

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 63/21 — Aircraft Not Requiring Registration (Classes of RPA and Model Aircraft) Prescription Instrument 2021

Purpose

The purpose of *CASA 63/21 — Aircraft Not Requiring Registration (Classes of RPA and Model Aircraft) Prescription Instrument 2021* (the **instrument**) is to prescribe certain remotely piloted aircraft (**RPA**) and model aircraft that are operated for test flights as aircraft not requiring registration. The test flights must follow manufacture of, or the fitting of equipment on, the aircraft, or before or after maintenance or repair of the aircraft or its equipment. Operators will then not be required to register the aircraft, and pay the associated unmanned aircraft levy, only to conduct these test flights. The instrument also gives directions regarding the keeping of test flight records.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (**CASR**).

Subpart 11.G of CASR provides for the Civil Aviation Safety Authority (**CASA**) to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245 (1) (a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245 (2) of CASR provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions.

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

Part 47 of CASR relates to the registration of aircraft. Subregulation 47.015 (1) of CASR provides that an aircraft is required to be registered unless it is one of the kinds of aircraft listed in the section. RPA are not listed in subregulation 47.015 (1). However, paragraph 47.015 (1) (i) lists "an aircraft that is prescribed by an instrument under subregulation (1B) for the purposes of this paragraph".

Relevantly for this instrument, paragraph 47.015 (1B) (a) states that, for the purposes of subsection 98 (5A) of the Act and paragraph 47.015 (1) (i) of this regulation, CASA may issue an instrument prescribing classes of medium RPA, small RPA, very small RPA, micro RPA or model aircraft. A note after subregulation 47.015 (1B) states that "an instrument made under paragraph (a) is a legislative instrument: see subsection 98 (5AA) of the Act."

Paragraph 47.015 (1) (f) lists "a model aircraft covered by subregulation (1A)." Subregulation 47.015 (1A) of CASR states that a model aircraft is covered by paragraph 47.015 (1) (f) if it is a glider, or it has a gross weight of no more than 250 g, or it has a gross weight of more than 250 g and is operated only in either or both of the following

ways: indoors or as mentioned in subregulation 101.374B (3) (which covers the operation of model aircraft in particular areas).

Subregulation 47.097 (4) provides that an application to register an aircraft as an RPA under Division 47.C.2 must be accompanied by the unmanned aircraft levy (if any) for the application.

Part 101 of CASR relate to unmanned aircraft and rockets. Regulation 101.021 sets out the meaning of **RPA**. An **RPA** is a remotely piloted aircraft, other than a balloon, a kite or a model aircraft.

Regulation 101.022 sets out the 5 types of RPA and defines them. The types of RPA are **micro RPA**, **very small RPA**, **small RPA**, **medium RPA** and **large RPA**.

The definition of **model aircraft** in the CASR Dictionary refers to regulation 101.023 of CASR. Subregulation 101.023 (1) of CASR provides that a model aircraft is an aircraft (other than a balloon or kite) that does not carry a person:

- (a) if the aircraft:
 - (i) is being operated for the purpose of sport or recreation; and
 - (ii) has a gross weight of not more than 150 kg; or
- (b) if the aircraft has a gross weight of not more than 7 kg, and is being operated in connection with the educational, training or research purposes of:
 - (i) a school in relation to which there is an approved authority under the *Australian Education Act 2013*; or
 - (ii) a higher education provider within the meaning of the *Higher Education Support Act 2003*.

Subregulation 101.023 (2) provides that paragraph (1) (b) does not apply in relation to education, training or research conducted by or on behalf of an entity other than a school or higher education provider mentioned in subparagraph (1) (b) (i) or (ii).

Regulation 202.466 of CASR provides that regulation 101.023 does not to apply until the *model aircraft stage 1 application day* which, under regulation 202.229 is 1 March 2022 (or a later determined day). Instrument *CASA EX37/21 – Educational, Training or Research Use of Certain RPA as if They were Model Aircraft – Prescription and Exemption Instrument 2021* ameliorates the effects of the delay of the application of the new definition of **model aircraft**.

The definition of **model aircraft** that is in the CASR Dictionary was substituted for the previous CASR Dictionary definition of **model aircraft** by the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations 2019*. The previous definition provided that a model aircraft is an aircraft that is used for sport or recreation, and cannot carry a person.

Background

Recent amendments made to CASR by the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations 2019* in relation to RPA and model aircraft may negatively impact organisations that manufacture, repair or maintain these kinds of unmanned aircraft. These regulations require a range of manufacturer, repair and maintenance organisations to register these aircraft as an RPA, before conducting a flight test of the aircraft following its manufacture, or before or after its

maintenance or repair. After such a flight test is completed, the unmanned aircraft must be deregistered and then, depending how the owner intends to fly the unmanned aircraft (as an RPA or a model aircraft), reregistered by the owner, and the associated registration levy paid.

