies offence provision subregulation 91.385(1) setting out pilot requirements after joining a circuit pattern for an aerodrome. The amendment in the Regulations extends the disapplication to sailplanes that do not join the circuit out of necessity to land the aircraft	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential), in paragraph 91.385(2)(b) where the aircraft is a sailplane (without an engine operating) and the pilot in command contravenes the offence in subregulation 91.385(1), to the extent necessary to enable the aircraft to land safely</p>	A pilot of a sailplane without an engine operating may wish to join the circuit pattern of an aerodrome, but depending on flight conditions, may not be able to complete that circuit requirement, in which case the pilot (defendant) has the peculiar knowledge of the circumstances enabling the aircraft to land safely. It is also significantly more difficult and costly for the prosecution to disprove the matter than for the defendant to establish.
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Subpart 91.D

Division 91.D.6—Fuel requirements

This Division sets out fuelling requirements for aircraft, including dealing with: contaminated, degraded or inappropriate fuels; fire hazard requirements; electrical bonding while fuelling and aircraft; limitations on fuelling aircraft with persons on board; and hot fuelling an aircraft. This Division contains one reverse onus of proof provision.

Subregulation 91.510(2A) disapplies the offence provisions subregulations 91.510(1) or (2) setting out requirements for the pilot in command when fuelling with persons on board the aircraft.	<p>Prosecution – offence (legal and evidential)</p> <p>Defendant – exemption (evidential), in relation to the replacement of fuel cylinders on a Part 131 aircraft while a</p>	Whether or not a defendant has fuelled their Part 131 aircraft by replacing pre-pressurised fuel cylinders is a matter peculiarly within the knowledge of the defendant, and is significantly more
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The amendment in the Regulations extends the disapplication to the replacement of fuel cylinders for a Part 103 aircraft when persons are on board the aircraft	person is on board	difficult and costly for the prosecution to disprove than for the defendant to establish.
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Implication on right to presumption of innocence

The provisions reversing the evidential burden of proof are consistent with the presumption of innocence, as they are within reasonable limits which take into account the importance of the objective being sought while maintaining the defendant's right to a defence. In particular, consistent with section 4.3.1 of the AGD Guide, the provisions have been included in the Regulations because they relate to matters that are peculiarly within the knowledge of a defendant and/or would be significantly more difficult and more costly for the prosecution to disprove than for the defendant to establish the matter.

The right to a fair trial and fair hearing: right to an effective remedy

Through the rights of merit review afforded an affected party by regulation 201.004 of CASR, combined with the governance by the *Administrative Decisions (Judicial Review) Act 1977* and general administrative legal principles of Australia, there is no impact on an individual's right to an effective remedy by the Regulations.

Conclusion

This Legislative Instrument is compatible with human rights and to the extent that it 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.

**Details of the Civil Aviation Legislation Amendment (Parts 103, 105 and 131)
Regulations 2019**

Section 1 – Name of Regulations

Section 1 provides that the title of the Regulations is the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*.

Section 2 – Commencement

Section 2 provides for sections 1 to 4, Schedule 4, and anything else in the Regulations that is not Schedules 1 to 3, to commence the day after the instrument is registered. Schedules 1 to 3 commence on 25 March 2021.

Section 3 – Authority

Section 3 provides that this instrument was made under the *Civil Aviation Act 1988* (the Act).

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments relating to Part 103

Civil Aviation Safety Regulations 1998

Item 1—Part 103

This item repeals the existing Part 103 of CASR which is titled Sport and recreational aviation operations and substitutes a new Part 103 titled Sport and recreation aircraft. In addition to preliminary requirements, the Part provides for aircraft listing, certification and markings requirements, general obligations, operational procedures, the instruments, indicators, equipment and systems fitted to Part 103 aircraft, airworthiness, the towing of Part 103 aircraft by another aircraft and additional requirements in relation to Part 103 activities.

The Part makes many references to an ASAO. ASAO means approved self-administering aviation organisation and is an organisation approved by CASA to administer certain aviation activities. A Part 103 ASAO is defined by regulation 103.005 as one whose approved function is, or includes, administering a Part 103 activity. Part 103 activities comprise: operating a Part 103 aircraft; maintaining, or ensuring the airworthiness of a Part 103 aircraft, or aeronautical products for Part 103 aircraft; providing training for an abovementioned activity; carrying on a business or undertaking involving the provision of services or equipment for undertaking an abovementioned activity (other than training); and an activity prescribed by the Part 103 Manual of Standards.

Subpart 103.A—Preliminary

This Subpart inserts a new Subpart 103.A of CASR inclusive of regulations 103.005 to 103.020. It provides for the application of Part 103, definitions for Part 103, a head of power for a Part 103 Manual of Standards and for the provision of approvals by CASA for Part 103.

Regulation 103.005 Application of Part 103

Subregulation 103.005(1) provides that the Part (other than Subpart 103.Z) applies to Part 103 aircraft.

Subregulation 103.005(2) provides that the Part does not apply to the operation of a Part 103 aircraft if Part 12, 133, 135 or 137 applies to the operation.

Subregulation 103.005(3) provides that Subpart 103.Z applies in relation to the towing of a Part 103 aircraft by an aircraft that is not a Part 103 aircraft.

Subregulation 103.005(4) provides the meaning of what aircraft, that are not registered under Part 47 of CASR, are Part 103 aircraft.

Subregulation 103.005(5) provides that a sailplane (registered under Part 47) is a Part 103 aircraft.

Subregulation 103.005(6) provides that an RPA and a model aircraft are not Part 103 aircraft.

The provisions outline the operations to which this Part applies by way of exclusion of the types of operations listed in the regulation and provides a meaning of Part 103 aircraft. A Part 103 aircraft means an aircraft that is not registered and is mentioned in the list of aircraft set out in paragraph 103.005(4)(b). This includes aeroplanes that may be prescribed by CASA in the Part 103 MOS for the purposes of the definition. A sailplane is a Part 103 aircraft, even though sailplanes are registered under Part 47 of CASR. The term “sailplane” is defined in Part 1 of the Dictionary, together with the terms “powered sailplane”, “power-assisted sailplane” and “touring motor glider”, which are all variants of sailplanes, the last mentioned also being a variant of a

powered sailplane. To avoid doubt, the regulation expressly provides that neither remotely piloted aircraft (RPA) nor model aircraft are Part 103 aircraft.

Regulation 103.010 provides a list of other definitions relevant to Part 103 of CASR. This includes the definition of a “Part 103 activity” which is an important conceptual principle of Part 103. A Part 103 activity means operating a Part 103 aircraft, maintaining or ensuring the airworthiness of Part 103 aircraft, providing training in the operation of a Part 103 aircraft or in maintenance of a Part 103 aircraft, conducting a business in relation to provision of services or equipment in respect of operating or maintaining a Part 103 aircraft, and also towing a Part 103 aircraft by another Part 103 aircraft. CASA may also prescribe other activities in the Part 103 MOS as a Part 103 activity.

Regulation 103.015 provides that, as permitted by subsection 98(5A) of the Act, CASA may issue a Manual of Standards for this Part.

Regulation 103.020 Approvals by CASA for Part 103

Subregulation 103.020(1) provides that a person may apply to CASA, in writing, for an approval that is referred to under this regulation.

Subregulation 103.020(2) provides that CASA must grant the approval, subject to regulation 11.055.

Subregulation 103.020(3) provides that subregulation 11.055(1B) applies to the granting of an approval under this regulation.

These provisions underpin the operation of Part 103, forming the basis for the assurance of aviation safety by subsequent provisions of the Part.

Subpart 103.B—Aircraft listing, certification and markings

This Subpart inserts a new Subpart 103.B of CASR inclusive of regulations 103.025 to 103.035. It provides for aircraft listing, certificate and marking requirements for Part 103 aircraft.

Regulation 103.025 Listing with a Part 103 ASAO

Subregulation 103.025(1) provides for when a Part 103 aircraft is listed with a Part 103 ASAO for the purposes of this regulation. A Part 103 aircraft is listed with a Part 103 ASAO if it is listed in accordance with the requirements prescribed by the Part 103 Manual of Standards for the purposes of this subregulation.

Subregulation 103.025(2) provides that the owner of a Part 103 aircraft contravenes this subregulation if the aircraft is an aircraft other than a sailplane, hang glider, powered hang glider, paraglider or powered paraglider and the aircraft has an empty weight of more than 70kg, a person operates the aircraft and the aircraft is not listed with a Part 103 ASAO.

Subregulation 103.025(3) provides that, where the aircraft is a sailplane, hang glider, powered hang glider, paraglider or powered paraglider and has an empty weight of 70kg or less, the aircraft may be listed with a Part 103 ASAO but it is not mandatory to list the aircraft.

Subregulation 103.025(4) provides that the owner of a Part 103 aircraft contravenes this subregulation if a person operates the aircraft and the aircraft is listed with more than one Part 103 ASAO at the same time.

Subregulation 103.025(5) provides that a person commits an offence of strict liability if they contravene subregulation 103.025(2) or (4). The penalty for the offence has been set at 50 penalty units.

These provisions contribute to aviation safety by ensuring Part 103 aircraft of significant mass are subject to a form of recording of aircraft information and identification by an ASAO termed “listing” and that they are listed (and therefore administered) by only one ASAO at a time. The term “registration” is not used as this has a specific meaning in relation to Part 47. Hang gliders and paragliders (including powered variants thereof) are not required to be listed provided their empty weight does not exceed 70kg. An ASAO may choose to voluntarily list these aircraft, in which case it must list all the individual aircraft it administers. Sailplanes are registered under Part 47 and are not eligible for listing under Part 103.

Regulation 103.030 Flying without a certificate of airworthiness—aircraft to which Part 21 does not apply

Subregulation 103.030(1) provides that subregulation (2) applies to a Part 103 ASAO if the approved functions of the Part 103 ASAO include administering Part 103 aircraft for which neither a certificate of airworthiness issued under regulation 21.176 nor an experimental certificate (issued under regulation 21.195A) is in force and in relation to which no person is eligible to apply for such a certificate.

Subregulation 103.030(2) provides that the exposition for the Part 103 ASAO must include: (a) procedures for setting airworthiness standards for the aircraft; (b) procedures for accepting an aircraft that meets those standards; and (c) issuing a statement of acceptance to the owner of an aircraft accepted in accordance with the procedures mentioned in paragraph (b).

Subregulation 103.030(3) provides that the procedures mentioned in paragraphs (2)(a), (b) or (c) must meet any requirements prescribed by the Part 103 Manual of Standards for the purposes of this regulation.

Subregulation 103.030(4) provides, for the purposes of paragraph 20AA(3)(b) of the Act, that a flight in a Part 103 aircraft (other than an aircraft for which a certificate of airworthiness issued under regulation 21.176, or an experimental certificate, is in force) is authorised without a certificate of airworthiness if a Part 103 ASAO has issued a statement of acceptance to the owner of the aircraft in accordance with the procedures mentioned in paragraph (2)(c) of this regulation. A statement of acceptance will be an authorisation issued by an ASAO, and as such, it will not be an authorisation within the meaning of regulation 11.015, but will be instead be subject to the review mechanisms available through Subpart 149.K of CASR, which includes internal ASAO review and CASA review of the internal ASAO review.

These provisions contribute to aviation safety by requiring the ASAO to include procedures for the setting of airworthiness standards by an ASAO for certain aircraft it administers and procedures for the acceptance of those aircraft against those standards by the ASAO. An ASAO will not be able to set airworthiness standards for aircraft for which the prescribed requirements of Subpart 21.H of CASR are, or can be, satisfied in relation to the aircraft. The procedures would be for the ASAO to formulate (subject to any requirements prescribed by the Part 103 Manual of Standards) and may include defining a standard and inspecting the aircraft for acceptance by the ASAO against the standard, accepting evidence from the manufacturer or another NAA that demonstrates the aircraft meets the standard, or accepting a statement from the owner of the aircraft that it meets the standard.

Regulation 103.035 Display of markings—aircraft other than sailplanes

Subregulation 103.035(1) provides that Part 45 does not apply to a Part 103 aircraft that is not a sailplane.

Subregulation 103.035(2) provides that, if the approved functions of the Part 103 ASAO include administering a Part 103 activity in relation to Part 103 aircraft that are not sailplanes, then the exposition for the Part 103 ASAO must include requirements relating to the display of markings (within the ordinary meaning of the term) on the aircraft and prohibit the operation of the aircraft if they do not meet the requirements relating to the display of markings.

Subregulation 103.035(3) provides that the exposition must have, without limiting subregulation 103.035(2), requirements for when markings must be displayed, the number of sets of markings that must be displayed, the location of sets of markings on aircraft, and the characters to be used in each set of markings, including height, width and font requirements.

These provisions contribute to aviation safety by providing for an ASAO to include requirements in relation to markings on aircraft it administers. The markings should be such that individual aircraft can be readily identified.

Subpart 103.C—General obligation

This Subpart inserts a new Subpart 103.C of CASR which contains regulation 103.040. It provides the requirements for undertaking Part 103 activities.

Regulation 103.040 Requirements for undertaking Part 103 activities

Subregulation 103.040(1) provides that a person contravenes this subregulation if the person undertakes a Part 103 activity and they do not hold an authorisation from a Part 103 ASAO authorising them to undertake the activity.

Subregulation 103.040(2) provides that subregulation 103.040(1) does not apply if the person holds an approval under regulation 103.020 to undertake the activity or the person is otherwise authorised under these Regulations (CAR or CASR) to undertake the activity.

Subregulation 103.040(3) provides that a person contravenes this subregulation if they undertake a Part 103 activity, hold an authorisation from a Part 103 ASAO authorising them to undertake the activity and they undertake the activity in a way that contravenes the authorisation.

Subregulation 103.040(4) provides that a person commits an offence of strict liability if they contravene subregulation 103.040(1) or (3). The penalty for the offence has been set at 50 penalty units.

These provisions contribute to aviation safety by providing that a person must hold an authorisation from an ASAO to undertake a Part 103 activity and must not contravene the authorisation. This means a person can only exercise privileges specific to the authorisation and must comply with any limitations on the exercise of those privileges specified in relation to the authorisation.

Subpart 103.D—Operational procedures

This Subpart inserts a new Subpart 103.D of CASR inclusive of regulations 103.045 to 103.085. It provides the flight rules that are unique to Part 103 aircraft.

Regulation 103.045 Minimum height rules—other than over populous areas or public gatherings

Subregulation 103.045(1) provides that this regulation applies if a Part 103 aircraft is flown other than over a populous area or a public gathering. The minimum height rules for an aircraft flown over a populous area or a public gathering are in regulation 91.315.

Subregulation 103.045(2) provides that the pilot in command of a Part 103 aircraft for a flight contravenes this subregulation if, during the flight, the aircraft is flown below 500 ft above the highest feature or obstacle within a horizontal radius of 300 m of the point on the ground or water immediately below the aircraft, and none of the circumstances mentioned in subregulation 103.045(3) applies.

Subregulation 103.045(3) provides 11 circumstances for the purposes of subregulation 103.045(2). These circumstances, which allow for Part 103 aircraft to be flown below 500 ft in the setting mentioned in subregulation 103.045(2), include a Part 103 aircraft taking off, operating or landing in circumstances prescribed in the Part 103 MOS, if the aircraft is a glider engaged in ridge or hill soaring, if the aircraft is practising emergency procedures at an aerodrome, or if the aircraft is performing training circuits in accordance with circumstances prescribed in the Part 103 MOS.

Subregulation 103.045(4) provides that a person commits an offence of strict liability if they contravene subregulation 103.045(2). The penalty for the offence has been set at 50 penalty units.

These provisions contribute to aviation safety by requiring the pilot in command of a Part 103 aircraft to not fly below 500 ft above the highest feature or obstacle within a horizontal radius of 300 m of the aircraft unless the mentioned circumstances apply to the operation of the aircraft.

Orographic lift is generated when a wind blows against a hill, ridge or escarpment, causing the air to rise and creating a region of rising air directly above the slope, which may extend some distance upwards and outwards from its face because the airflow follows the upward contour of the hill. A glider may use this orographic lift to stay aloft for long periods or travel great distances soaring by following the topography of the hill or ridge while staying within the bounds of the orographic lift, the activity being described as “hill or ridge soaring”.

