

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA OAR 168/22 – Declarations and Directions in relation to Prohibited, Restricted and Danger Areas etc. – Permanent Instrument 2022 (No. 1)

Purpose

The purpose of this declaration instrument is to designate areas of Australian territory to be restricted areas or danger areas. These are typically volumes of airspace where, as a result of other flights or activities in the airspace, a danger to the flight of an aircraft in the area exists (or may exist) and the flight is, therefore, subject to access conditions or “take precautions” recommendations.

It is also necessary to direct that areas outside Australian territory in Australian-administered airspace become notional restricted areas or notional danger areas, with similar access conditions or recommendations. However, in this case, the airspace is over the high seas and, therefore, subject to international freedom of navigation rights under the Chicago Convention. Hence, the conditional access rules do not apply to foreign registered aircraft.

Australian-administered airspace

Australian-administered airspace is airspace allocated to Australia by the International Civil Aviation Organization (*ICAO*) under the Chicago Convention and for which Australia has accepted responsibility. Australian-administered airspace includes the airspace over Australian territory and significant volumes of international airspace around Australia. Australian territory includes external Territories, territorial seas and related airspace.

Legislation — declaration designating airspace

Section 15 of the *Airspace Act 2007* (the *As Act*) provides that the Governor-General may make regulations for the *As Act*.

Under subsection 11 (1) of the *As Act*, the regulations may confer functions and powers on CASA in connection with the administration and regulation of Australian-administered airspace.

Under subsection 11 (2) of the *As Act*, the regulations may make provision for, and in relation to, various matters, including the designation of volumes of Australian-administered airspace for the purposes of restricting access to, or warning about access to, that airspace.

For this purpose, under subregulation 6 (1) of the *Airspace Regulations 2007* (the *AsR*) CASA may make a declaration designating an area of Australian territory (up to the 12 nautical miles sea boundary) to be a prohibited, restricted or danger area (**P**, **R** or **D area**).

Under subregulation 6 (2) of the *AsR*, CASA must not declare a prohibited area unless, in the opinion of CASA, it is necessary for reasons of military necessity to prohibit the flight of aircraft over the area.

Under subregulation 6 (3) of the *AsR*, CASA must not declare a restricted area unless, in the opinion of CASA, it is necessary in the interests of public safety (including the safety of aircraft in flight), or for the protection of the environment, or for security, to restrict the flight of aircraft over the area to aircraft flown in accordance with specific conditions.

Under subregulation 6 (4) of the AsR, CASA must not declare a danger area unless, in the opinion of CASA, there exists within or over the area an activity that is a potential danger to aircraft flying over the area.

Under subregulation 6 (6) and regulation 7 of the AsR, the declaration does not take effect until it is published in the Aeronautical Information Publication (the *AIP*) (for a declaration that is to have effect for longer than 3 months) or in a Notice to Airmen (*NOTAM*) (for declarations of lesser duration). Under subregulation 6 (7) of the AsR, the declaration ceases to have effect on the day, event or circumstances specified in the declaration.

Under subregulations 9 (2) and (3) of the AsR, if an area of Australian territory has been declared under regulation 6 to be a restricted area or danger area, CASA may make a determination that the air traffic services (*ATS*) to be provided for the relevant airspace are services that are at variance with the ATS that would otherwise be provided, and cause details of the services provided to be published in the AIP or NOTAM.

Background

The definitive description of Australian-administered airspace is compiled and monitored by Airservices Australia (*AA*). Currently, these descriptions are published twice yearly in an alternating 24- or 28-week cycle, in AA's *Designated Airspace Handbook* (the *DAH*) of the AIP. The next iteration of this is effective on and from 1 December 2022.

Currently, there are no prohibited (P) areas. (However, to make this clear, the instrument contains a place holder, Schedule 1A).

The restricted (R) areas and danger (D) areas are published in the DAH with details of alternative ATS where relevant. The new DAH for 1 December 2022 contains some revision of the R and D areas since the previous issue by AA in June 2022. It is necessary, therefore, for CASA, under AsR 6, to update its previous declarations and determinations instrument, also issued in June 2022.

The instrument would repeal *CASA OAR 048/22 – Designation of prohibited, restricted and danger areas – Declaration and Determination (Permanent PRDs) Instrument 2022*, the previous instrument of declaration of prohibited, restricted and danger areas and determinations of services, and redeclare and redetermine them with minor changes effective on and from 1 December 2022. (For ease of users' reference, "change bars" are used in the instrument to highlight where modifications have been made since the previous version.)