An industry organisation that manufactures RPAs, and model aircraft such as recreational drones, and an organisation that maintains and repairs these aircraft commercially separately approached CASA seeking relief from the requirement to register the aircraft and pay the related unmanned aircraft levy just to conduct this kind of flight testing.

Overview of instrument

The instrument prescribes classes of RPA and model aircraft under paragraph 47.015 (1B) (a) of CASR. Due to the operation of paragraph 47.015 (1) (i) of CASR, the prescribed classes of aircraft are therefore exceptions to the requirements for an aircraft to be registered. The prescribed classes of aircraft are RPA other than large RPA, and model aircraft that are not covered by paragraph 47.015 (1) (f) of CASR, when operated only for specified kinds of test flights. The prescribed classes of aircraft are described further below under the heading *Contents of instrument*.

The instrument also issues directions under regulation 11.245 of CASR relating to the logging of test flights of the prescribed classes of aircraft. The relevant operator of an aircraft of a prescribed class must keep written records of each test flight that includes specified matters. The record must be prepared by the relevant operator as soon as possible after the test flight is completed, kept by the relevant operator or the operator's employer for 3 years from the date of the test flight, and given to CASA on request. A record of a test flight may not be given to any other person without the consent of the owner of the aircraft unless the disclosure of the record is required by law.

CASA has assessed the industry organisations' request for relief from the requirement to pay an RPA registration levy to be able to test fly certain aircraft following their manufacture, or before or after maintenance or repair, and is satisfied that the instrument will have no impact on aviation safety. Although aircraft registration creates incentive to comply with safety legislation through concern at being identified if undertaking an unsafe action, CASA considers that allowing a small well-defined class of aircraft to be operated for test flights by persons who are experienced operators before dispatch to a purchaser, or before or after their maintenance or repair, will have no measurable negative effect on safety. To ameliorate any concern regarding the lack of registration of these aircraft, directions have been included in the instrument requiring the keeping of a record of each test flight of the aircraft. These records must be provided to CASA on request.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument. The instrument commences on the day after it is registered and is repealed at the end of 1 September 2026.

Section 3 sets out some definitions for the instrument. A key defined term is ***test flight***. This term is defined to mean, for an RPA or a model aircraft, a flight of the aircraft solely to test the aircraft or its equipment to determine if the aircraft or its equipment is in working order and in a condition for safe operation. For example, a flight to test cameras or sensors that have been installed on an RPA or model aircraft would be a test flight.

The word “solely” in the definition ensures that a flight which tests the aircraft or its equipment but which also happens to capture some data for which the operator is paid is not a test flight i.e. a test flight cannot have an incidental commercial purpose.

Subsections 4 (1) and (2) prescribe the following kinds of aircraft for paragraph 47.015 (1) (i) of CASR, when they are operated only for a purpose mentioned in subsection 4 (2):

- micro RPA;
- very small RPA;
- small RPA;
- medium RPA;
- model aircraft that are not covered by paragraph 47.015 (1) (f) of CASR.

The purposes for which the RPA or model aircraft may be operated are test flights following the manufacture or installation of equipment on the aircraft, or before or after the maintenance or repair of, the aircraft or its equipment, that is conducted by, or at the request of, the operator of the aircraft or its manufacturer, equipment fitter, or maintainer or repairer. If the test flight follows the aircraft’s manufacture, it must be conducted before the aircraft is provided to its initial purchaser.

Allowing a test flight to be carried out before maintenance or repair of an aircraft or its equipment would enable, for example, a test flight to be conducted before a repair is carried out (e.g. to cameras) to ascertain if a drone is failing to perform as described by the customer.

Subsection 4 (4) states that section 4 ceases to be in force at the end of 31 August 2023.

Section 5 sets out directions relating to the logging of test flights. The section ensures that a person who operates an RPA or model aircraft of a prescribed class for a test flight prepares a written record of the test flight. The section specifies the matters that the record must include, such as details of the owner of the aircraft, the time, date and location of the test flight, the reason for the test flight and any accident, incident or malfunction that occurred during the flight. The section also specifies how the record must be prepared, and that the record must be kept by the operator (e.g. if the operator is a sole trader), or the employer of the operator, for 3 years from the date of the test flight.

Section 5 also provides that the keeper of the record must give it to CASA on request. This enables CASA to audit the records of test flights, ensuring that test flights conducted under this instrument are for a legitimate purpose (i.e. a test flight as defined in the instrument) and fees remain payable for RPA and model aircraft operated for other flights. The monitoring of

the results of test flights would also assist CASA maintain or improve aviation safety as it would allow CASA to become aware of any accidents or incidents that may have occurred during a test flight and take any appropriate regulatory action.