Regulation 103.050 Safety when aircraft operating on ground

Subregulation 103.050(1) provides that a person contravenes this subregulation if they start the engine of a Part 103 aircraft, or causes the engine to be started, while the aircraft is on the ground, and a requirement mentioned in subregulation 103.050(2) is not met.

Subregulation 103.050(2) provides 3 requirements for the purposes of subregulation 103.050(1), including that the person must be authorised by a Part 103 ASAO or be a person of a kind prescribed in the Part 103 MOS, that the aircraft be secured from moving, and that, if the aircraft is hand started, the hand-starting meets the requirements prescribed by the Part 103 MOS.

Subregulation 103.050(3) provides that a person contravenes this subregulation if they operate a Part 103 aircraft on the ground, or causes a Part 103 aircraft to be operated on the ground, and they permit another person to board the aircraft or to remain on the aircraft while a pilot seat of the aircraft is not occupied by a person who is competent to apply the brakes and control the engine.

Subregulation 103.050(4) provides that a person is “competent” to apply the brakes and control the engine of an aircraft under subregulation 103.050(3) if they have been given instructions on how, and is assessed as competent, to apply the brakes and control the engine by another person who is authorised by a Part 103 ASAO to pilot or maintain the aircraft, or the person is authorised by a Part 103 ASAO to maintain the aircraft.

Subregulation 103.050(5) provides that a person commits an offence of strict liability if they contravene subregulation 103.050(1) or (3). The penalty for the offence has been set at 50 penalty units.

These provisions contribute to aviation safety by requiring persons to meet certain requirements for the operation of a Part 103 aircraft in relation to starting the engine of the aircraft.

Regulation 103.055 provides that an exposition for a Part 103 ASAO must include requirements in relation to the carriage of passengers on Part 103 aircraft.

This provision contributes to aviation safety by requiring an ASAO to include in its exposition requirements in relation to the carriage of passengers on Part 103 aircraft. The requirements must provide for the safe conduct of passenger carrying operations and are subject to CASA approval.

Regulation 103.060 Carriage and restraint of persons

Subregulation 103.060(1) provides that the pilot in command of a Part 103 aircraft for a flight contravenes this subregulation if the requirement mentioned in subregulation 103.060(2) is not met for the flight.

Subregulation 103.060(2) provides the requirement for subregulation 103.060(1), which is that an infant must not be carried on the flight except in the circumstances prescribed by the Part 103 Manual of Standards for the purposes of this subregulation.

Subregulation 103.060(3) provides that the pilot in command of a Part 103 aircraft for a flight contravenes this subregulation if a requirement mentioned in subregulation 103.060(4) is not met.

Subregulation 103.060(4) provides the requirements for subregulation 103.060(3). The requirements are that the pilot in command must occupy a pilot seat and be securely fastened with a seatbelt and, if any, the shoulder harness. All other adults on the flight must either occupy a seat and likewise be securely fastened, or if the aircraft is not fitted with seats, then the adult must be wearing a harness or restraint that is securely fastened at all times. A child must be restrained in accordance with requirements prescribed in the Part 103 MOS.

Subregulation 103.060(5) provides that subregulation 103.060(4) does not apply in relation to a person if regulation 105.105 imposes requirements in relation to restraint of the person.

Subregulation 103.060(6) provides that a person commits an offence of strict liability if they contravene subregulation 103.060(1) or (3). The penalty for the offence has been set at 50 penalty units.

These provisions contribute to aviation safety by providing requirements for the restraint of persons.

Regulation 103.065 Carriage of cargo

Subregulation 103.065(1) provides that this regulation does not apply in relation to an animal carried in a passenger cabin. This is because the requirements for carriage of an animal in an aircraft cabin are set out in regulation 91.620.

Subregulation 103.065(2) provides that the pilot in command of a Part 103 aircraft for a flight contravenes this subregulation if cargo is carried on the flight and a requirement mentioned in subregulation 103.065(3) is not met for the flight.

Subregulation 103.065(3) provides the requirements for subregulation 103.065(2). These requirements include that cargo must not be carried in a place where cargo may damage or obstruct any part of the aircraft, and meet any other requirement prescribed in the Part 103 MOS.

Subregulation 103.065(4) provides that a person commits an offence of strict liability if they contravene subregulation 103.065(2). The penalty for the offence has been set at 50 penalty units.

These provisions contribute to aviation safety by providing for the carriage of cargo in a way that does not endanger the safety of the aircraft.

Regulation 103.070 Simulating Instrument Meteorological Conditions (IMC) flying

Subregulation 103.070(1) provides that the pilot in command of a Part 103 aircraft for a flight contravenes this subregulation if, during the flight, IMC are simulated and a requirement in subregulation 103.070(2) is not met.

Subregulation 103.070(2) provides the requirements for subregulation 103.070(1). These requirements include that the aircraft must be of a kind prescribed in the Part 103 MOS, that the pilot (a safety pilot) must occupy a pilot seat fitted with fully functioning flight controls and have adequate vision forward and to the sides of the aircraft, that the pilot (the second pilot) flying the aircraft under simulated IMC must also occupy a pilot seat fitted with fully functioning flight controls, and that the safety pilot be authorised by a Part 103 ASAO to pilot the aircraft.

Subregulation 103.070(3) provides that a person commits an offence of strict liability if they contravene subregulation 103.070(1). The penalty for the offence has been set at 50 penalty units.

These provisions mirror regulation 91.720, but in relation to the operation of a Part 103 aircraft prescribed by the Part 103 MOS.

Regulation 103.075 Training flight limitations etc.

Subregulation 103.075(1) provides the definition for a “permitted person” for this regulation.

Subregulation 103.075(2) provides that the pilot in command of a Part 103 aircraft for a flight contravenes this subregulation if, during the flight, a person other than a permitted person is carried on the aircraft, and the pilot in command permits the simulation (other than verbally) of an emergency or abnormal situation that may affect the handling characteristics of the aircraft.

Subregulation 103.075(3) provides that the pilot in command of a Part 103 aircraft for a flight contravenes this subregulation if, during the flight, a person other than a permitted person, or a person prescribed by the Part 103 Manual of Standards for the purposes of subparagraph 103.075(3)(a)(ii), is carried on the aircraft and the pilot in command permits a test of the aircraft, or any of its instruments, indicators, items of equipment or systems.

Subregulation 103.075(4) provides that a person commits an offence of strict liability if they contravene subregulation 103.075(2) or (3). The penalty for the offence has been set at 50 penalty units.

These provisions mirror regulation 91.725, but in relation to the operation of a Part 103 aircraft.

Regulation 103.080 Consumption or provision of alcohol

Subregulation 103.080(1) provides that a person on a Part 103 aircraft for a flight contravenes this subregulation if they consume alcohol or they provide alcohol to another person on the aircraft.

Subregulation 103.080(2) provides that a person commits an offence of strict liability if they contravene subregulation 103.080(1). The penalty for the offence has been set at 50 penalty units.

Because passengers in Part 103 aircraft are situated in close proximity to the pilot and aircraft control systems, any interference by a person affected by alcohol with the pilot or a control system will have an immediate adverse effect on the safety of the aircraft, which the pilot may be unable to rectify.

Regulation 103.085 Additional requirements in relation to Part 103 activities

Subregulation 103.085(1) provides that the Part 103 MOS may prescribe additional requirements in relation to undertaking a Part 103 activity.

Subregulation 103.085(2) provides that these requirements may include, in relation to Part 103 aircraft and without limiting subregulation (1), flights over populous areas; flights in specified classes of airspace and the monitoring of Air Traffic Control communications in controlled airspace; flights at or above specified altitudes; operations at or within prescribed distances from aerodromes; the conduct of aerobatic manoeuvres during flights, the dropping of things from an aircraft during flight; the towing of a Part 103 aircraft by another Part 103 aircraft; the conduct of training in the operation of an aircraft; placards that must be displayed in aircraft; documents that must be carried on an aircraft; and documents and authorisations that must be in force when an aircraft begins a flight.

Subregulation 103.085(3) provides that a person contravenes this subregulation if the person is subject to a requirement mentioned in subregulation 103.085(1) and the requirement is not met.

Subregulation 103.085(4) provides that a person commits an offence of strict liability if they contravene subregulation 103.085(3). The penalty for the offence has been set at 50 penalty units.

These provisions contribute to aviation safety by providing for Part 103 MOS to prescribe requirements as necessary to ensure the safety of air navigation.

Subpart 103.K—Instruments, equipment and systems

This Subpart inserts a new Subpart 103.K of CASR inclusive of regulations 103.090 to 103.095. It provides the requirements for instruments, indicators, equipment and systems, and when a Part 103 aircraft may be flown with inoperative instruments, indicators, equipment or systems.

Regulation 103.090 Instruments, indicators, equipment and systems—requirements

Subregulation 103.090(1) provides that the Part 103 Manual of Standards may prescribe instruments, indicators, items of equipment or systems, and their respective requirements, that must be fitted to, or carried on, a Part 103 aircraft in circumstances prescribed by the Part 103 Manual of Standards. The Part 103 Manual of Standards may also prescribe instruments, indicators, items of equipment or systems that must not be fitted to, or carried on, a Part 103 aircraft in circumstances prescribed by the Part 103 Manual of Standards.

Subregulation 103.090(2) provides that the operator and the pilot in command of a Part 103 aircraft for a flight each contravene this subregulation if, when the flight begins, an instrument, indicator, item of equipment or system required to be fitted to, or carried on, the aircraft, is not fitted to, or carried on, the aircraft (as the case requires). The operator and the pilot in command of a Part 103 aircraft for a flight each contravene this subregulation if, when the flight begins, an instrument, indicator, item of equipment or system that must not be fitted to, or carried on, the aircraft, is fitted to, or carried on, the aircraft.

Subregulation 103.090(3) provides a person on a Part 103 aircraft for a flight contravenes this subregulation if they are subject to a requirement in relation to an instrument, indicator, item or equipment or system that is fitted to, or carried on, a Part 103 aircraft in circumstances prescribed by the Part 103 Manual of Standards, and the requirement is not met for the flight.

Subregulation 103.090(4) provides that a person commits an offence of strict liability if they contravene subregulation 103.090(2) or (3). The penalty for the offence has been set at 50 penalty units.

Regulation 103.095 provides that, if an instrument, indicator, item of equipment or system is required under regulation 103.090 to be fitted to, or carried on, a Part 103 aircraft for a flight, the aircraft may begin the flight with the instrument, indicator, item of equipment or system inoperative if circumstances prescribed by the Part 103 Manual of Standards for the purposes of this regulation apply to the flight.

These provisions contribute to aviation safety by providing for Part 103 MOS to prescribe such equipment necessary to ensure the safe operation of the aircraft.

Subpart 103.M—Airworthiness requirements

This Subpart inserts a new Subpart 103.M of CASR inclusive of regulations 103.100 to 103.125. It provides the airworthiness requirements for a Part 103 aircraft.

Regulation 103.100 provides that Parts 4 and 4A of CAR do not apply to a Part 103 aircraft, and Parts 4B, 4C and 4D of CAR do not apply to a Part 103 aircraft that is not a sailplane. Part 4 of CAR deals with general airworthiness requirements; Part 4A of CAR deals with maintenance requirements; Part 4B of CAR deals with defect reporting; Part 4C deals with flight manuals; and Part 4D deals with removal and alteration of data plates. The purpose of disapplying these various parts to different kinds of Part 103 aircraft is to enable Subpart 103.M to establish an alternative framework on maintenance and airworthiness matters.

Regulation 103.105 Requirements prescribed by the Part 103 Manual of Standards

Subregulation 103.105(1) provides that the Part 103 Manual of Standards may prescribe requirements relating to the maintenance, or ensuring the airworthiness of, a Part 103 aircraft or aeronautical products for Part 103 aircraft.

Subregulation 103.105(2) provides a person contravenes this subregulation if they are subject to a requirement in subregulation 103.105(1) and do not comply with the requirement.

Subregulation 103.105(3) provides that a person commits an offence of strict liability if the person contravenes subregulation 103.105(2). The penalty for the offence has been set at 50 penalty units.

Regulation 103.110 provides, for the purposes of subsection 20AB(2) of the Act, that a person is permitted to carry out maintenance on a Part 103 aircraft or on an aeronautical product for a Part 103 aircraft if the person holds an authorisation from a Part 103 ASAO authorising the person to carry out the maintenance.

Regulation 103.115 Requirements for ASAO exposition

Subregulation 103.115(1) provides that this regulation applies if the approved functions of a Part 103 ASAO include administering the activity mentioned in paragraph (b) of the definition of “Part 103 activity”.

Subregulation 103.115(2) provides that the exposition for the Part 103 ASAO must include requirements relating to undertaking the activity mentioned in paragraph (b) referred to in subregulation 103.115(1).

Regulation 103.120 Aircraft data plate—aircraft to which Part 21 does not apply

Subregulation 103.120(1) provides that this regulation applies in relation to a data plate attached to a Part 103 aircraft that is administered by a Part 103 ASAO, other than a data plate attached in accordance with Division 21.Q.2.

Subregulation 103.120(2) provides that the exposition for the Part 103 ASAO must include requirements relating to the procedures used for attaching a data plate to the aircraft.

Subregulation 103.120(3) provides that the owner of an aircraft contravenes this subregulation if an aircraft data plate attached to the aircraft does not meet the requirements prescribed by the Part 103 MOS for the purposes of this subregulation.

Subregulation 103.120(4) provides that a person contravenes this subregulation if they remove or engage in conduct that results in the alteration of any of the information on an aircraft data plate and they do not hold an approval under regulation 103.020 to do so.

Subregulation 103.120(5) provides that a person commits an offence of strict liability if they contravene subregulations 103.120(3) or (4). The penalty for the offence has been set at 50 penalty units.

The Part 103 MOS will prescribe requirements in relation to the information that must be recorded on the aircraft data plate attached to a Part 103 aircraft required to have a data plate by subregulation 103.120(1). These provisions work with Part 21 to contribute to aviation safety by ensuring aircraft information and airworthiness history can be recorded in relation to individual Part 103 aircraft. This will enable the owner, operator and administering ASAO to determine whether known safety issues raised in airworthiness directives and mandatory service bulletins apply to an individual aircraft. These provisions will also work with regulation 103.025 to identify the aircraft for listing with an ASAO.

Regulation 103.125 Major defects

Subregulation 103.125(1) provides that a person contravenes this subregulation if they are the owner or operator of a Part 103 aircraft that is administered by a Part 103 ASAO, they know there is a defect in the aircraft, and they do not report the defect, in accordance with the requirements prescribed by the Part 103 Manual of Standards for the purposes of paragraph 103.125(1)(c), to the Part 103 ASAO within 3 business days after becoming aware of the defect.

Subregulation 103.125(2) provides that a Part 103 ASAO contravenes this subregulation if the Part 103 ASAO receives a report under subregulation 103.125(1) and does not, in accordance with the requirements prescribed by the Part 103 Manual of Standards for the purposes of paragraph 103.125(2)(b), provide a copy of the report to CASA, each other Part 103 ASAO prescribed by the Part 103 MOS for the purpose of paragraph 103.125(2) and the manufacturer of the aircraft.

Subregulation 103.125(3) provides a person contravenes this subregulation if they are the owner or operator of a Part 103 aircraft that is administered by a Part 103 ASAO, they know there is a major defect in the aircraft, and they do not record the defect, in accordance with the requirements prescribed by the Part 103 Manual of Standards for the purposes of paragraph 103.125(3)(c).

Subregulation 103.125(4) provides the pilot in command of a Part 103 aircraft for a flight contravenes this subregulation if the aircraft is administered by a Part 103 ASAO, a major defect in the aircraft has been recorded in accordance with subregulation 103.25(3) and, when the flight begins, a person authorised by the Part 103 ASAO has not signed a release to service for the aircraft in relation to the defect.

Subregulation 103.125(5) provides that a person commits an offence if they contravene subregulation 103.125(1), (2) or (3). The penalty for the offence has been set at 50 penalty units.

Subregulation 103.125(6) provides that a person commits an offence of strict liability if they contravene subregulation 103.125(4). The penalty for the offence has been set at 50 penalty units.

The Part 103 MOS will prescribe requirements in relation to the reporting of major defects in a Part 103 aircraft by the owner or operator of a Part 103 aircraft to the administering ASAO and the actions to be taken by an ASAO that receives a defect report. The requirements of the Part 103 MOS will include actions to be undertaken by owners and operators in reporting defects as well as the duties and responsibilities of ASAOs to act in response to receipt of a defect report.