The instrument would continue existing arrangements for voice deactivation of a P, R or D area, and a trial of short-term Royal Australian Air Force (*RAAF*) voice-activated extensions of certain R areas to permit the approach and landing of overdue RAAF aircraft.

For subregulation 6 (6) of AsR, the declaration and determination cannot take effect until published in the AIP (because they will have effect for longer than 3 months).

AIP publication takes the form of the promulgation of the DAH, as part of the AIP, effective on 1 December 2022. It is proposed that the declaration instrument would also take effect on that day.

Details of the instrument are set out in Appendix 1.

Directions for airspace outside Australian territory

As noted above, CASA's powers under the AsR are limited to Australian territory. Hence, it is necessary to use CASA powers of direction to make appropriate designations of airspace outside Australian territory in Australian-administered airspace.

Legislation — directions

Section 98 of the *Civil Aviation Act 1988* (the **CA Act**) empowers the Governor-General to make regulations for the CA Act and the safety of air navigation.

Under subregulation 11.245 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR**), for subsection 98 (5A) of the CA Act, the Civil Aviation Safety Authority (**CASA**) may, by instrument, issue a direction about, among other things, any matter affecting the safe navigation and operation of aircraft.

Under subregulation 11.245 (2), CASA may issue such a direction: only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation; and only if the direction is not inconsistent with the CA Act; and only for the purposes of CASA's functions.

Under regulation 11.250, a direction ceases to be in force on a day specified in the instrument or, if no day is specified (as is the case here), 1 year after the instrument commences. Under subregulation 11.255 (1), it is an offence to contravene a direction under regulation 11.245 that is applicable to the person.

The instrument, therefore, includes provisions directing that certain airspace in Australian-administered airspace outside Australian territory be treated as if it were a notional restricted area or a notional danger area.

Chicago Convention

While safety restrictions may be imposed (a) on *any aircraft* flying inside Australian territory, and (b) on any *Australian-registered aircraft* flying outside Australian territory, the Chicago Convention does *not* permit Australia to have or enforce any flight restrictions on foreign registered aircraft in international airspace.

Some declared parts of Australian-administered airspace outside Australian territory are used by Australia for military exercises and military flying, presenting potential dangers to aircraft overflying the relevant airspace unless appropriate precautions are taken.

Previously, Australia had sought to protect aviation safety in relevant airspace through what amounted to an unenforceable statement, embodied in the otherwise enforceable bi-annual *Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instruments*, that the airspace was a notional restricted area, access to which was subject to permission from controlling authorities, or a notional danger area with open access but subject to cautionary advice.

CASA 26/21

A degree of enforceability was introduced through a directions instrument, *CASA 26/21 – Direction – Airservices Australia – Air Traffic and Aeronautical Information Services in Australian-administered Airspace Outside Australian Territory Instrument 2021*. Its effect was to create notional restricted areas and notional danger areas in Australian-administered

airspace outside Australian territory. The effect was that Australian-registered aircraft were required to observe the entry conditions for the notional restricted areas.

However, with the exception of a very small number of foreign registered aircraft operating under specific CASA approvals or permissions (for example, aerial work certificates), foreign registered aircraft were not be required to observe the entry conditions for notional restricted areas. They were instead recommended to take such precautions as a reasonable pilot would take when overflying an area within which there is a potential danger to aviation.

For the purposes of the December 2022 DAH, a CASA review of the Chicago Convention requirements concluded that no foreign registered aircraft should be subject to access controls but the pilots in command of all such aircraft should instead be recommended to take appropriate precautions when overflying notional restricted areas outside Australian territory.

Instead of being in a separate directions instrument, these new requirements are now included in modified form in the declaration instrument so that a single instrument may contain the coordinates and conditions and controlling or contact authorities for all relevant volumes of airspace, both domestic and international.

For the effectiveness of the instrument, therefore, the relevant nomenclature is:

- declared restricted areas (these are inside Australian territory)
- declared danger areas (these are inside Australian territory)
- directed notional restricted areas (these are outside Australian territory)
- directed notional danger areas (these are outside Australian territory).