A record may only be disclosed to persons other than CASA with the consent of the owner of the aircraft or as required by law. These safeguards have been included because the *Privacy Act 1988* may only apply in relation to the keeping of these records by the operator depending upon the annual turnover of the operator's business.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft.

Additionally, paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons, and paragraph 98 (5AA) (b) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of aircraft.

The instrument prescribes classes of aircraft under regulation 45.015 (1B) (a) of CASR for the purposes of subsection 98 (5A) of the Act and paragraph 47.015 (1) (i) of CASR. (A note under regulation 45.015 (1B) (a) of CASR states that an instrument made under paragraph (a) is a legislative instrument.). The instrument also issues directions to classes of persons i.e. persons who operate an RPA or model aircraft of a prescribed class. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA provided a copy of the draft instrument by email on 26 August 2021 to the Part 101 Post Implementation Review Technical Working Group (the **TWG**) that was established to operate and report to the Aviation Safety Advisory Panel in relation to proposed amendments to Part 101 of CASR and its related MOS. The TWG comprises representatives from the RPA aircraft industry, and the Model Aeronautical Association of Australia. A copy of the draft was also provided to the two industry stakeholders who initially raised with CASA the need for relief from the requirement to pay the RPA registration levy for the conduct of the flight testing described in the instrument. Comments on the instrument were requested to be provided by 30 August 2021. Six responses were received and taken into consideration when the final draft was prepared. Changes were made to the record keeping requirements in response to these comments.

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

Sector risk, economic and cost impact

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

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

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

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

The economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument;
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements;
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government;
- (d) a valuation of the impact the different requirements would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly.
- (e) community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The instrument would prescribe certain RPA and model aircraft operated only for specified test flights in specified circumstances as aircraft not requiring registration, thereby ensuring that the operators of these aircraft for test flights will not have to pay the unmanned aircraft levy and register the aircraft just to test fly these aircraft in those circumstances.

The instrument would require those operators, or their employers, to prepare records in relation to such test flights, keep the records for a 3 year period following the test flight, and provide them to CASA on request.

CASA has assessed that the economic and cost impact of the instrument is not significant, and that the cost of individual operators or businesses having to keep records of test flights for 3 years is relatively minor compared to having to pay the RPA registration levy that would otherwise apply. As there is no significant economic or cost impact on individuals or businesses, there will be no community impact.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for directions, approvals, permissions and exemptions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument is compatible with human rights and, to the extent that it engages certain rights (the right to privacy), it does so in a way that is reasonable, necessary and proportionate.

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR. The instrument commences on the day after it is registered and is repealed at the end of 1 September 2026.

Statement of Compatibility with Human Rights

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

CASA 63/21 — Aircraft Not Requiring Registration (Classes of RPA and Model Aircraft) Prescription Instrument 2021

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

Overview of the legislative instrument

The purpose of this instrument is to prescribe certain remotely piloted aircraft (*RPA*) and model aircraft that are operated for certain test flights as classes of aircraft that are not required to be registered. Persons operating such aircraft will not have to pay the associated unmanned aircraft levy.

The test flights must follow the manufacture of, or installation of equipment on, the aircraft, or be before or after the maintenance or repair of, the aircraft or its equipment. The instrument also gives directions to operators regarding the keeping of records of test flights and sets out the matters to be included in each record. These include the name, address and ARN of the owner of the aircraft and the name and signature of the relevant operator of the aircraft. The records are to be kept for 3 years and provided to CASA on request.

Human rights implications

This legislative instrument engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* because it requires the preparation, retention and possible disclosure to CASA of records of certain tests flights, which include the name, address and ARN of the owner of the aircraft.

Limitations on this right are permissible in order to pursue a legitimate objective and if they are a reasonable, necessary and proportionate means of achieving this objective. In this case, the monitoring by CASA of the test flights would assist CASA to maintain or improve aviation safety by allowing CASA to be aware of any accidents or incidents that may have occurred during a test flight, and take any appropriate regulatory action. It would also ensure relief is provided from the requirement to register the aircraft, and pay the related unmanned aircraft levy, only if the aircraft are operated for these kinds of test flights.

The records of test flights are not sensitive information as defined in the *Privacy Act 1988*. However, as the application of the *Privacy Act 1988* to a maintainer or repairer (whether an employer of the person conducting the test flight or a sole trader conducting the flight test) would be dependent upon their annual turnover, additional safeguards have been included in the instrument relating to the disclosure of the records to persons other than CASA. Records may only be disclosed to such persons with aircraft owner's consent or if required by law.

Conclusion

This legislative instrument is compatible with human rights as, to the extent that it engages certain rights, it does so in a way that is reasonable, necessary and proportionate.

Civil Aviation Safety Authority