The MOS will also prescribe requirements on relation to the recording of defects by the owner or operator of a Part 103 aircraft so that the aircraft is known to be defective – firstly to ensure that another pilot does not fly the aircraft if the defect has not been repaired and the aircraft authorised for flight by an authorised maintainer; and secondly, to ensure that an authorised maintainer is aware of the defect and can undertake appropriate repairs and authorise the aircraft for flight in a document that is specific to the aircraft.

Subpart 103.Z—Towing of Part 103 aircraft by other aircraft

This Subpart inserts a new Subpart 103.Z of CASR inclusive of regulation 103.130. It provides the requirements for towing a Part 103 aircraft by other aircraft.

Subregulation 103.130 Towing of Part 103 aircraft by other aircraft

Subregulation 103.130(1) provides that the Part 103 Manual of Standards may prescribe requirements in relation to the towing of a Part 103 aircraft by an aircraft that is not a Part 103 aircraft.

Subregulation 103.130(2) provides that the pilot in command of an aircraft for a flight contravenes this subregulation if a requirement mentioned in subregulation 103.130(1) is not met for the flight.

Subregulation 103.130(3) provides that a person commits an offence of strict liability if they contravene subregulation 103.130(2). The penalty for the offence has been set at 50 penalty units.

These provisions contribute to aviation safety by providing for the Part 103 MOS to prescribe requirements to ensure the safe conduct of towing operations.

Part 2 – Transitional and consequential provisions

Civil Aviation Safety Regulations 1998

Item 2 Part 1 of the Dictionary (definition of *empty weight*)

The definition of *empty weight* is repealed and is substituted with a new definition.

Item 3 Part 1 of the Dictionary (definition of *glider*)

The term “inoperative” is omitted and substituted with “not being operated” in the definition of *glider*.

Item 4 Part 1 of the Dictionary (definition of *gyroglider*)

The definition of *gyroglider* is repealed and is substituted with a new definition.

Item 5 Part 1 of the Dictionary (definition of *hang glider*)

The definition of *hang glider* is repealed and is substituted with a new definition.

Item 6 Part 1 of the Dictionary (definition of *paraglider*)

The definition of *paraglider* is repealed and is substituted with a new definition.

Item 7 Part 1 of the Dictionary

A number of references to the Regulations are inserted to supplement the definitions of *Part 103 activity*, *Part 103 aircraft*, *Part 103 ASAO*, *Part 103 Manual of Standards* and *power-assisted sailplane*.

Item 8 Part 1 of the Dictionary (definition of *powered hang glider*)

The definition of *powered hang glider* is repealed and is substituted with a new definition.

Item 9 Part 1 of the Dictionary (definition of *powered paraglider*)

The definition of *powered paraglider* is repealed and is substituted with a new definition.

Item 10 Part 1 of the Dictionary (definition of *powered sailplane*)

The term “inoperative” is omitted and substituted with “not being operated” in the definition of *powered sailplane*.

Item 11 Part 1 of the Dictionary (at the end of the definition of *powered sailplane*)

A note is inserted at the end of the definition of *powered sailplane* to include a touring motor glider.

Item 12 Part 1 of the Dictionary

A definition of *touring motor glider* is inserted.

Schedule 2—Amendments relating to Part 105

Civil Aviation Safety Regulations 1998

Item 1 Regulation 152

This regulation is repealed.

Item 1 repeals CAR 152 because the regulation is replaced by Part 105 of CASR

Civil Aviation Safety Regulations 1998

Item 2 Subparagraph 99.015(2)(c)(iv)

“and” is omitted.

Item 3 At the end of paragraph 99.015(2)(c)

(v) is added, which provides “reserve parachutes or emergency parachutes; and”.

Item 4 At the end of subregulation 99.015(2)

(m) and (n) are added.

Item 5 Subregulation 99.015(3)

“(l)” is omitted and is substituted with “(n)”.

Items 2, 3, 4 and 5 enhance aviation safety by providing for the inclusion of the maintenance or manufacture of reserve parachutes or emergency parachutes, the undertaking of parachute descents and the supervision of parachute descents as safety-sensitive aviation activities for the purpose of applicable drug and alcohol testing under Part 99 of CASR.

Item 6—Part 105

This item repeals the existing Part 105 of the *Civil Aviation Safety Regulations 1998* (CASR) which is titled Sport and recreational parachuting from aircraft and is currently reserved for future use. It substitutes a new Part 105 titled Parachuting from aircraft. It provides for general obligations, rules for parachute descents and requirements for pilots of aircraft operated to facilitate a parachute descent.

It also provides requirements for aircraft operated to facilitate a parachute descent and the requirements for dealing with parachute defects.

The Part makes many references to an ASAO. ASAO means approved self-administering organisation – an organisation approved by CASA to administer certain aviation activities under Part 149 of CASR. Parachuting from aircraft is one such activity. A Part 105 ASAO is defined by regulation 105.010 as an ASAO whose approved function is, or includes, administering a parachuting activity.

Subpart 105.A—Preliminary

This Subpart inserts a new Subpart 105.A of CASR inclusive of regulations 105.005 to 105.015. It provides for the application of Part 105, definitions for Part 105 and a head of power for a Part 105 Manual of Standards (MOS).

Regulation 105.005 provides an outline of the operations that the Part applies to by way of exclusion of the types of operations listed in the regulation. The exclusions apply to parachutes that are not for use by a person (i.e. not personnel parachutes), parachute descents that are not from aircraft and emergency parachute descents.

Regulation 105.010 provides a list of definitions relevant to Part 105, including certain activities that fall within the definition of parachuting activities. It is necessary to define the meaning of certain terms used in the Part to ensure correct implementation of the Part.

Regulation 105.015 provides that, as permitted by subsection 98(5A) of the Act, CASA may issue a Manual of Standards (MOS) for this Part.

Subpart 105.C—General

This Subpart inserts a new Subpart 105.C of CASR inclusive of regulations 105.020 and 105.025. It provides obligations for a person conducting a parachute activity and for parachute operators.

Division 105.C.1—General flight limitations

Regulation 105.020 Parachutists must not create hazards

Subregulation 105.020(1) provides that a person contravenes this subregulation if they undertake a parachute descent in a way that creates a hazard to an aircraft, another person or property.

Subregulation 105.020(2) provides that a person commits an offence of strict liability if they contravene subregulation 105.020(1). The penalty for the offence has been set at 50 penalty units.

Regulation 105.025 Persons must not create hazards to aircraft operated to facilitate parachute descents

Subregulation 105.025(1) provides that a person contravenes the subregulation if they do an act that creates a hazard to an aircraft that is being operated to facilitate a parachute descent.

Subregulation 105.025(2) provides that a person commits an offence of strict liability if they contravene subregulation 105.025(1). The penalty for the offence has been set at 50 penalty units.

The regulations in this Division promote safety behaviours in persons undertaking parachute descents and in relation to aircraft being used for parachute descents.

Division 105.C.2—Operational documents

This Division is reserved for future use.

Division 105.C.3—Flight related documents

This Division is reserved for future use.

Division 105.C.4—Reporting and recording defects, incidents etc.

Regulation 105.045 Reserve parachutes and emergency parachutes—reporting of major defects by maintainers

Subregulation 105.045(1) provides that the regulation applies to a person if they hold an authorisation from a Part 105 ASAO to carry out maintenance on reserve parachutes or emergency parachutes.

Subregulation 105.045(2) provides that a person contravenes this regulation if they carry out maintenance on a reserve parachute or emergency parachute, knows there is a major defect in the parachute, and does not report the defect to the Part 105 ASAO within 3 business days after becoming aware of the defect.

Subregulation 105.045(3) provides that the report required in subregulation 105.045(2) must be made in writing, in a form approved by the Part 105 ASAO and contain information about the make and type of the parachute, the serial number of the parachute, the name and address of the owner of the parachute, a description of the defect and how the defect may affect the safety of the parachute or cause the parachute to become a danger to persons or property.

Subregulation 105.045(4) provides that an ASAO contravenes the subregulation if it receives a report under subregulation 105.045(2) and does not provide a copy of the report to CASA, the manufacturer of the parachute and all other Part 105 ASAOS within 3 business days of receiving the report.

Subregulation 105.045(5) provides that a person commits an offence of strict liability if they contravene subregulations 105.045(2) or (4). The penalty for the offence has been set at 50 penalty units.

Regulation 105.050 Reserve parachutes—reporting of major defects by parachutists

Subregulation 105.050(1) provides that the regulation applies to a person if they hold an authorisation from a Part 105 ASAO to undertake a parachute descent.

Subregulation 105.050(2) provides that a person contravenes the regulation if they know there is a major defect in the reserve parachute, knows that the major defect has not been reported to the Part 105 ASAO and does not report the defect to the Part 105 ASAO within 3 business days after becoming aware of the defect.

Subregulation 105.050(3) provides that the report required in subregulation 105.050(2) must be made in writing, in a form approved by the Part 105 ASAO and contain information about the make and type of the parachute, the serial number of the parachute, the name and address of the owner of the parachute, a description of the defect and how the defect may affect the safety of the parachute or cause the parachute to become a danger to persons or property.

Subregulation 105.050(4) provides that an ASAO contravenes the subregulation if it receives a report under subregulation 105.050(2) and does not provide a copy of the report to CASA, the manufacturer of the reserve parachute and all other Part 105 ASAOS within 3 business days of receiving the report.

Subregulation 105.050(5) provides that a person commits an offence of strict liability if they contravene subregulation 105.050(2) or (4). The penalty for the offence has been set at 50 penalty units.

The regulations in this Division promote safety behaviours by parachutists and parachute maintainers by requiring the reporting of a defect in a reserve or emergency parachute that may affect the safe operation of the parachute or cause the parachute to become a danger to persons or property.

Division 105.C.5—Search and rescue services and emergency and survival equipment

Regulation 105.055 Reserve parachute and emergency parachute equipment requirements

Subregulation 105.055(1) provides that a person contravenes the subregulation if they undertake a parachute descent and they are not equipped with a reserve parachute that meets the requirements in subregulation 105.055(3).

Subregulation 105.055(2) provides that a person contravenes the subregulation if they provide a reserve parachute to another person for the purposes of the other person undertaking a parachute descent, and the reserve parachute does not meet the requirements in subregulation 105.055(3).

Subregulation 105.055(3) provides the requirements are to be prescribed by the Part 105 MOS for the purposes of subregulations 105.055(1) and (2).

Subregulation 105.055(4) provides that a person contravenes the subregulation if they provide an emergency parachute to another person for carriage on board an aircraft prescribed by the Part 105 MOS, and the emergency parachute does not meet the requirements in subregulation 105.055(5).

Subregulation 105.055(5) provides the requirements for the purposes of subregulation 105.055(4).

Subregulation 105.055(6) provides that a person commits an offence of strict liability if they contravene subregulations 105.055(1), (2) or (4). The penalty for the offence has been set at 50 penalty units.

Regulation 105.060 Defective reserve parachutes and defect emergency parachutes

Subregulation 105.060(1) provides that a person contravenes the subregulation if they undertake a parachute descent and they are equipped with a defective reserve parachute.

Subregulation 105.060(2) provides that subregulation 105.060(1) does not apply if the person is a tandem parachutist or a trainee parachutist. The defendant bears the evidential burden in relation to this matter.

Subregulation 105.060(3) provides that a person contravenes the subregulation if they provide a defective reserve parachute or a defective emergency parachute to another person for the purposes of the other person undertaking a parachute descent.

Subregulation 105.060(4) provides that a person commits an offence of strict liability if they contravene subregulations 105.060(1) or (3). The penalty for the offence has been set at 50 penalty units.

Subregulation 105.060(5) provides the definition of a *defective reserve parachute* for the purposes of this regulation.

Subregulation 105.060(6) provides the definition of a *defective emergency parachute* for the purposes of this regulation.

The regulations in this Division promote safety through the prohibition of parachute descents by a person equipped with a reserve parachute known to be defective and the prohibition of the supply of a defective reserve parachute or emergency parachute to a person that will or may use the parachute. The equipment contravention does not apply to tandem parachutists and trainee

parachutists because they are presumed not to have the requisite knowledge to identify a parachute as defective.

Division 105.C.6—Miscellaneous requirements

Regulation 105.065 Requirements for undertaking parachuting activities

Subregulation 105.065(1) provides that a person contravenes the subregulation if they undertake a parachuting activity and do not hold an authorisation from a Part 105 ASAO authorising the person to undertake the activity.

Subregulation 105.065(2) provides that a person contravenes the subregulation if they undertake a parachuting activity, hold an authorisation from a Part 105 ASAO authorising them to undertake the activity, and undertake the activity in a way that contravenes the authorisation.

Subregulation 105.065(3) provides that a person commits an offence of strict liability if they contravene subregulations 105.065(1) or (2). The penalty for the offence has been set at 50 penalty units.

Regulation 105.070 Additional obligations applying to parachute operators

Subregulation 105.070(1) provides that a parachute operator must take reasonable steps to ensure that each person employed or otherwise engaged by the operator to provide service or equipment for undertaking parachute descents is aware of the obligations imposed on persons under this Part, and complies with any written procedures of the operator relating to the safe provision of those services or that equipment.

Subregulation 105.070(2) provides that a parachute operator must take reasonable steps to ensure that a person to whom the operator provides services or equipment for undertaking parachute descents is aware of the obligations imposed on the person under this Part, and complies with any written procedures of the operator relating to the safe conduct of parachute descents.

Subregulation 105.070(3) provides that a person (the operator mentioned in subregulation 105.070(2)) commits an offence of strict liability if they contravene subregulations 105.070(1) or (2). The penalty for the offence has been set at 50 penalty units.

Regulation 105.075 Permission to undertake parachute descent

Subregulation 105.075(1) provides that the regulation applies in relation to a person undertaking a parachute descent other than as a tandem parachutist.

Subregulation 105.075(2) provides that a person (the parachutist) contravenes the subregulation if the parachutist undertakes a parachute descent but, before the parachutist exits the aircraft to begin the parachute descent, the pilot in command of the aircraft, or a person nominated by the pilot, has not given permission for the parachutist to do so.

Subregulation 105.075(3) provides that a person commits an offence of strict liability if they contravene subregulation 105.075(2). The penalty for the offence has been set at 50 penalty units.

Regulation 105.080 General requirements for aircraft used for parachute descents

Subregulation 105.080(1) provides that the pilot in command of an aircraft contravenes the subregulation if the aircraft is being operated to facilitate a parachute descent and is not a Part 103 aircraft, an aeroplane, a helicopter, a powered-lift aircraft, or a manned free balloon.

Subregulation 105.080(2) provides that the pilot in command of a Part 103 aircraft contravenes the subregulation if the aircraft is being operated to facilitate a parachute descent by a trainee parachutist and/or a tandem parachutist.

Subregulation 105.080(3) provides that the pilot in command of an aircraft (other than a Part 103 aircraft) contravenes the subregulation if the aircraft is being operated to facilitate a parachute descent by a trainee parachutist and/or a tandem parachutist, and the pilot does not meet the pilot training requirements prescribed by the Part 105 MOS for the purposes of paragraph 105.080(3)(b).

Subregulation 105.080(4) provides that the pilot in command of a multi-engine aeroplane or a single-engine turbine-powered aeroplane contravenes the subregulation if the aircraft is being operated to facilitate a parachute descent by a trainee parachutist and/or a tandem parachutist, and the pilot does not meet the flight time required by subregulation 105.080(5).

Subregulation 105.080(5) provides the flight time required for the purposes of subregulation 105.080(4).

Subregulation 105.080(6) provides that the pilot in command of a powered-lift aircraft contravenes this subregulation if the aircraft is being operated to facilitate a parachute descent by a trainee parachutist and/or tandem parachutist, and the pilot does not meet the flight time requirements prescribed by the Part 105 MOS for the purposes of paragraph 105.080(6)(b).

Subregulation 105.080(7) provides that a person commits an offence of strict liability if they contravene subregulations 105.080(1), (2), (3), (4) or (6). The penalty for the offence has been set at 50 penalty units.

Subregulation 105.080(8) provides the definitions of *flight time* and *multi-engine aeroplane* for the purposes of the regulation. These definitions have the same meaning as in Part 61 of CASR.