Using these categories, in simplified tabular summary, the instrument provides:

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Declared restricted areas inside Australian territory	Declared danger areas inside Australian territory	Directed notional restricted areas outside Australian territory	Directed notional danger areas outside Australian territory	Straddle areas straddling inside and outside Australian territory
Aircraft					
Australian-registered aircraft	Access conditional on Controlling Authority	Access unconditional, subject to precautions	Access conditional on Controlling Authority	Access unconditional, subject to precautions	Each part of a straddling area has the respective access characteristics for inside or outside Australian territory as otherwise described for the aircraft in column 2, 3, 4 or 5.
Foreign registered aircraft	Access conditional on Controlling Authority	Access unconditional, subject to precautions	Access unconditional, subject to precautions	Access unconditional, subject to precautions	

Proposed *Airspace Amendment (Danger Areas) Regulations 2023*

It is expected that an AsR amendment (the *Airspace Amendment (Danger Areas) Regulations 2023*) will be made in 2023 to remove the need for directions as such, while preserving compliance with the Chicago Convention in respect of foreign registered aircraft, in terms similar to the directions in the declaration instrument.

Legislation Act 2003 (the LA)

Directions under subregulation 11.245 (1) of CASR are “for subsection 98 (5A)” of the CA Act, that is, for regulations which empower the issue of certain instruments, like directions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The directions in the declaration instrument are clearly in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the CA Act, a direction issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if it is expressed to apply in relation to a class of persons or a class of aircraft.

The directions apply to the class of aircraft, operators, and pilots in command who may fly in Australian-administered airspace outside Australian territory and it is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Disallowance

CASA’s usual 6-monthly *Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instruments* are not legislative instruments by virtue of item 1 of the table in regulation 7 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. Being declaratory, they are not considered, in themselves, to determine, or alter the content of the law. In addition, there is a frequent need for very short-term temporary declarations in response to unexpected circumstances or events which expire within days or weeks. Consequently, declaration instruments, as such, are not legislative or subject to disallowance.

In the unlikely event that the more usual instrument of this kind were one to which the Parliament, or a House of the Parliament, made its objections known to CASA, it would certainly not be remade in the same or similar form within 6 months without CASA considering and, as far as safe and practicable, addressing any such parliamentary concerns.

In this particular case, however, the instrument also contains directions under regulation 11.245 of CASR. Directions are considered to be legislative in nature thus making this form of the instrument, as a whole, legislative and subject to disallowance.

It is expected that the instrument will be repealed and replaced within the next 6 months in the context of the proposed *Airspace Amendment (Danger Areas) Regulations 2023*.

Sunsetting

Under item 5 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, an instrument relating to aviation safety made under regulation 6 or 9 of the *Airspace Regulations 2007* is, in effect, exempted from the sunset provisions under Part 4 of Chapter 3 of the LA.

Under item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, a direction instrument relating to aviation safety made under regulation 11.245 of the CASR is, in effect, exempted from the sunset provisions under Part 4 of Chapter 3 of the LA.

Being such an aviation safety instrument, the instrument is, therefore, exempted from the sunset provisions. In policy terms, this exemption is necessary because the instrument deals with safety matters that, once identified, require a risk response or treatment plan which may be required to be certain and enduring in the interests of aviation safety.

In this case, as noted above, the instrument is only in force for about 6 months before it is self-repealed. Thus, in practice, no sunset avoidance issues arise. The fact that the instrument is formally not subject to sunset does not, therefore, impact on the potential for parliamentary oversight.

Incorporations by reference

Under subsection 98 (5D) of the CA Act, the instrument may apply, adopt or incorporate any matter contained in any instrument or other writing.

A non-legislative instrument may be incorporated into a legislative instrument made under the CA Act, as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made).

Under paragraph 15J (2) (c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

There are no such specific documents incorporated into the instrument.

Consultation

Under section 16 of the CA Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial, consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable, in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

The single substantive airspace change proposal that resulted in changes to the declaration instrument was made available for consultation through the Victorian Aviation State Engagement Forum (*AvSEF*). AvSEFs are State-based aviation forums who are advised of papers promulgated on the AvSEF website, covering all matters relating to airspace and related procedures in Australia in their particular areas of responsibility. AvSEF membership is open to all stakeholders of the Australian aviation industry, including associations, organisations, and independent entities. Any representations made by airspace users and others in the course of this consultation process are taken into account by CASA. There were no substantive objections or reservations concerning the minor changes proposed for the declaration instrument.

CASA is satisfied that the nature, extent, and duration of the consultation it conducted was appropriate and that no further consultation would be appropriate or necessary in these circumstances.