Regulation 105.085 Requirements for aircraft used for descents by trainee parachutist and tandem parachutists

Subregulation 105.085(1) provides the regulation applies if an aircraft is being operated to facilitate a parachute descent by a trainee parachutist and/or a tandem parachutist.

Subregulation 105.085(2) provides that the pilot in command of the aircraft contravenes the subregulation if the aircraft does not meet a requirement mentioned in subregulation 105.085(3).

Subregulation 105.085(3) provides the requirements for the purposes of subregulation 105.085(2).

Subregulation 105.085(4) provides that a person commits an offence of strict liability if they contravene subregulation 105.085(2). The penalty for the offence has been set at 50 penalty units.

Regulation 105.090 Dropping things over populous areas

Subregulation 105.090(1) provides that a person contravenes the subregulation if they undertake a parachute descent over a populous area, they cause a thing to be dropped from the aircraft before the descent or during the descent, and the thing is dropped otherwise than in accordance with any requirements prescribed by the Part 105 MOS for the purposes of paragraph 105.090(1)(c).

Subregulation 105.090(2) provides that a person commits an offence of strict liability if they contravene subregulation 105.090(2). The penalty for the offence has been set at 50 penalty units.

Regulation 105.095 Dropping things other than over populous areas

Subregulation 105.095(1) provides that a person contravenes the subregulation if they undertake a parachute descent other than over a populous area, and they cause a thing to be dropped before the descent or during the descent, and the thing is dropped otherwise than in accordance with an authorisation from a Part 105 ASAO to cause the thing to be dropped and/or the thing is dropped otherwise in accordance with any requirements prescribed by the Part 105 MOS for the purposes of paragraph 105.095(1)(c)(ii).

Subregulation 105.095(2) provides that a person contravenes the subregulation if they undertake a parachute descent and they cause a thing to be dropped from the aircraft before the descent or during the descent, and the thing creates a hazard to another aircraft, a person or property.

Subregulation 105.095(3) provides that a person commits an offence of strict liability if they contravene subregulations 105.095(1) or (2). The penalty for the offence has been set at 50 penalty units.

The regulations in this Division promote safety by prescribing that the persons undertaking a parachute descent must hold an authorisation from an ASAO that authorises the descent (i.e. that they are qualified or under training to conduct a parachute descent) and by requiring that parachute operators ensure that persons employed or engaged by the operator are aware of their obligations imposed by the regulations and comply with the operators parachute descent procedures.

The safety of the parachutist is promoted through requirements that apply to the pilot in command and the aircraft. The pilot in command must first provide permission for a parachutist to exit the aircraft (i.e. that it is safe to commence the parachute descent) and, if the descent is by a trainee parachutist or tandem parachutist, the pilot must meet certain flight time requirements for the category of aircraft being used and satisfy the pilot training requirements prescribed by the Part 105 MOS. The aircraft must also be of a category of aircraft approved for the purposes of carrying parachutists undertaking the parachute descent or, for a descent that is not a descent by a trainee parachutist or tandem parachutist, a Part 103 aircraft.

The regulations also provide for the safety of persons and property on the ground and other aircraft through the prescription of requirements for the dropping of things from a parachuting aircraft or by a parachutist during a parachute descent.

Subpart 105.D—Operational requirements

This Subpart inserts a new Subpart 105.D of CASR inclusive of regulations 105.100 to 105.115. It provides additional requirements in relation to parachuting activities, restraint of persons other than flight crew members, requirements for compliance with safety directions and restrictions on aircraft occupants for descents by trainee parachutists and tandem parachutists.

Regulation 105.100 Additional requirements in relation to parachuting activities

Subregulation 105.100(1) provides that the Part 105 MOS may prescribe additional requirements in relation to undertaking parachuting activities.

Subregulation 105.100(2) provides, without limiting subregulation 105.100(1), the requirements that the Part 105 MOS can prescribe.

Subregulation 105.100(3) provides that a person contravenes the subregulation if they are subject to a requirement mentioned in subregulation 105.100(1) and do not comply with the requirement.

Subregulation 105.100(4) provides that a person commits an offence of strict liability if they contravene subregulation 105.100(3). The penalty for the offence has been set at 50 penalty units.

These provisions provide for the MOS to prescribe additional operational requirements to ensure that parachuting activities are unlikely to have an adverse effect on aviation safety.

Regulation 105.105 Restraint of persons other than flight crew members

Subregulation 105.105(1) provides that the pilot in command of an aircraft contravenes the subregulation if the aircraft is being operated to facilitate a parachute descent, a person is carried on the aircraft who is not a flight crew member, and, for paragraph 105.105(1)(c), the person is not provided with a seatbelt, shoulder harness or a single-point or dual-point restraint that is an approved restraint device.

Subregulation 105.105(2) provides that the pilot in command of an aircraft contravenes the subregulation if the aircraft is being operated to facilitate a parachute descent, a person is carried on the aircraft who is not a flight crew member, and the person is provided with a restraint device mentioned in paragraph 105.105(1)(c), but is not provided with instructions for the use of the device.

Subregulation 105.105(3) provides that the pilot in command of an aircraft contravenes the subregulation if the aircraft is being operated to facilitate a parachute descent, a person is carried on the aircraft who is not a flight crew member, the person is provided with a restraint device mentioned in paragraph 105.105(1)(c), and the requirement mentioned in subregulation 105.105(4) is not met before taxiing, taking off and landing.

Subregulation 105.105(4) provides the requirement, which is that the person must be directed to fasten the person's restraint device.

Subregulation 105.105(5) provides that the pilot in command of an aircraft contravenes the subregulation if the aircraft is being operated to facilitate a parachute descent, a person is carried on the aircraft who is not a flight crew member, the person is provided with a restraint device mentioned in subregulation 105.105(1), the pilot in command has reason to believe it is necessary, for the safety of the person, that the person's restraint device is fastened and the pilot in command does not direct the person to fasten their restraint device.

Subregulation 105.105(6) provides that a person commits an offence of strict liability if they contravene subregulations 105.105(1), (2), (3) or (5). The penalty for the offence has been set at 50 penalty units.

Subregulation 105.105(7) provides, for the purposes of regulation 105.105, a restraint device is an approved restraint device if it is approved by CASA under regulation 21.305 of CASR.

These provisions provide obligations on the pilot in command to ensure the safety of a person (other than flight crew) being carried on board a parachuting aircraft by making the pilot responsible for confirming that the aircraft is fitted with a restraint for each person carried on board, that each person is instructed in the use of the restraint and are directed to fasten the restraint prior to taxiing, taking off and landing or when the pilot in command believes it necessary for the safety of the person.

Regulation 105.110 Persons other than flight crew members—compliance with safety directions

Subregulation 105.110(1) provides that a person contravenes the subregulation if a person is carried on an aircraft being operated to facilitate a parachute descent, the person is not a flight crew member, a direction mentioned in subregulation 105.105(4) or paragraph 101.105(5)(e) is given to the person, and the person does not comply with the direction.

Subregulation 105.110(2) provides that a person commits an offence of strict liability if they contravene subregulation 105.110(1). The penalty for the offence has been set at 50 penalty units.

These provisions provide for the safety of persons (other than flight crew) carried on board a parachuting aircraft by requiring the persons to comply with the directions of the pilot to fasten their restraints.

Regulation 105.115 Restrictions on aircraft occupants for descents by trainee parachutists and tandem parachutists

Subregulation 105.115(1) provides that the regulation applies if an aircraft is being operated to facilitate a parachute descent by a trainee parachutist and/or a tandem parachutist.

Subregulation 105.115(2) provides that the pilot in command of the aircraft contravenes this subregulation if a person is carried on the aircraft and the person is not undertaking a parachute descent from the aircraft, or a crew member, or an officer or delegate of CASA who is on board the aircraft to carry out the officer's or delegate's duties, or performing a duty in accordance with the exposition of a Part 105 ASAO, or authorised by a Part 105 ASAO to be carried on the flight for training purposes.

Subregulation 105.115(3) provides that subregulation 105.115(2) does not apply if the aircraft is a manned free balloon and the pilot in command holds an authorisation from a Part 105 ASAO to carry the person on board the balloon. The defendant bears the evidential burden in relation to subregulation 105.115(3).

Subregulation 105.115(4) provides that a person commits an offence of strict liability if they contravene subregulation 105.115(2). The penalty for the offence has been set at 50 penalty units.

These provisions provide for the safety of persons (other than flight crew) carried on board a parachuting aircraft used for a descent by a trainee parachutist and/or a tandem parachutist by limiting the persons carried on board to essential or permitted personnel. The exception provided to balloons by subregulation 105.115(3) is because large balloons require persons on board to land safely.

Subpart 105.G—Personnel fatigue management

This Subpart inserts a new Subpart 105.G of CASR inclusive of regulation 105.120. It provides for the management of fatigue in relation to persons exercising certain parachute descent duties.

Regulation 105.120 Management of fatigue in relation to persons exercising certain parachute descent duties

Subregulation 105.120(1) provides that the Part 105 MOS may prescribe requirements in relation to managing the risk of fatigue in persons who exercise a duty in relation to the operation of aircraft being operated to facilitate parachute descents.

Subregulation 105.120(2) provides that a person contravenes the subregulation if they are subject to a requirement mentioned in subregulation 105.120(1) and they do not comply with the requirement.

Subregulation 105.120(3) provides that a person commits an offence of strict liability if they contravene subregulation 105.120(2). The penalty for the offence has been set at 50 penalty units.

These provisions provide for the safety of all persons on board an aircraft used for parachute descents by providing a head of power for the Part 105 MOS to prescribe requirements for managing the risk of fatigue in persons that have a duty in relation to the operation of the aircraft.

Subpart 105.J—Weight and balance

This Subpart inserts a new Subpart 105.J of CASR inclusive of regulation 105.125. It provides the requirements relating to the loading of parachuting aircraft.

Regulation 105.125 Loading of aircraft used for parachute descents

Subregulation 105.125(1) provides that the Part 105 MOS may prescribe requirements in relation to the loading of aircraft being operated to facilitate a parachute descent.

Subregulation 105.125(2) provides, without limiting subregulation 105.125(1), that the Part 105 MOS may prescribe requirements relating to aircraft loading procedures that must be followed, aircraft loading system requirements and the making and retention of aircraft loading records.

Subregulation 105.125(3) provides that a person contravenes the subregulation if they are subject to a requirement mentioned in subregulation 105.125(1) and they do not comply with the requirement.

Subregulation 105.125(4) provides that a person commits an offence of strict liability if they contravene subregulation 105.125(3). The penalty for the offence has been set at 50 penalty units.

These provisions provide for the safety of all persons on board an aircraft used for parachute descents by providing a head of power for the Part 105 MOS to prescribe requirements for managing the loading of aircraft to mitigate the risk of loss of control due to improper aircraft loading.

Subpart 105.K—Instruments, indicators, equipment and systems

This Subpart inserts a new Subpart 105.K of CASR inclusive of regulation 105.130. It provides the requirements relating to radio equipment and oxygen equipment.

Regulation 105.130 Requirements relating to radio equipment and oxygen equipment

Subregulation 105.130(1) provides that the Part 105 MOS may prescribe requirements relating to radio equipment that must be carried on an aircraft that are being operated to facilitate parachute descents, oxygen equipment that must be carried on aircraft that are being operated to facilitate parachute descents, and/or the circumstances in which the equipment abovementioned must be used.

Subregulation 105.130(2) provides that a person contravenes this subregulation if they are subject to a requirement mentioned in subregulation 105.130(1) and they do not comply with the requirement.

Subregulation 105.130(3) provides that a person commits an offence of strict liability if they contravene subregulation 105.130(2). The penalty for the offence has been set at 50 penalty units.

These provisions provide a head of power for the Part 105 MOS to prescribe operational safety requirements for the carriage and use of radio and oxygen equipment on parachuting aircraft, to mitigate the risk to the safety of air navigation of parachuting aircraft operations in controlled airspace or at high altitude.

Subpart 105.N—Flight crew

This Subpart inserts a new Subpart 105.N of CASR inclusive of regulations 105.135 to 105.155. It provides requirements for pilots of parachuting aircraft in flight crew licence qualifications and aeronautical experience in relation to aircraft permitted to be operated for the purpose of a parachute descent.

Regulation 105.135 Pilot requirements for parachute descents—Part 103 aircraft

Subregulation 105.135(1) provides that the regulation applies if a Part 103 aircraft is being operated to facilitate a parachute descent.

Subregulation 105.135(2) provides that the pilot in command of the aircraft contravenes the subregulation if the pilot does not satisfy the requirements prescribed by the Part 105 MOS for the purposes of paragraph 105.135(2)(a), or the aircraft does not satisfy the requirements prescribed by the Part 105 MOS for the purposes of paragraph 105.135(2)(b).

Subregulation 105.135(3) provides that a person commits an offence of strict liability if they contravene subregulation 105.135(2). The penalty for the offence has been set at 50 penalty units.

These provisions provide for the safety of persons on board a sport and recreational (Part 103) aircraft used for parachute descents by providing a head of power for the Part 105 MOS to prescribe requirements to be met by both the pilot and the aircraft.

Regulation 105.140 Pilot requirements for parachute descents—aeroplanes

Subregulation 105.140(1) provides that the regulation applies if an aeroplane (other than a Part 103 aircraft) is being operated to facilitate a parachute descent.

Subregulation 105.140(2) provides that the pilot in command of the aeroplane contravenes the subregulation if the pilot does not hold an air transport pilot licence with an aeroplane category rating, the pilot does not hold a commercial pilot licence with an aeroplane category rating, or the pilot does not have both a private pilot licence with an aeroplane category rating and the aeronautical experience mentioned in regulation 61.610 of CASR.

Subregulation 105.140(3) provides that a person commits an offence of strict liability if they contravene subregulation 105.140(2). The penalty for the offence has been set at 50 penalty units.

Regulation 105.145 Pilot requirements for parachute descents—helicopters

Subregulation 105.145(1) provides that the regulation applies if a helicopter (other than a Part 103 aircraft) is being operated to facilitate a parachute descent.

Subregulation 105.145(2) provides that the pilot in command of the helicopter contravenes this subregulation if the pilot does not hold an air transport pilot licence with a helicopter category rating, the pilot does not hold a commercial pilot licence with a helicopter category rating, or the

pilot does not have both a private pilot licence with a helicopter category rating and the aeronautical experience mentioned in regulation 61.610 in a helicopter.

Subregulation 105.145(3) provides that a person commits an offence of strict liability if they contravene subregulation 105.145(2). The penalty for the offence has been set at 50 penalty units.

Regulation 105.150 Pilot requirements for parachute descents—powered-lift aircraft

Subregulation 105.150(1) provides that the regulation applies if a powered-lift aircraft is being operated to facilitate a parachute descent.

Subregulation 105.150(2) provides that the pilot in command of the powered-lift aircraft contravenes the subregulation if the pilot does not hold an air transport pilot licence with a powered-lift aircraft category rating, the pilot does not hold a commercial pilot licence with a powered-lift aircraft category rating, or the pilot does not have both a private pilot licence with a powered-lift aircraft category rating and the aeronautical experience mentioned in regulation 61.610 in a powered-lift aircraft.

Subregulation 105.150(3) provides that a person commits an offence of strict liability if they contravene subregulation 105.150(2). The penalty for the offence has been set at 50 penalty units.

Regulation 105.155 Pilot requirements for parachute descents—manned free balloons

Subregulation 105.155(1) provides that the regulation applies if a manned free balloon is being operated to facilitate a parachute descent.

Subregulation 105.155(2) provides that the pilot in command of the balloon contravenes this subregulation if the pilot does not hold a commercial pilot (balloon) licence, the pilot does not have both an authorisation from a Part 131 ASAO that authorises the pilot to operate a manned free balloon and at least 75 hours of experience as pilot in command of a manned free balloon, and the pilot does not meet the requirements prescribed by the Part 105 MOS for the purposes of this subregulation.

Subregulation 105.155(3) provides that a person commits an offence of strict liability if they contravene subregulation 105.155(2). The penalty for the offence has been set at 50 penalty units.

These provisions provide for the safety of all persons on board an aircraft used for parachute descents by ensuring that the pilot in command is qualified to pilot the aircraft and has sufficient aeronautical experience to manage the operation of the aircraft and persons on board in all circumstances and environments in which the aircraft is likely to be operated.

Item 7 Subregulation 149.285(2)

The subregulation is repealed and is substituted with a new (2) which provides “An ASAO must ensure that the ASAO’s personnel have ready access to the reference materials”.

Item 7 improves aviation safety by removing the requirement for an ASAO to provide access to aircraft and aeronautical product manuals for ASAO authorisation holders. This requirement is unnecessarily onerous as it imposes additional cost without providing any additional safety benefit. An ASAO is unlikely to be in a position to maintain a library of all versions of applicable manuals that apply to all variants of products used by its authorisation holders, which increases the likelihood of the inadvertent provision of the wrong manual, with adverse safety consequences.

Item 8 Subpart 202.FE

This Subpart is repealed and is substituted with a new Subpart 202.FE. It provides the definitions for Division 202.FE.1, application of Part 105 to parachuting activities, transitional provisions for parachute descents authorised by CASA and transitional provisions for manned free balloons.

Item 8 provides transitional arrangements that enable sport aviation bodies that have not become ASAOs at the commencement of Part 105 to continue to conduct parachuting activities safely in accordance with applicable legislative instruments and not in accordance with Part 105 in the period beginning 25 March 2021 and ending 13 July 2022, being the period from the commencement of Part 105 to the end of the three years prescribed by Part 149 of CASR for sport aviation bodies to become ASAOs.

Regulation 202.501 provides that Part 105 applies in relation to parachuting activities undertaken on or after 25 March 2021.

Regulation 202.502 Transitional – parachute descents authorised by CASA

Subregulation 202.502(1) provides that despite regulation 202.501, Part 105 does not apply in relation to a parachute descent if the descent is authorised by, and conducted in accordance with: instrument CASA 263/02 or CASA 36/19 (as either is in force from time to time); and if the descent is being undertaken by a trainee parachutist or tandem parachutist instrument CASA 11/17 or CASA 84/18 (as either is in force from time to time); and subsection 15 of Civil Aviation Order 20.16.3 (as in force immediately before 25 March 2021).

Subregulation 202.502(2) provides that if Part 105 does not apply because of the operation of subregulation (1), Part 105 also does not apply to any other parachuting activity undertaken for the purposes of the descent.

Subregulation 202.502(3) provides that despite the repeal of regulation 152 of CAR, instruments CASA 263/02 and CASA 36/19 continue in force after commencement as if the repeal had not happened.

Subregulation 202.502(4) provides for the repeal of this regulation at the end of the day that is 3 years after the day on which the *Civil Aviation Legislation Amendment (Part 149) Regulations 2018* commenced.

Regulation 202.503 Transitional – manned free balloons

Subregulation 202.503(1) provides that despite regulation 202.501, a pilot in command of a manned free balloon that is being operated to facilitate a parachute descent is taken to satisfy subparagraph 105.155(2)(b)(i) if the pilot meets the requirements specified in Civil Aviation Order 95.54.

Subregulation 202.503(2) provides for the repeal of this regulation at the end of the day that is 3 years after the day on which the *Civil Aviation Legislation Amendment (Part 149) Regulations 2018* commenced.

Item 9 Part 1 of the Dictionary

A definition of *emergency parachute* is inserted into the CASR Dictionary for Part 105 purposes.

Item 10 Part 1 of the Dictionary

The definition of *major defect* in the CASR Dictionary is amended to apply correctly in relation to emergency and reserve parachutes.

Item 11 Part 1 of the Dictionary

Definitions of *parachute*, *parachute operator*, *parachuting activity*, *Part 105 ASAO*, *Part 105 Manual of Standards*, *reserve parachute*, *reserve parachute assembly*, *tandem parachutist* and *trainee parachutist* are inserted into the CASR Dictionary for Part 105 purposes.

The definitions provided by items 9 to 11 are essential to the operation of Part 105 of CASR.

Schedule 3—Amendments relating to Part 131

Civil Aviation Safety Regulations 1998

Item 1—Part 131

This item inserts a new Part 131 of the *Civil Aviation Safety Regulations 1998* (CASR) after Part 129. It provides requirements for Part 131 operator certification and management, operational procedures for Part 131 aircraft, aircraft loading and carriage of passengers, aircraft instruments, indicators, equipment and systems, continuing airworthiness (reserved), flight crew and other operational safety-critical personnel. It also provides for Part 131 recreational activities, and approval and operational requirements for tethered gas balloons.

The Part makes many references to an ASAO. ASAO means approved self-administering aviation organisation and is an organisation approved by CASA, in accordance with Part 149, to administer certain aviation activities. A ‘Part 131 ASAO’ is defined by in the Dictionary to CASR as one whose approved function is, or includes, administering a Part 131 recreational activity. A ‘Part 131 recreational activity’ is defined in regulation 131.025 as meaning operating a Part 131 aircraft other than for a balloon transport operation or a specialised balloon operation.

Subpart 131.A—Preliminary

This Subpart inserts a new Subpart 131.A of CASR inclusive of regulations 131.005 to 131.055. It provides for the application of Part 131, definitions for Part 131, a head of power for a Part 131 MOS, the prescribed purpose for the Part, required material in the reference library and for the provision of approvals by CASA for Part 131.

Regulation 131.005 provides the application of Part 131. Part 131 applies in relation to Part 131 aircraft, which are manned free balloons and hot air airships. A manned free balloon may be a hot air balloon, a gas balloon, or a mixed gas and hot air balloon. It further provides that Subpart 131.Z applies in relation to a tethered gas balloon that is capable of carrying 1 or more persons and is intended for tethered flight only.

Regulation 131.010 provides the definition of a ***balloon transport operation***, which is a passenger transport operation conducted in Part 131 aircraft that is a registered aircraft or a foreign registered aircraft, conducted for hire or reward, and undertaken within Australia but not undertaken as part of a flight into or out of Australian territory.

Regulation 131.015 provides the definitions of ***balloon transport AOC*** and ***balloon transport operator***. An AOC is an air operators’ certificate issued by CASA under section 27 of the *Civil Aviation Act 1988*.

Regulation 131.020 provides the definition of ***specialised balloon operation***. This is an operation conducted using Part 131 aircraft, is not a balloon transport operation, and involves a particular activity mentioned in paragraph (c) of the definition or is an activity prescribed by the Part 131 MOS.

Regulation 131.025 provides the definition of ***Part 131 recreational activity***. This means operating a Part 131 aircraft other than for a balloon transport operation or for a specialised balloon operation.

Regulation 131.030 provides the definition of ***significant change*** in relation to a balloon transport operator.

Regulation 131.035 provides that a person may apply to CASA, in writing, for an approval that is referred to under this Part. It further provides in subregulation (2) that CASA must grant the approval, subject to regulation 11.055, and in subregulation (3) subregulation 11.055(1B) applies to the granting of an approval under this regulation for paragraph 131.145(2)(a).

Regulation 131.040 provides, for the purposes of subsection 27(9) of the Act, the flying or operation of a Part 131 aircraft for a balloon transport operation is a prescribed purpose.

Regulation 131.045 is notionally titled prescribed position – safety manager, and it has been reserved for future use.

Regulation 131.050 Required material—reference library

Subregulation 131.050(1) provides, for the purposes of 28BH(2)(b) of the Act, a list of material that is required for a balloon transport operator. The material is the civil aviation legislation that is relevant to the operator's balloon transport operations, the parts of the AIP that are relevant to the operations, all information about the flight operations of each class of Part 131 aircraft operated by the operator for the operations that is necessary to ensure the safe conduct of the operations, and any other publications, information or data required for the reference library by the operator's exposition.

Subregulation 131.050(2) provides that, if material is required under subregulation 131.050(1), the requirement is taken to be satisfied if an electronic copy of the material is readily available.

Regulation 131.055 provides that, as permitted by subsection 98(5A) of the Act, CASA may issue a MOS for this Part.

Subpart 131.B—Operator certification and management

This Subpart inserts a new Subpart 131.B of CASR inclusive of regulations 131.060 to 131.240. It provides for requirement for certification for balloon transport operations, balloon transport AOCs, changes relating to balloon transport operators, organisations and personnel, systems, expositions for balloon transport operators, records and documents and associated miscellaneous offences.

Division 131.B.1—Requirement for certification for balloon transport operations

Regulation 131.060 Balloon transport AOC required to conduct balloon transport operations

Subregulation 131.060(1) provides that a person contravenes this subregulation if they conduct a balloon transport operation and do not hold a balloon transport AOC that authorises them to conduct the operation.

Subregulation 131.060(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.060(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.065 Compliance with balloon transport AOC

Subregulation 131.065(1) provides that a person contravenes this subregulation if they conduct a balloon transport operation and they hold a balloon transport AOC that authorises them to conduct the balloon transport operation, but they conduct the operation in a way that contravenes the AOC.

Subregulation 131.065(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.065(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.070 Compliance with conditions of balloon transport AOC

Subregulation 131.070(1) provides that a balloon transport operator contravenes this subregulation if they contravene a condition of their balloon transport AOC.

Subregulation 131.070(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.070(1). The penalty for the offence has been set at 50 penalty units.

Division 131.B.2—Balloon transport AOCs

Regulation 131.075 provides that a person may apply to CASA for the issue of a balloon transport AOC. It further sets out the details required in the application and further requirements.

Regulation 131.080 provides that it is a condition for the issue to the application of a balloon transport AOC that CASA is satisfied of a number of listed requirements. It further provides the matters that CASA must consider in determining whether the applicant can conduct balloon transport operations safely and in accordance with its exposition and the civil aviation legislation, and in deciding whether a person, as either an individual, or corporation, and their key personnel are fit and proper persons.

Regulation 131.085 provides that, if CASA issued a balloon transport AOC to an applicant, CASA is taken to have also approved the applicant's proposed exposition.

Regulation 131.090 provides the conditions of a balloon transport AOC issued to an operator, for the purposes of paragraph 28BA(1)(b) of the Act.

Division 131.B.3—Changes relating to balloon transport operations

Regulation 131.095 Changes of name etc.

Subregulation 131.095(1) provides that a balloon transport operator contravenes this subregulation if they make a change mentioned in subregulation 131.095(2) and does not, before making the change, amend the operator's exposition to reflect the change, and give CASA written notice of the change and a copy of the amended part of the exposition clearly identifying the change.

Subregulation 131.095(2) provides the changes for the purposes of subregulation 131.095(1). They are a change to the operator's name or contact details or, if the address of the operator's operational headquarters is different from the operator's mailing address—a change to the address of the operator's operational headquarters.

Subregulation 131.095(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.095(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.100 Application for approval of significant changes

Subregulation 131.100(1) provides that a balloon transport operator contravenes this subregulation if they make a significant change other than a significant change mentioned in subregulation 131.100(2) and CASA has not approved the significant change.

Subregulation 131.100(2) provides that a balloon transport operator contravenes this subregulation if they make a significant change that is the permanent appointment, or the acting appointment for a period of greater than 35 days, as any of the operator's key personnel of a person previously authorised to carry out the responsibilities of the position in a circumstance mentioned in subparagraph 131.195(1)(e)(iv), and the operator does not apply to CASA for

approval of the change in accordance with subregulation 131.100(3), within 7 days after the change is made.

Subregulation 131.100(3) provides that an application for approval of a significant change must be in writing, set out the change, and be accompanied by a copy of the part of the operator's exposition affected by the change, clearly identifying the change.

Subregulation 131.100(4) provides that a person commits an offence of strict liability if they contravene subregulation 131.100(1) or (2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.105 provides that CASA may approve a significant change for a balloon transport operator only if satisfied that the requirements mentioned in section 28 of the Act and subregulation 131.080(1) will continue to be met. If CASA approves the significant change, it is taken to have also approved the changes to the operator's exposition covered by the application for the change.

Regulation 131.110 Changes must be made in accordance with process in exposition

Subregulation 131.110(1) provides that a balloon transport operator contravenes this subregulation if they make a change, and the change is not made in accordance with the process included in the operator's exposition in accordance with paragraph 131.195(1)(m).

Subregulation 131.110(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.110(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.115 CASA directions relating to exposition or key personnel

Subregulation 131.115(1) provides that, if CASA is satisfied that it is necessary in the interests of aviation safety, it may, by written notice given to a balloon transport operator, direct the operator to change its exposition to remove, include, revise or vary the information, procedures or instructions in the exposition.

Subregulation 131.115(2) provides that CASA may, by written notice given to a balloon transport operator, direct the operator to remove any of the operator's key personnel from the person's position if satisfied that the person is not carrying out the responsibilities of the position or, if the person is the chief executive officer, properly managing matters for which the person is accountable.

Subregulation 131.115(3) provides that a notice given by CASA under regulation 131.115 must state the period within which the direction must be complied with.

Subregulation 131.115(4) provides that a balloon transport operator contravenes regulation 131.115 if CASA gives the operator a direction and the operator does not comply with the direction in the period stated in the notice.

Subregulation 131.115(5) provides that a balloon transport operator commits an offence of strict liability if they contravene subregulation 131.115(4). The penalty for the offence has been set at 50 penalty units.

Division 131.B.4—Organisation and personnel

Subregulation 131.120(1) provides that a balloon transport operator must maintain an effective organisational structure appropriate to the size, nature and complexity of the operation.

Subregulation 131.120(2) provides that a balloon transport operator contravenes this subregulation if any of the operator's key personnel carries out a responsibility in a way that contravenes the operator's exposition.

Subregulation 131.120(3) provides that a person commits an offence if they contravene subregulation 131.120(2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.125 Key personnel cannot carry out responsibilities

Subregulation 131.125(1) provides that a balloon transport operator contravenes this subregulation if they become aware that any of its key personnel carry out, or is likely to be unable to carry out, the person's responsibilities for a period of longer than 35 days, and the operator does not tell CASA of that fact within the time mentioned in subregulation 131.125(2).

Subregulation 131.125(2) provides that the time, for subregulation 131.125(1), is 24 hours after the operator becomes aware of the matter if there is not another person authorised to carry out the responsibilities for all or part of the period. The time period is 3 days after the operator becomes aware of the matter if there is another person authorised to carry out the responsibilities for all or part of the period.

Subregulation 131.125(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.125(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.130 provides that a balloon transport operator must ensure that, before a person appointed as any of the operator's key personnel begins to carry out the responsibilities of the position, the person has completed any training that is necessary to familiarise the person with the responsibilities.

Regulation 131.135 Chief executive officer—experience

Subregulation 131.135(1) provides that the chief executive officer of a balloon transport operator must have the experience required under subregulation 131.135(2).

Subregulation 131.135(2) provides that the experience required is, if the operator holds an approval under regulation 131.035, the experience mentioned in the approval, otherwise the experience mentioned in subregulation 131.135(3).

Subregulation 131.135(3) provides that the experience is sufficient relevant experience in organisational, operational, financial and people management of air operations to capably lead, manage and set standards to enable the operator to conduct safe operations in accordance with the operator's exposition and the civil aviation legislation, as well as a satisfactory record in the conduct or management of air operations.

Regulation 131.140 provides the responsibilities of the chief executive officer of a balloon transport operator's organisation, and that the chief executive officer is accountable to the operator and CASA for ensuring the responsibilities mentioned in this regulation are carried out effectively.

Regulation 131.145 Head of flying operations—qualifications and experience

Subregulation 131.145(1) provides that the head of flying operations of a balloon transport operator must hold a commercial pilot (balloon) licence endorsed for the classes of Part 131 aircraft to be used in the operator's balloon transport operations. They must also have the experience required under subregulation 131.145(2), have a satisfactory record in the conduct or management of balloon transport operations, and have sufficient safety and regulatory knowledge

to enable the operator to conduct the operator's balloon transport operations safely and in accordance with the operator's exposition and the civil aviation legislation.

Subregulation 131.145(2) provides the experience required for subregulation 131.145(1) is, if the operator holds an approval under regulation 131.035, the experience mentioned in the approval, otherwise at least 250 hours flight time as the pilot in command of a Part 131 aircraft and at least 2 years' experience in the conduct of Part 131 aircraft operations.

Subregulation 131.145(3) provides CASA may, by written notice given to the head of flying operations, or proposed head of flying operations, of a balloon transport operator, direct the person to undertake an assessment mentioned in subregulation 131.145(4).

Subregulation 131.145(4) provides the assessment for subregulation 131.145(3) is an assessment conducted by CASA, or a person nominated by CASA, to demonstrate the head of flying operation's or proposed head of flying operation's suitability as head of flying operations for the operator, and may include a free flight assessment in a Part 131 aircraft.