CASA does not consider that consultation on the directions within the declaration instrument is practicable or appropriate, and is satisfied that, in the context of its planned information and communication initiatives directed towards the relevant aviation industry sector, such consultation is unnecessary.

As mentioned above, the direction content of the declaration instrument is, in effect, a series of supplemental supporting provisions to ensure CASA's compliance with Australia's international obligations under the Chicago Convention and United Nations Convention on the Law of the Sea for operations over the high seas.

It is not expected that, in the relevant international airspace, relevant foreign registered aircraft or Australian aircraft will depart from the previously safe navigation practices that had pertained. In the case of relevant foreign registered aircraft, the aircraft operators and pilots in command are recommended to conform to the commonsense requirements of aviation safety, and observe and act upon the threats and potential dangers to safe navigation that may arise from time to time due to military exercises and military training.

Office of Impact Analysis (OIA)

Consistent with Office of Impact Analysis Guidance, an Impact Analysis is not required for the direction instrument because it is a machinery direction which does not substantially alter existing arrangements and is required under the CA Act and the relevant regulations for the purposes of, and in the course of, their administration by CASA (OIA id: 14507).

Sector risk, economic and cost impact

Economic and cost impact

Subsection 9A (1) of the CA 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 CA 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.

With only marginal changes, the instrument is similar to its predecessor (CASA OAR 048/22) and the related direction instruments (CASA 26/21, and CASA 36/21, the latter to

coordinate the role of AA). Australian-registered aircraft are subject to certain offshore airspace access controls. Consistent with the Chicago Convention, foreign registered aircraft are not so subject, but in practice they generally observe the access controls rather than alter existing practices and routes. Operators are familiar with these requirements, and operations have been adjusted to them without any significant objections or impacts.

Apart from this, the changes made by the instrument from its predecessor are presentational only — the relevant directions are in the instrument rather than being made separately. Therefore, in terms of economic and cost impacts for subsection 9A (3) of the CA Act, the instrument will have no detrimental material, economic or cost impact on aircraft operators in their continuing operations.

Sector risks

There are no increased, or differential, sector risks arising from the instrument.

Regional and remote Australia impacts

The Minister's Statement of Expectations for the CASA Board states: "I expect that CASA will: ... (b) fully consider the impact of new regulations on general aviation, with a particular focus on regional and remote Australia. All Explanatory Statements drafted by CASA for subordinate legislation should identify the impact on the various categories of operations as well as on communities in regional and remote Australia served by those operations and how these impacts have been considered."

There are no identified regional and remote impacts that differ in any material way from the general economic and cost impacts described above.

Environmental impact

Under subsection 9A (2) of the CA Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any specific negative environmental impacts as a result of the instrument, as compared to its predecessor (CASA OAR 048/22) and related direction (CASA 36/21). Thus, the instrument as such will have no specific new effects on the environment.

Statement of Compatibility with Human Rights

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the **HR Act**). The direction instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the HR Act and, to the extent that it engages relevant rights, it does so in a reasonable, necessary and proportionate way to promote relevant rights to life, to work and to safe and healthy working conditions.

Making and commencement

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the CA Act.

As required by subregulations 6 (6) and 7 (1) of the AsR, following registration, the instrument commences on 1 December 2022, the day it is published in the AIP DAH.

Appendix 1

CASA OAR 168/22 – Declarations and Directions in relation to Prohibited, Restricted and Danger Areas etc. – Permanent Instrument 2022 (No. 1)

1 Name

This section names the instrument.

2 Duration

Under this section, the instrument commences on 1 December 2022, and ceases only if the instrument is repealed, or amended, and then only in accordance with the amendment. A Note explains that the declarations only take effect when they are published in the AIP DAH on 1 December 2022.

3 Repeal

Instrument *CASA OAR 048/22 – Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instrument 2022* (as amended) is repealed.

3A Definitions

Under this section, key words and phrases are defined.

3B Directions for notional restricted areas and notional danger areas

This section makes it clear that the **declarations** designating areas of Australian territory to be restricted areas or danger areas are supplemented by directions.

The directions require relevant areas **outside** Australian territory (*directed areas*) to be treated as if they were **notional restricted areas**, or **notional danger areas**.

The directions also require that, within directed areas, any variances in ATS relative to Annex 11 of the Chicago Convention must be published in the AIP or a NOTAM. No variance is permitted for foreign registered aircraft operating outside Australian territory. A Note explains that CASA may direct such variances, but only in conformity with the Chicago Convention processes.