Regulation 131.150 provides the head of flying operations of a balloon transport operator must safely manage the flying operations of the operator and, without limiting this requirement, include the responsibilities listed.

Regulation 131.155 is notionally titled Head of training and checking – qualifications and experience, and is reserved for future use.

Regulation 131.160 is notionally titled Head of training and checking – responsibilities, and is reserved for future use.

Regulation 131.165 is notionally titled Safety manager – experience, and is reserved for future use.

Regulation 131.170 is notionally titled Safety manager – responsibilities, and is reserved for future use.

Regulation 131.175 Key personnel—additional qualifications and experience requirements

Subregulation 131.175(1) provides that this regulation applies to an applicant for a balloon transport AOC and a balloon transport operator.

Subregulation 131.175(2) provides that CASA may, by written notice given to the applicant or operator, direct that any of the key personnel of the applicant or operator must have stated additional qualifications or experience to those otherwise required under this Part.

Subregulation 131.175(3) provides that, if CASA is satisfied that it is necessary in the interests of aviation safety, it may, by written notice to a person who is or is proposed to be any of the key personnel of the applicant or operator, direct the person to undertake a stated examination, be interviewed by CASA or completed a stated training course.

Subregulation 131.175(4) provides that CASA must, in deciding whether to give a direction under this regulation, have regard to, but is not limited to considering: the need to ensure that the applicant or operator can conduct balloon transport operations safely and in accordance with its exposition and the civil aviation legislation; the nature and complexity of the operations; the leadership, management and standards-setting skills required by the person for the operations; how recently the person has used their aviation skills; and whether the person is able to exercise the privileges of each civil aviation authorisation held by the person.

Division 131.B.5—Systems

Regulation 131.180 is notionally titled Safety management system requirements, and is reserved for future use.

Regulation 131.185 is notionally titled Training and checking system, and is reserved for future use.

Regulation 131.190 provides that a balloon transport operator must have a system for managing crew fatigue that complies with the requirements prescribed by the Part 131 MOS.

Division 131.B.6—Expositions for balloon transport operators

Regulation 131.195 Contents of exposition

Subregulation 131.195(1) provides what must be included in an exposition for a balloon transport operator.

Subregulation 131.195(2) provides that a balloon transport operator contravenes this subregulation if the operator's exposition does not comply with subregulation 131.195(1).

Subregulation 131.195(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.195(2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.200 Compliance with exposition by operator

Subregulation 131.200(1) provides that a balloon transport operator contravenes this subregulation if the operator does not meet a requirement of the operator's exposition.

Subregulation 131.200(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.200(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.205 Providing personnel with exposition

Subregulation 131.205(1) provides that a balloon transport operator contravenes this subregulation if a person who is a member of the operator's personnel is subject to a requirement under the operator's exposition, and the operator does not make that part of the exposition relating to the requirement available to the person before the person first begins carrying out their duties relating to the requirement.

Subregulation 131.205(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.205(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.210 Compliance with exposition by personnel

Subregulation 131.210(1) provides that a member of a balloon transport operator's personnel contravenes this subregulation if the member is subject to a requirement under the operator's exposition in relation to the safe conduct of the operator's balloon transport operations, and the member does not meet the requirement.

Subregulation 131.210(2) provides that a balloon transport operator contravenes this subregulation if a member of the operator's personnel is subject to a requirement under the operator's exposition in relation to the safe conduct of the operator's balloon transport operations, and the member does not meet the requirement.

Subregulation 131.210(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.210(1) or (2). The penalty for the offence has been set at 50 penalty units.

Division 131.B.7—Records and documents

Regulation 131.215 Personnel training and checking records—making records

Subregulation 131.215(1) provides that a balloon transport operator contravenes this subregulation if records are not made within 21 days after a person who is a member of the operator's personnel undertakes an activity, obtains a qualification or certificate, or gains flying experience – if that activity, qualification, certificate or flying experience is mentioned in subregulation 131.215(2). The record that is made must reflect when the activity was undertaken, when the qualification or certificate was obtained, or when the flying experience was gained. If the activity relates to training or a check, flight test, flight review or assessment of competency, then the record must reflect whether that matter was successfully completed. The purpose of this provision is to ensure that personnel training and checking records are contemporaneously made and accurately reflect the activity undertaken.

Subregulation 131.215(2) provides the activities, qualifications, certificate and flying experience for a person for subregulation 131.215(1).

Subregulation 131.215(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.215(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.220 Personnel training and checking records—availability of records

Subregulation 131.220(1) provides that a balloon transport operator contravenes this subregulation if they make a record about a person under regulation 131.215, the person requests that record be made available to the person, and the operator does not make the record available to the person within 7 days after receiving the request.

Subregulation 131.220(2) provides that a balloon transport operator contravenes this subregulation if a record is made under regulation 131.215, the operator receives a request from another balloon transport operator for a copy of the record, the operator holds a written authority from the person to whom the record relates to provide a copy of the person's records to another balloon transport operator if request, and the operator does not give a copy of the record to the other balloon transport operator within 7 days after receiving the request.

Subregulation 131.220(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.220(1) or (2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.225 Copies of balloon flight crew licences and medical certificates

Subregulation 131.225(1) provides that a balloon transport operator contravenes this subregulation if a person who is a flight crew member of the operator's personnel exercises a privilege of the person's balloon flight crew licence for the operator and the operator does not have a copy of the person's balloon flight crew licence or a copy of the person's medical certificate.

Subregulation 131.225(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.225(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.230 Retention periods for personnel records

Subregulation 131.230(1) provides that a balloon transport operator contravenes this subregulation if the operator is required, under this Part, to make or have a record required under regulation 131.215, or a copy of an authorisation required by regulation 131.225, and they do not keep the record for the period provided in this subregulation. The minimum period requirements are set out in column 2 of the table in subregulation 131.230(1), in respect of the corresponding record mentioned in column 1 of the table.

Subregulation 131.230(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.230(1). The penalty for the offence has been set at 50 penalty units.

Division 131.B.8—Miscellaneous offences

Regulation 131.235 Dealings in relation to cancelled, suspended, varied, pending or refused civil aviation authorisations

Subregulation 131.235(1) provides that a balloon transport operator contravenes this subregulation if the operator enters into an agreement with another person, the operator does an act mentioned in subregulation 131.235(2), (4), (6) or (8), and the operator does not hold an approval under regulation 131.035 to do the act.

Subregulation 131.235(2) provides the acts for the purposes of subregulation 131.235(1).

Subregulation 131.235(3) provides subregulation 131.235(4) applies in relation to an authorisation that has been suspended or varied other than on the application or request of the holder of the authorisation.

Subregulation 131.235(4) provides the acts for the purposes of subregulation 131.235(1).

Subregulation 131.235(5) provides subregulation 131.235(6) applies in relation to an application for a civil aviation authorisation that has not been finally determined by CASA.

Subregulation 131.235(6) provides the acts for the purposes of subregulation 131.235(1).

Subregulation 131.235(7) provides subregulation 131.235(8) applies in relation to an application for a civil aviation authorisation that has been refused by CASA.

Subregulation 131.235(8) provides the acts for the purposes of subregulation 131.235(1).

Subregulation 131.235(9) provides that a person commits an offence of strict liability if they contravene subregulation 131.235(1). The penalty for the offence has been set at 50 penalty units.

Subregulation 131.235(10) provides the definitions for *cancelled authorisation* and *employ* for this regulation.

Regulation 131.240 Maximum period for use of foreign registered Part 131 aircraft in Australian territory

Subregulation 131.240(1) provides that a balloon transport operator contravenes this subregulation if, in any 12 month period, the operator uses a Part 131 aircraft that is a foreign registered aircraft to conduct balloon transport operations for a total of more than the number of days mentioned in subregulation 131.240(2).

Subregulation 131.240(2) provides that the number of days for the purposes of subregulation 131.240(1) is 90 or, if the operator holds an approval under regulation 131.035 in relation to the Part 131 aircraft, the number mentioned in the approval for the aircraft.

Subregulation 131.240(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.240(1). The penalty for the offence has been set at 50 penalty units.

Subpart 131.C – General

This Subpart inserts a new Subpart 131.C of CASR inclusive of regulations 131.245 to 131.330. It provides for general flight limitations, documentation requirements and recording information, search and rescue services, portable electronic devices, special flight operations, and miscellaneous requirements.

Division 131.C.1 – General flight limitations

Regulation 131.245 Pilots must be authorised

Subregulation 131.245(1) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, during the flight, the requirement mentioned in subregulation 131.245(2) is not met.

Subregulation 131.245(2) provides that the requirement, which is that the flight must be conducted by at least one pilot who holds a Part 131 pilot authorisation that authorises the pilot to conduct the flight.

Subregulation 131.245(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.245(1). The penalty for the offence has been set at 50 penalty units.

Subregulation 131.250(1) provides that the operator and the pilot in command must not simulate an emergency or an abnormal situation during a flight that is a balloon transport operation.

Subregulation 131.250(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.250(1). The penalty for the offence has been set at 50 penalty units.

Division 131.C.2 – Operational documents

Regulation 131.255 Compliance with flight manual

Subregulation 131.255(1) provides that the operator of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this subregulation if, during the flight, the aircraft is operated in a way that does not meet a requirement or limitation that is set out in the aircraft flight manual instruction for the aircraft and relates to the operation of the aircraft.

Subregulation 131.255(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.255(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.260 Availability of checklists

Subregulation 131.260(1) provides that the operator of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this subregulation if the requirement mentioned in subregulation 131.260(2) is not met for the flight.

Subregulation 131.260(2) provides the requirement for the purposes of subregulation 131.260(1).

Subregulation 131.260(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.260(1). The penalty for the offence has been set at 50 penalty units.

Division 131.C.3 – Flight related documents

Regulation 131.265 provides that, if a document is required to be carried on a flight of an aircraft under this Subpart, that requirement is taken to be satisfied if an electronic copy of the document is carried on the flight.

Regulation 131.270 Availability of parts of exposition

Subregulation 131.270(1) provides that the operator of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this subregulation if a part that is relevant to the duties of the crew member for the flight and a part that is required for the conduct of the flight are not available to a crew member for the flight before the flight begins.

Subregulation 131.270(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.270(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.275 Carriage of documents

Subregulation 131.275(1) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, when the aircraft begins the flight, a document prescribed by the Part 131 MOS is not carried on the aircraft.

Subregulation 131.275(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.275(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.280 Keeping documents with a person on the ground during flight

Subregulation 131.280(1) provides that a balloon transport operator's exposition must include procedures for keeping the documents prescribed by the Part 131 MOS accessible to a person on the ground for the duration of a flight of a Part 131 aircraft.

Subregulation 131.280(2) provides that the operator of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this subregulation if a procedure mentioned in subregulation 131.280(1) is not complied with for the flight.

Subregulation 131.280(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.280(2). The penalty for the offence has been set at 50 penalty units.

Division 131.C.4 – Reporting and recording information

Regulation 131.285 Recording and reporting information

Subregulation 131.285(1) provides that the Part 131 MOS may prescribe requirements relating to the recording, retaining and reporting of information for a flight of a Part 131 aircraft, including flight time, fuel usage, passenger lists, aircraft defects, flight incidents and weight documents.

Subregulation 131.285(2) provides that the Part 131 MOS may prescribe different requirements, without limiting subregulation 131.285(1), for Part 131 aircraft that are operated under a balloon transport AOC, and for Part 131 aircraft that are not operated under a balloon transport AOC.

Subregulation 131.285(3) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if a requirement mentioned in subregulation 131.320(1) applies for the flight and the requirement is not met for the flight.

Subregulation 131.285(4) provides that a person commits an offence of strict liability if they contravene subregulation 131.285(3). The penalty for the offence has been set at 50 penalty units.

Division 131.C.5 – Search and rescue services and emergency and survival equipment

Regulation 131.290 Information about search and rescue

Subregulation 131.290(1) provides that the operator of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this subregulation if, when the flight begins, information about the search and rescue services relevant to the flight are not readily accessible to the flight crew members for the flight.

Subregulation 131.290(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.290(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.295 Information about emergency and survival equipment

Subregulation 131.295(1) provides that the operator of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this subregulation if the Part 131 MOS prescribes an item of equipment for the purposes of this regulation and, when the flight begins, the information prescribed by the Part 131 MOS for that equipment is not available for immediate communication by the operator to a rescue coordination centre.

Subregulation 131.295(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.295(1). The penalty for the offence has been set at 50 penalty units.

Division 131.C.6 – Miscellaneous requirements for balloons

Regulation 131.300 Competence of ground support personnel

Subregulation 131.300(1) provides that the operator of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this subregulation if, before a member of the operator's personnel carries out a ground support duty for the flight, the member has not met a requirement mentioned in subregulation 131.300(2).

Subregulation 131.300(2) provides the member must have successfully completed training for the duty and must have been assessed as competent to carry out the duty.

Subregulation 131.300(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.300(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.305 Flights over populous areas, public gatherings and other areas

Subregulation 131.305(1) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, during the flight, the aircraft is flown over a populous area or a public gathering, and a requirement prescribed by the Part 131 MOS for the purposes of paragraph 131.305(1)(b) is not met for the flight.

Subregulation 131.305(2) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, during the flight, the aircraft is flown other than over a

populous area or a public gathering, and a requirement prescribed by the Part 131 MOS for the purpose of paragraph 131.305(2)(b) is not met for the flight.

Subregulation 131.305(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.305(1) or (2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.310 Dropping things from aircraft

Subregulation 131.310(1) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, during the flight, a thing is dropped from the aircraft, and the safety of the aircraft, or of any person or property, is likely to be endangered as a result of the thing being dropped.

Subregulation 131.310(2) provides that subregulation 131.310(1) does not apply in relation to a thing to a kind prescribed by the Part 131 MOS. A defendant bears an evidential burden in relation to the matters in this subregulation.

Subregulation 131.310(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.310(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.315 Flights at night

Subregulation 131.315(1) provides that the operator and the pilot in command of a Part 131 aircraft for a flight that is a balloon transport operation each contravene this subregulation if the aircraft is flown at night and the pilot in command does not hold an approval under regulation 131.035 to fly the aircraft at night.

Subregulation 131.315(2) provides that the pilot in command of a Part 131 aircraft for a flight that is not a balloon transport operation contravenes this subregulation if the aircraft is flown at night and the pilot in command does not hold an authorisation from a Part 131 ASAO to fly the aircraft at night.

Subregulation 131.315(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.315(1) or (2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.320 Use of supplemental oxygen equipment

Subregulation 131.320(1) provides that the operator and pilot in command of a Part 131 aircraft for a flight that is a balloon transport operation each contravene this subregulation if, during the flight, the aircraft is flown above 10,000 ft above mean sea level, and the operator does not hold an approval under regulation 131.035 to fly the aircraft above that height.

Subregulation 131.320(2) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, during the flight, the pilot in command is not using equipment that is supplying supplemental oxygen while the aircraft is above 10,000 ft above mean sea level.

Subregulation 131.320(3) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, during the flight, the aircraft is above 13,000 ft above mean sea level, and the pilot in command does not direct each other person on board the aircraft to use equipment that is supplying supplemental oxygen while the aircraft is above that height.

Subregulation 131.320(4) provides that a person commits an offence of strict liability if they contravene subregulation 131.320(1), (2) or (3). The penalty for the offence has been set at 50 penalty units.

Regulation 131.325 Specialised balloon operations

Subregulation 131.325(1) provides that the operator of a Part 131 aircraft for a flight that involves a specialised balloon operation contravenes this subregulation if the requirement in subregulation 131.325(2) is not met for the flight.

Subregulation 131.325(2) provides the requirement for the purposes of subregulation 131.325(1).

Subregulation 131.325(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.325(2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.330 Additional requirements for specialised balloon operations

Subregulation 131.330(1) provides that the Part 131 MOS may prescribe additional requirements relating to flights of Part 131 aircraft involving specialised balloon operations.

Subregulation 131.330(2) provides that the Part 131 MOS may prescribe different requirements for different kinds of specialised balloon operations referred to in regulation 131.020.

Subregulation 131.330(3) provides that the operator of a Part 131 aircraft for a flight involving a specialised balloon operation contravenes this subregulation if the operator is subject to a requirement mentioned in subregulation 131.330(1) for the flight and the requirement is not met for the flight.