3C Direction – Airservices Australia – Air Traffic and Aeronautical Information Services

This section requires Airservices Australia to provide the relevant ATS and aeronautical information services for aircraft flying over a notional restricted area as if it were a declared restricted area.

4 Prohibited, restricted and danger areas

This section formally makes the declarations and directions of airspace in terms of the Table.

Schedule	Areas
Schedule 1A	Declared Prohibited Areas inside Australian territory
Schedule 1	Declared Restricted Areas inside Australian territory
Schedule 2	Declared Danger Areas inside Australian territory
Schedule 3	Directed notional Restricted Areas wholly outside Australian territory in Australian-administered airspace
Schedule 4	Directed notional Danger Areas wholly outside Australian territory in Australian-administered airspace
Schedule 5	Straddle Areas R — combining declared Restricted Areas inside Australian territory, and directed notional Restricted Areas outside Australian territory in Australian-administered airspace
Schedule 6	Straddle Areas D — combining declared Danger Areas inside Australian territory, and directed notional Declared Areas outside Australian territory in Australian-administered airspace

5 All aircraft — approvals and conditions for declared restricted areas over Australian territory

Under this section, an aircraft may only be flown in a declared restricted area inside Australian territory if the pilot in command has Controlling Authority (CA) approval.

5A All aircraft — take precautions for declared danger areas over Australian territory

Under this section, an aircraft may be flown in a declared danger area inside Australian territory without the pilot in command having approval from the relevant Contact, but precautions are recommended.

5B All Australian-registered aircraft, and all foreign registered aircraft operating under an Australian authorisation — approvals and conditions for directed notional restricted areas outside Australian territory

Under this section, an Australian-registered aircraft, and all foreign registered aircraft operating under an Australian authorisation, may only be flown in the airspace of a directed notional restricted area outside Australian territory if the pilot in command has CA approval.

5C All foreign registered aircraft — take precautions for directed notional restricted areas outside Australian territory

Under this section, a foreign registered aircraft may be flown in a directed notional restricted area outside Australian territory without the pilot in command having approval from the relevant CA, but precautions are recommended.

5D All aircraft — take precautions for directed notional danger areas outside Australian territory in Australian-administered airspace

Under this section, an aircraft may be flown in the airspace of a directed notional danger area outside Australian territory without the pilot in command having approval from the relevant Contact, but precautions are recommended.

5E Straddle areas R and straddle areas D

Under this section, each part of an area which straddles inside and outside Australian territory has the respective access characteristics for inside or outside Australian territory as prescribed in the above provisions.

6 Voice deactivation for prohibited, restricted, and danger areas

Under this section, a prohibited area, a restricted area or a danger area, including a directed notional such area, is activated in accordance with the hours of activity statement prescribed in the Schedule for the area.

A relevant area activated in accordance with an hours of activity statement that is a NOTAM (an *activating NOTAM*) remains active until the finish time specified in the activating NOTAM (*specified finish time*), unless the CA or contact deactivates the area earlier using voice communication.

Early deactivation may only be carried out if:

- (a) the activity for which the area was activated has ceased; and
- (b) CASA has authorised the early deactivation.

If early deactivation occurs within the 60 minutes before the specified finish time, an amending NOTAM is not required.

The period of activation of a relevant area activated by NOTAM may not be extended by voice communication past the finish time specified in the activating NOTAM.

6A Trial of short-term RAAF voice-activated extension of certain declared restricted areas

The purpose of section 6A is allow the conduct of a time-limited safety trial of RAAF use of voice communication, in certain circumstances, in 17 restricted areas, to provide a 15-minute, temporary extension of an otherwise about-to-expire activation of a restricted area, for overdue RAAF aircraft. Hence, under this section a trial of short-term RAAF voice-activated extensions of specified declared restricted areas is established, expiring at the end of 14 June 2023.

The section sets out the safety and operational conditions which must be met for a voice-activated extension.

6B RAAF voice-activated extension — YBBB/R578B WILLIAMTOWN

Under this section, so much of one of the 17 areas as is outside Australian territory in Australian-administered airspace is directed to be treated as if it were a relevant declared restricted area to which section 6A applies.

7 Determination and direction that ATS are at variance with Annex 11

This section applies for an Australian-registered aircraft in a declared restricted area, a declared danger area, a directed notional restricted area, and a directed notional danger area so that if the ATS to be provided for the airspace are at variance with the ATS that would otherwise be provided for that airspace in accordance with the ICAO Annex, the variance must be published in the AIP or a NOTAM. A Note explains that CASA may direct such variances, but only in conformity with the Chicago Convention processes.

8 Acronym legend and guidance about likelihood of approvals

It is also provided that each decision of the relevant CA to approve or not approve an aircraft to fly in the airspace of a declared restricted area inside Australian territory, or a directed notional restricted area outside Australian territory, is to be taken in accordance with the requirements and limitations imposed for this area under this instrument. The section also supplements the acronym legend in Schedule 1AA.

Schedules:

Schedule 1AA contains an acronym legend.

Schedule 1A is a place holder for declared prohibited areas inside Australian territory (there are currently none).

Schedule 1 contains the coordinates, conditions and controlling authorities for the declared restricted areas inside Australian territory.

Schedule 2 contains the coordinates, conditions and contact authorities for the declared danger areas inside Australian territory.

Schedule 3 contains the coordinates, conditions and controlling authorities for the directed notional restricted areas wholly outside Australian territory in Australia-administered airspace.

Schedule 4 contains the coordinates, conditions and contact authorities for the directed notional danger areas wholly outside Australian territory in Australia-administered airspace.

Schedule 5 contains the coordinates, conditions and controlling authorities for the straddle areas R – combining declared restricted areas inside Australian territory, and directed notional restricted areas outside Australian territory in Australia-administered airspace.

Schedule 6 contains the coordinates, conditions and contact authorities for the straddle areas D – combining declared danger areas inside Australian territory, and directed notional danger areas outside Australian territory in Australia-administered airspace.

Statement of Compatibility with Human Rights

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

CASA OAR 168/22 – Declarations and Directions in relation to Prohibited, Restricted and Danger Areas etc. – Permanent Instrument 2022 (No. 1)

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 declaration instrument is to designate areas of Australian territory to be restricted areas or danger areas. These are typically volumes of airspace where, as a result of other flights or activities in the airspace, a danger to the flight of an aircraft in the area exists (or may exist) and the flight is, therefore, subject to access conditions or “take precautions” recommendations. It is also necessary to direct that areas outside Australian territory in Australian-administered airspace become notional restricted or danger areas, with similar access conditions or recommendations. However, in this case, the airspace is over the high seas, and, therefore, subject to international freedom of navigation rights. Hence, the conditional access rules do not apply to foreign registered aircraft.

Human rights implications

The direction instrument may engage the following human rights:

- the right to freedom of movement in the air under Article 12 of the *International Covenant on Civil and Political Rights* (the **ICCPR**)
- the right to life under Article 6 of the ICCPR
- the right to work under Article 6 (1) and the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the **ICESCR**).

Right to freedom of movement in the air

The instrument may engage this right for aircraft by making access to certain restricted and notional restricted areas conditional. However, to ensure conformity with the Chicago Convention, the right is not engaged for foreign registered aircraft over the high seas.

The right is engaged in the interests of the safety of air navigation because of the potential risks arising from, for example, certain kinds of military flying in relevant airspace.

Right to life under the ICCPR

Right to work and to safe and healthy working conditions under the ICESCR

The instrument may engage these rights. This engagement is in the context of CASA’s statutory purpose. The aim of CASA and its regulatory framework, including in the instrument, is to uphold aviation safety by prescribing appropriate safety rules and practices.

It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety. The instrument promotes the right to life under Article 6 of the ICCPR by legislating for the safe use of threatened or potentially dangerous airspace.

As a consequence of the foregoing, for Article 7 of the ICESCR, the direction instrument will also promote the right to safe and healthy working conditions for pilots of aircraft in the relevant airspace.

For the right to work under Article 6 (1) of the ICESCR, the instrument will require aircraft operators and pilots in command to observe the restricted and notional restricted airspace requirements. This is reasonably required in the interests of aviation safety and it is not expected to result in any change of actual flying practices from those previously followed.

Human rights implications

The direction 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.

To the extent that the instrument does engage any of the applicable rights or freedoms, it does so either out of necessity in the interests of aviation safety, or positively to promote the right to life under the ICCPR and the right to safe and healthy working conditions under the ICESCR. Any relevant engagement is considered to be reasonable, necessary and proportionate to the risks the instrument seeks to address.

Conclusion

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

Civil Aviation Safety Authority