Subregulation 131.330(4) provides that the pilot in command of a Part 131 aircraft for a flight involving a specialised balloon operation contravenes this subregulation if the pilot in command is subject to a requirement mentioned in subregulation 131.330(1) for the flight and the requirement is not met for the flight.

Subregulation 131.330(5) provides that a person commits an offence of strict liability if they contravene subregulations 131.330(3) or (4). The penalty for the offence has been set at 50 penalty units.

Subpart 131.D—Operational procedures

This Subpart inserts a new Subpart 131.D of CASR inclusive of regulations 131.340 to 131.440. It provides for the operational procedures for a Part 131 aircraft.

Division 131.D.1—Operational control

Division 131.D.1 is notionally titled Operational control and is reserved for future use.

Division 131.D.2—Flight preparation

Regulation 131.340 Flight preparation requirements

Subregulation 131.340(1) provides that the Part 131 MOS may prescribe requirements relating to flight preparation and weather assessments for Part 131 aircraft (the *balloon flight preparation (weather assessment) requirements*).

Subregulation 131.340(2) provides that a balloon transport operator's exposition must include procedures for complying with the balloon flight preparation (weather assessments) requirements for a flight of a Part 131 aircraft.

Subregulation 131.340(3) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if a flight preparation (weather assessments) requirement is not met for the flight.

Subregulation 131.340(4) provides that a person commits an offence of strict liability if they contravene subregulation 131.340(3). The penalty for the offence has been set at 50 penalty units.

Division 131.D.3—Flight planning and pre-flight checks

Regulation 131.345 Balloon flight planning and notification requirements

Subregulation 131.345(1) provides that the Part 131 Manual of Standards may prescribe requirements, making the defined term *balloon flight planning and notification requirements*, relating to flight plans and notification for flights of Part 131 aircraft.

Subregulation 131.345(2) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if a balloon flight planning and notification requirement is not met for the flight.

Subregulation 131.345(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.345(2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.350 Matters to be checked before take-off

Subregulation 131.350(1) provides that the Part 131 MOS may prescribe requirements relating to checks to be carried out on Part 131 aircraft prior to take-off.

Subregulation 131.350(2) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, when the aircraft take off for the flight, a check prescribed by the Part 131 MOS has not been carried out.

Subregulation 131.350(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.350(2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.355 Additional right of way rules

Subregulation 131.355(1) provides that the pilot in command of a Part 131 aircraft contravenes this subregulation if the aircraft is in the vicinity of another Part 131 aircraft, the aircraft is higher than the other aircraft, and the pilot in command contravenes the right of way rule mentioned in subregulation 131.355(2).

Subregulation 131.355(2) provides the right of way rule is that a higher aircraft must give way to a lower aircraft.

Subregulation 131.355(3) provides subregulation 131.300(2) does not apply if the other aircraft is a hot air airship.

Subregulation 131.355(4) provides that a person commits an offence of strict liability if they contravene subregulation 131.355(1). The penalty for the offence has been set at 50 penalty units. A defendant bears an evidential burden in relation to the matters in this subregulation.

Regulation 131.360 Operations at non-controlled aerodromes

Subregulation 131.360(1) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if, during the flight, the aircraft is operated at, or within the vicinity of, an aerodrome of a kind prescribed by the Part 131 MOS, circumstances prescribed by the Part 131 MOS apply in relation to the operation of the aircraft, and a requirement prescribed by the Part 131 MOS for operating an aircraft at, or within the vicinity of, an aerodrome of that kind, in those circumstances, is not met for the flight.

Subregulation 131.360(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.360(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.365 Flights over water

Subregulation 131.365(1) provides that the operator and the pilot in command of a Part 131 aircraft for a flight that is a balloon transport operation each contravene this subregulation if the aircraft is flown over water and a requirement prescribed by the Part 131 MOS for the purposes of this paragraph is not met for the flight.

Subregulation 131.365(2) provides that the pilot in command of a Part 131 aircraft for a flight that is not a balloon transport operation contravenes this subregulation if the aircraft is flown over water and a requirement prescribed by the Part 131 MOS for the purposes of paragraph 131.365(2)(b) is not met for the flight.

Subregulation 131.365(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.365(1) or (2). The penalty for the offence has been set at 50 penalty units.

Division 131.D.5—Taking off, landing and ground operations

Regulation 131.370 provides that a balloon transport operator's exposition must include procedures to ensure the safety of persons in the vicinity of a Part 131 aircraft when a person is embarking or disembarking the aircraft, when the aircraft is being prepared for flight, and when the aircraft is being manoeuvred on the ground.

Regulation 131.375 Operation of Part 131 aircraft while tethered

Subregulation 131.375(1) provides that the pilot in command of a Part 131 aircraft for a flight contravenes this subregulation if the aircraft is tethered to the ground for the flight, and a requirement prescribed by the Part 131 MOS is not met for the flight.

Subregulation 131.375(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.375(1). The penalty for the offence has been set at 50 penalty units.

Division 131.D.6—Fuel requirements

Regulation 131.380 provides that a balloon transport operator's exposition must include procedures to ensure that a flight of a Part 131 aircraft is conducted in accordance with the requirements mentioned in regulation 131.385.

Regulation 131.385 Fuel and ballast requirements

Subregulation 131.385(1) provides that the Part 131 MOS may prescribe requirements relating to the fuel and ballast for Part 131 aircraft, including, but not limited to, the amount of fuel and ballast to be carried, procedures for monitoring fuel and ballast during flight, procedures if fuel

and ballast reach specified amounts during flight, and matters do be considered when determining whether the aircraft has sufficient fuel and ballast to complete a flight safely.

Subregulation 131.385(2) provides that an operator and the pilot in command of a Part 131 aircraft for a flight that is a balloon transport operation contravene subregulation 131.385(2) if a requirement in subregulation 131.385(1) is not met for the flight.

Subregulation 131.385(3) provides that the pilot in command of a Part 131 aircraft for a flight that is not a balloon transport operation contravene subregulation 131.285(3) if a requirement in subregulation 131.385(1) is not met for the flight.

Subregulation 131.385(4) provides that a person commits an offence of strict liability if they contravene subregulations 131.385(2) or (3). The penalty for the offence has been set at 50 penalty units.

Division 131.D.7—Safety of persons on aircraft and cargo requirements

Regulation 131.390 Smoking not permitted during flight or within 15 metres of Part 131 aircraft

Subregulation 131.390(1) provides that a person on a Part 131 aircraft contravenes this subregulation if they smoke during the flight.

Subregulation 131.390(2) provides that a person contravenes this subregulation if they smoke within 15 metres of a Part 131 aircraft that is being prepared or fuelled for a flight or deflated after a flight

Subregulation 131.390(3) provides that a person commits an offence of strict liability if they contravene subregulations 131.390 (1) or (2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.395 Certain Part 131 aircraft to have signage about smoking

Subregulation 131.395(1) provides that the operator of a Part 131 aircraft that is a balloon transport operation contravenes this subregulation if before the flight begins the operator has not provided sufficient “no smoking” signs or graphics to indicate to all occupants of the aircraft that smoking is not permitted.

Subregulation 131.395(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.395 (1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.400 Carriage of infants

Subregulation 131.400(1) provides that the operator and the pilot in command of a Part 131 aircraft that is a balloon transport operation contravene this subregulation if an infant is carried on a flight and the operator does not hold an approval under 131.035 to carry an infant on a flight.

Subregulation 131.400(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.400 (1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.405 Carriage of persons requiring assistance

Subregulation 131.405(1) provides that the operator and the pilot in command of a Part 131 aircraft contravene this subregulation if a passenger is carried on the flight is likely to require

assistance and a requirement prescribed by the Part 131 MOS is not met for the flight. A passenger likely to require assistance means a person that may require assistance to board or exit the aircraft in normal or emergency situations.

Subregulation 131.405(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.405 (1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.410 Passengers – safety briefings and instructions

Subregulation 131.410(1) provides that the operator and pilot in command for a flight each contravene this subregulation if before take-off for a flight a passenger is not given the safety briefing and instructions prescribed by the Part 131 MOS.

Subregulation 131.410(2) provides that the operator and pilot in command for a flight each contravene this subregulation if circumstances prescribed by the Part 131 MOS apply and a passenger is not given the safety briefing and instructions prescribed by the Part 131 MOS for those circumstances.

Subregulation 131.410(3) provides that a person commits an offence of strict liability if they contravene subregulations 131.410 (1) or (2). The penalty for the offence has been set at 50 penalty units.

Regulation 131.415 provides that a balloon transport operator's exposition must include procedures for briefing passengers on what to do if an emergency occurs during a flight.

Regulation 131.420 Passengers – compliance with safety directions

Subregulation 131.420 (1) provides that a passenger on a Part 131 aircraft for a flight contravenes this subregulation if an instruction given in 131.410 (1) or (2) is given to the passenger and the passenger does not comply with the direction.

Subregulation 131.420(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.420 (1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.425 Restraint of cargo

Subregulation 131.425(1) provides that the operator and pilot in command of a Part 131 aircraft for a flight each contravene this subregulation if the aircraft is landing and any cargo on the aircraft is not restrained or securely stowed. Cargo is defined in the Dictionary to CASR as meaning things other than a person carried in an aircraft

Subregulation 131.425(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.425(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.430 provides a balloon transport operator's exposition must include procedures for the carriage of animals for a flight of a Part 131 aircraft.

Division 131.D.8 Miscellaneous

Regulation 131.435 Training flight limitations

Subregulation 131.435(1) provides that the pilot in command of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this subregulation if, during the flight, the pilot

in command permits flying training for a person who does not hold either a commercial pilot (balloon) licence or a CAR certificate of validation.

Subregulation 131.435 (2) provides that a person commits an offence of strict liability if they contravene subregulation 131.435(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.440 Test flights

Subregulation 131.440(1) provides that the pilot in command of a Part 131 aircraft for a flight that is a balloon transport operation contravenes this regulation if, during the flight, the pilot in command permits a test of the aircraft, or any of its components or equipment (other than a test of the aircraft during the course of checks associated with the normal operation of the aircraft).

Subregulation 131.440(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.440(1). The penalty for the offence has been set at 50 penalty units.

Subpart 131.F—Performance

This Subpart inserts a new Subpart 131.F of CASR inclusive of regulations 131.445 to 131.455. It provides requirements for loading weights, loading procedures and the carriage of passengers.

Regulation 131.445 Loading weights

Subregulation 131.445(1) provides that the operator and the pilot in command of a Part 131 aircraft for a flight each contravene this subregulation if, during the flight, the aircraft's weight is greater than the maximum loading weight permitted by the flight manual or, if the circumstances prescribed under subregulation 131.445(2) exist, the weight calculated in accordance with the corresponding method.

Subregulation 131.445(2) provides that the Part 131 MOS may prescribe the circumstances in which a weight for a Part 131 aircraft for a flight must be calculated under this subregulation and the methods for calculating that weight.

Subregulation 131.445(3) provides that the operator and the pilot in command of a Part 131 aircraft for a flight each contravene this subregulation if, during the flight, the aircraft's weight is less than any minimum loading weight permitted by the flight manual for the aircraft or, if the circumstances prescribed under subregulation 131.445(4) exist, the weight calculated in accordance with the corresponding method.

Subregulation 131.445(4) provides the Part 131 MOS may prescribe the circumstances in which a weight for a Part 131 aircraft for a flight must be calculated under this subregulation, and the methods for calculating that weight.

Subregulation 131.445(5) provides that a person commits an offence of strict liability if they contravene subregulation 131.445(1) or (3). The penalty for the offence has been set at 50 penalty units.

Regulation 131.450 provides that a balloon transport operator's exposition must include procedures for loading a Part 131 aircraft for a flight.

Regulation 131.455 provides that the MOS may prescribe requirements relating to the carriage of passengers.

Subpart 131.K—Instruments, indicators, equipment and systems

This Subpart inserts a new Subpart 131.K of CASR inclusive of regulations 131.460 to 131.465. It provides requirements for instruments, indicators, equipment and systems.

Regulation 131.460 provides the requirements for instruments, indicators, equipment and systems for a Part 131 aircraft.

Regulation 131.465 provides when Part 131 aircraft may be flown with inoperative instruments, indicators, equipment or systems.

Subpart 131.M—Continuing airworthiness

This Subpart heading is reserved for future use.

Subpart 131.N—Flight crew

This Subpart inserts a new Subpart 131.N of CASR inclusive of regulation 131.565. It provides for the qualification and training requirements for pilots of a Part 131 aircraft for a flight.

Regulation 131.565 provides the qualifications and training requirements for pilots.

Subpart 131.P—Other operational safety-critical personnel

Division 131.P.1—Ground support personnel

This Subpart inserts a new Subpart 131.P of CASR inclusive of regulation 131.570. It provides the qualifications and training for ground support personnel for a balloon transport operation to be prescribed in the Part 131 MOS.

Regulation 131.570 provides the qualifications and training requirements for ground support personnel.

Division 131.P.2—Other operational support personnel

This Division is reserved for future use.

Subpart 131.R—Part 131 recreational activities

This Subpart inserts a new Subpart 131.R of CASR inclusive of regulations 131.580 and 131.585. It provides for the authorisation requirements for Part 131 recreational activities.

Regulation 131.580 Part 131 recreational activities must be authorised

Subregulation 131.580(1) provides that a person contravenes this subregulation if they undertake a Part 131 recreational activity and they do not hold a Part 131 authorisation that authorises them to undertake the activity.

Subregulation 131.580(2) provides subregulation 131.580(1) does not apply if the person mentioned in subregulation 131.580(1) is otherwise permitted under these Regulations to undertake the activity. A defendant bears an evidential burden in relation to the matters in this subregulation.

Subregulation 131.580(3) provides that a person contravenes this subregulation if they undertake a Part 131 recreational activity, they hold a Part 131 authorisation authorising them to undertake the activity, and they undertake the activity in a way that contravenes the authorisation.

Subregulation 131.580(4) provides that a person commits an offence of strict liability if they contravene subregulation 131.580(1) or (3). The penalty for the offence has been set at 50 penalty units.

Regulation 131.585 provides that, if the approved functions of a Part 131 ASAO include authorising a person to undertake an activity that involves carrying a hang glider outside a Part 131 aircraft, the exposition for the Part 131 ASAO must include procedures for the carrying of hang gliders outside a Part 131 aircraft.

Subpart 131.S—Balloon flight crew licensing

This Subpart heading is reserved for future use.

Subpart 131.Z—Tethered gas balloons

This Subpart inserts a new Subpart 131.Z of CASR inclusive of regulations 131.685 to 131.710. It provides for requirements specific to tethered gas balloons, including approval required to operate, compliance with the Part 131 MOS, operational requirements under cloud and night, rapid deflation device requirements and the process to follow if a balloon escapes its mooring.

Regulation 131.685 Approval required to operate

Subregulation 131.685(1) provides that a person contravenes this subregulation if the person operates a tethered gas balloon and they do not hold an approval under regulation 131.035 to operate the tethered gas balloon.

Subregulation 131.685(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.685(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.690 Compliance with Part 131 Manual of Standards

Subregulation 131.690(1) provides that a person contravenes this subregulation if they operate a tethered gas balloon, and a requirement prescribed by the Part 131 MOS for the purposes of paragraph 131.690(1)(b) is not complied with for the operation.

Subregulation 131.690(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.690(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.695 Operation under cloud

Subregulation 131.695(1) provides that a person contravenes this subregulation if they operate a tethered gas balloon, and the balloon does not remain at least 500 ft below the cloud ceiling.

Subregulation 131.695(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.695(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.700 Operation at night

Subregulation 131.700(1) provides that a person contravenes this subregulation if they operate a tethered gas balloon at night at or above 400 ft above ground level, and the balloon is not lit so as to be visible from at least 4,000 metres away.

Subregulation 131.700(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.700(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.705 Rapid deflation device required

Subregulation 131.500(1) provides that a person contravenes this subregulation if they operate a tethered gas balloon, and the balloon is not fitted with a device that will cause it to deflate rapidly and completely if it escapes from its mooring.

Subregulation 131.705(2) provides that a person commits an offence of strict liability if they contravene subregulation 131.705(1). The penalty for the offence has been set at 50 penalty units.

Regulation 131.710 What to do if balloon escapes

Subregulation 131.710(1) provides that a person contravenes this subregulation if they operate a tethered gas balloon, the balloon escapes from its mooring, the balloon is not deflated completely using a deflation device, and the person does not comply with the requirement in subregulation 131.710(2).

Subregulation 131.710(2) provides the requirement for subregulation 131.710(1), which is that the person must tell Air Traffic Services as soon as possible where the balloon was launched, what time it broke free, and the direction it was headed when last seen.

Subregulation 131.710(3) provides that a person commits an offence of strict liability if they contravene subregulation 131.710(1). The penalty for the offence has been set at 50 penalty units.

Schedule 4—Other amendments

Civil Aviation Safety Amendment (Operational Definitions) Regulation 2019

Item 1 Item 21 of Schedule 1 (definition of *operational safety-critical personnel*)

The existing definition is repealed and is substituted with a new definition.

Item 2 Item 27 of Schedule 1 (definition of *special VFR*)

The existing definition is repealed and is substituted with a new definition.

Item 3 Item 29 of Schedule 1 (definition of *VMC criteria*)

The existing definition is repealed and is substituted with a new definition.

Civil Aviation Safety Amendment (Part 91) Regulations 2018

Item 4 Item 1 of Schedule 1 (after the heading to regulation 91.030)

“*Part 101*” is inserted.

Item 5 Item 1 of Schedule 1 (regulation 91.030)

“(1)” is inserted before “This Part”.

Item 6 Item 1 of Schedule 1 (regulation 91.030)

“, 103 or 131” is omitted.

Item 7 Item 1 of Schedule 1 (at the end of regulation 91.030)

A list of provisions in Part 103 and Part 131 is added which do not apply to the operation of a Part 103 or Part 131 aircraft respectively.

Item 8 Item 1 of Schedule 1 (regulation 91.035)

The existing regulation heading is repealed and is substituted with a new heading.

Item 9 Item 1 of Schedule 1 (subregulation 91.035(1))

“105” is inserted after “provision of Part”.

Item 10 Item 1 of Schedule 1 (subregulation 91.035(1) (table heading))

“105” is inserted after “provisions of Part” in the table heading.

Item 11 Item 1 of Schedule 1 (subregulation 91.035(1) (table, heading to column 2))

“105,” is inserted after “of Part” in the column 2 heading within the table.

Item 12 Item 1 of Schedule 1 (subregulation 91.035(1) (cell at table item 3, column 2))

The existing cell at table item 3, column 2 is repealed and is substituted with a new cell containing three provisions: 105.090, 105.095 and 138.425.

Item 13 Item 1 of Schedule 1 (subregulation 91.035(1) (cell at table item 12, column 2))

The existing cell after table item 12, column 2 is repealed and is substituted with a new cell containing two provisions: 105.105 and 138.375.

Item 14 Item 1 of Schedule 1 (subregulation 91.035(1) (after table item 12))

A new item 12A is inserted into the table after item 12.

Item 15 Item 1 of Schedule 1 (regulation 91.065)

Regulation 91.065 Flying aircraft under VFR or IFR

The existing regulation is repealed and is substituted with a new regulation 91.065 to capture the operation of Part 103 and Part 131 aircraft. The existing two subregulations in regulation 91.065 are repealed and replaced with four subregulations to achieve this outcome.

Subregulation 91.065(1) provides that the pilot in command of an aircraft for a flight, other than a Part 103 aircraft or a Part 131 aircraft, contravenes this subregulation if, at any time during the flight, the aircraft is not flown under the VFR or IFR.

Subregulation 91.065(2) provides that the pilot in command of a Part 103 aircraft for a flight contravenes the regulation if any part of the flight takes place other than by day under the VFR.

Subregulation 91.065(3) provides that the pilot in command of a Part 131 aircraft for a flight contravenes the regulation if any part of the flight takes place other than under the VFR.

Subregulation 91.065(4) provides that a person commits an offence of strict liability if they contravene subregulations (1), (2) or (3). The penalty for the offence has been set at 50 penalty units.

Item 16 Item 1 of Schedule 1 (paragraph 91.155(1)(b))

The paragraph is repealed and is substituted with a new paragraph 91.155(1)(b).

Subregulation 91.155(1) provides that a person contravenes the subregulation if, during the flight of an aircraft, the person manipulates the flight controls of the aircraft, and the person is not authorised or qualified to pilot the aircraft if certain authorisations or qualifications are not held, depending on the type of aircraft.

The new paragraph amends the required authorisations or qualifications for an Australian aircraft other than a Part 103 aircraft or a Part 131 aircraft, a foreign registered aircraft, a Part 103 aircraft and a Part 131 aircraft.

Item 17 Item 1 of Schedule 1 (paragraph 91.155(2)(b))

The existing paragraph is repealed and is substituted with a new paragraph 91.155(2)(b).

Subregulation 91.155(2) provides that a pilot in command of an aircraft for a flight contravenes this subregulation if, during the flight, they permit a person to manipulate the flight controls of the aircraft and the person does not hold certain authorisations or qualifications, depending on the type of aircraft.

The new paragraph amends the required authorisations or qualification for an Australian aircraft other than a Part 103 aircraft or a Part 131 aircraft, a foreign registered aircraft, a Part 103 aircraft and a Part 131 aircraft.

Item 18 Item 1 of Schedule 1 (after subregulation 91.200(2))

Regulation 91.200 Persons not to be carried in certain parts of aircraft

Subregulation 91.200(2A) is inserted after subregulation 91.200(2). It provides that subregulation (1) does not apply if the aircraft is being operated to facilitate a parachute descent and the requirements prescribed by the Part 105 MOS are met.

Item 19 Item 1 of Schedule 1 (note to subregulation 91.200(3))

“or (2A)” is inserted after “(2)”.

Item 20 Item 1 of Schedule 1 (after subregulation 91.205(1))

Regulation 91.205 Flying in formation

Subregulation 91.205(1A) is inserted after 91.205(1). It provides that subregulation (1) does not apply if the requirements prescribed by the Part 91 MOS for the purposes of subregulation (1A) are met in relation to the flight.

Item 21 Item 1 of Schedule 1 (at the end of regulation 91.205)

A reverse onus of proof note is added at the end of the regulation. A defendant will bear the evidential burden in relation to the matters in subregulation (1A).

Item 22 Item 1 of Schedule 1 (paragraph 91.270(2)(b))

The existing paragraph is repealed and is substituted with a new paragraph.

Regulation 91.270 regulates unauthorised entry into prohibited or restricted areas. Subregulation 91.270(2) provides the pilot in command must, if the aircraft is fitted with, or carries, a means for the pilot in command to communicate with Air Traffic Services during the flight, inform Air Traffic Services, or the controlling authority for the prohibited or restricted area, that the aircraft is in the area.

In addition to this requirement, the new paragraph 91.270(2)(b) provides that the pilot in command must, for an aircraft other than a Part 131 aircraft, fly the aircraft out of the area. A new paragraph 91.270(2)(c) also requires, for a Part 131 aircraft, that the pilot in command fly the aircraft out of the area or, if it is not possible to fly the aircraft out of the area, land the aircraft and inform the authority controlling the area as soon as possible.

Item 23 Item 1 of Schedule 1 (after subregulation 91.275(1))

Regulation 91.275 Air defence identification zone flights

Subregulation 91.275(1A) is inserted after subregulation 91.275(1). It provides that subregulation (1) does not apply in relation to a Part 131 aircraft if the pilot in command of the aircraft lands the aircraft and informs the authority controlling the area as soon as is practicable after entering the air defence identification zone.

Item 24 Item 1 of Schedule 1 (at the end of the regulation 91.275)

A reverse onus of proof note is added at the end of the regulation. A defendant will bear the evidential burden in relation to the matters in subregulation (1A).

Item 25 Item 1 of Schedule 1 (at the end of subregulation 91.285(2))

A new paragraph 91.285(2)(d) is inserted, to disapply the contravention in subregulation (1) to a glider in soaring flight, because a glider cannot maintain a specified VFR cruising level for the track.

Item 26 Item 1 of Schedule 1 (paragraph 91.285(3)(b))

“clearance to fly aircraft at that cruising level” is omitted and is substituted with “an air traffic control instruction, or an air traffic control clearance, to fly the aircraft other than at a specified VFR cruising level for the track.” This change aligns with the intention to disapply VFR cruising level requirements being applicable to gliders in soaring flight.

Item 27 Item 1 of Schedule 1 (after subregulation 91.335(5))

Regulation 91.335 Additional right of way rules

Subregulation 91.335(5A) is inserted after subregulation 91.335(5). It provides that paragraph (2)(b) does not apply if the aircraft is a glider engaged in ridge or hill soaring, and the pilot flies the aircraft so that it passes between the ridge or hill and another aircraft.

Item 28 Item 1 of Schedule 1 (note to regulation 91.335)

“(5A)” is inserted after “(5)”.

Item 29 Item 1 of Schedule 1 (subregulation 91.370(2))

“(other than a glider being towed by a glider tug)” is inserted after the first occurrence of “subject aircraft”. This change ensures that a glider being towed by another aircraft does not have to comply with the taking-off requirements under subregulation (3).

Item 30 Item 1 of Schedule 1 (subregulation 91.370(4))

“(other than a glider)” is inserted after the first occurrence of “subject aircraft”. This change ensures that a glider does not need to comply with the landing requirements under subregulation (5).

Item 31 Item 1 of Schedule 1 (subregulation 91.370(4))

A note is added at the end of subregulation 91.370(4) which provides regulation 91.055 also prohibits an aircraft (including a glider) being operated in a manner than creates a hazard to another aircraft, a person or property.

Item 32 Item 1 of Schedule 1 (subregulation 91.385(2))

Regulation 91.385 Operating on manoeuvring area, or in the vicinity, of non-controlled aerodrome—requirements that apply after joining the circuit pattern

Subregulation 91.385(2) is repealed and is substituted with a new subregulation (2). It provides that subregulation (1) does not apply to the pilot in command of an aircraft if the aircraft is a

seaplane or amphibian and the pilot in command contravenes the subregulation only to the extent necessary to avoid an obstacle, avoid undue noise over a populous area without compromising the aircraft's safety, or to enable the aircraft to land on water if its engine fails in the case of a single-engine or amphibian. It further provides that subregulation (1) does not apply to the pilot in command if the aircraft is a glider (other than a glider with an engine operating) and the pilot in command contravenes the subregulation only to the extent necessary to enable the aircraft to land safely.

Item 33 Item 1 of Schedule 1 (subregulation 91.390(1))

“, a glider or a powered parachute” is inserted after “rotorcraft”. The reason for this change is to improve aviation safety by providing gliders or powered parachutes the opportunity to return to the airfield in the event of launch failure after take-off.

Item 34 Item 1 of Schedule 1 (paragraph 91.395(2)(c))

“other than an approach carried out in IMC using an instrument approach procedure” is omitted and is substituted with “other than an approach covered by subregulation (2A)”.

Item 35 Item 1 of Schedule 1 (after subregulation 91.395(2))

Regulation 91.395 Straight-in approaches at non-controlled aerodromes

Subregulation 91.395(2A) is inserted after subregulation (2) to describe the approaches for subregulation (2). It provides an approach is covered by this subregulation if the approach is carried out in IMC using an instrument approach procedure, or the approach is by a Part 103 aircraft prescribed by the Part 103 MOS for the purposes of this paragraph.

Item 36 Item 1 of Schedule 1 (at the end of paragraph 91.400(3)(d))

A new subparagraph 91.400(3)(d)(iii) is added, which provides that, if the aircraft is a Part 103 aircraft, the pilot in command of the other aircraft is authorised to operate the radio by a Part 103 ASAO.

Item 37 Item 1 of Schedule 1 (at the end of subregulation 91.405(3))

“(other than a Part 131 aircraft)” is inserted after “an aircraft”. The reason for this is a Part 131 aircraft is unable to follow the circuit pattern or maintain the same track after take-off.

Item 38 Item 1 of Schedule 1 (subparagraph 91.415(1)(b)(i) and (ii))

“other than a Part 103 aircraft” is inserted after “aircraft”.

Item 39 Item 1 of Schedule 1 (paragraph 91.415(1)(b))

A new subparagraph 91.415(1)(b)(v) is added at the end of paragraph (b) to provide for the taxiing operation of a Part 103 aircraft.

Item 40 Item 1 of Schedule 1 (paragraph 91.465(2)(a))

“(other than a Part 131 aircraft)” is added after “aircraft”. The reason is that fuel for Part 131 aircraft, such as LPG gas canisters obtained from local gas suppliers, are not subject to quality assurance that is within the control of the pilot in command or the operator.

Item 41 Item 1 of Schedule 1 (paragraph 91.475(2)(a))

“at least 2 fire extinguishers” is omitted and is substituted with “at least the number of fire extinguishers mentioned in subregulation (2A)”.

Item 42 Item 1 of Schedule 1 (after subregulation 91.475(2))

Regulation 91.475 Fuelling aircraft firefighting equipment

Subregulation 91.475(2A) is inserted after subregulation (2). It provides, for the purposes of paragraph (2)(a), the number of fire extinguishers for Part 131 aircraft is one, and for other aircraft the number of fire extinguishers is two, while fuelling the aircraft.

Item 43 Item 1 of Schedule 1 (after subregulation 91.510(2))

Regulation 91.510 Fuelling aircraft – person on aircraft, boarding or disembarking

Subregulation 91.510(2A) inserts a new subregulation 91.510(2A) after subregulation (2). It provides that subregulation (1) or (2) do not apply in relation to the replacement of fuel cylinders on a Part 131 aircraft. The reason for this is because the LPG fuel is not exposed to an ignition source.

Item 44 Item 1 of Schedule 1 (at the end of regulation 91.510)

A reverse onus of proof note is added at the end of the regulation. A defendant will bear the evidential burden in relation to the matters in subregulation (2A).

Item 45 Item 1 of Schedule 1 (heading to regulation 91.530)

The heading is repealed and is substituted with a new heading.

Item 46 Item 1 of Schedule 1 (subregulation 91.530(1) and (2))

“(other than a Part 103 aircraft)” is inserted after “person on an aircraft”.

Item 47 Item 1 of Schedule 1 (after subregulation 91.530(3))

A new subregulation 91.530(3A) is inserted after (3). It provides that a person on a Part 103 aircraft for a flight contravenes this subregulation if the person smokes on the aircraft.

Item 48 Item 1 of Schedule 1 (subregulation 91.530(5))

“or (2)” is omitted and is substituted with “, (2) or (3A)”.

Item 49 Item 1 of Schedule 1 (subparagraph 91.625(1)(b)(i))

“(other than a Part 103 aircraft or a Part 131 aircraft)” is inserted after “aircraft”.

Item 50 Item 1 of Schedule 1 (at the end of paragraph 91.625(1)(b))

(iii) and (iv) are added, which provide authorisations for a Part 103 aircraft and Part 131 aircraft for the purposes of this regulation.

Item 51 Item 1 of Schedule 1 (at the end of paragraph 91.625(1)(b))

“or eligible” is omitted and is substituted with “eligible or authorised”.

Item 52 Item 1 of Schedule 1 (subparagraph 91.640(1)(b)(i))

“(other than a Part 103 aircraft or a Part 131 aircraft)” is added after “aircraft”.

Item 53 Item 1 of Schedule 1 (subparagraph 91.640(1)(b)(ii))

“and” is omitted and is substituted with “or”.

Item 54 Item 1 of Schedule 1 (at the end of paragraph 91.640(1)(b))

(iii) and (iv) are added, which provide authorisations for a Part 103 aircraft and Part 131 aircraft for the purposes of this regulation.

Item 55 Item 1 of Schedule 1 (paragraph 91.670(1)(a))

“other than a glider” is inserted after “an aircraft”.

Item 56 Item 1 of Schedule 1 (paragraph 91.715(2)(c))

“, by a Part 103 ASAO or by a Part 131 pilot authorisation” is added after “Part 61”.

Item 57 Item 1 of Schedule 1 (paragraph 91.875(2)(c))

“or a balloon transport operation” is added after “operation”.

Item 58 Item 1 of Schedule 1 (paragraph 91.885(b))

The existing paragraph is repealed and is substituted with a new paragraph. The new paragraph provides the maximum number of passengers an experimental aircraft can carry, which is, if paragraph (a) does not apply and the aircraft is a Part 103 aircraft, 2, otherwise in any other case the letter of the number of persons the aircraft was designed to carry or 6.

Item 59 Item 1 of Schedule 1 (subparagraph 91.900(2)(b)(i))

The existing subparagraph is repealed and is substituted with “under Part 91 or Part 103”.