

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX19/24 – Indoor Operation of RPA Near People and BVLOS – Exemption Instrument 2024

The purpose of this exemption instrument is to permit licensed remote pilots, who are officers of an Australian police force that holds a relevant operating certificate, to operate remotely piloted aircraft (**RPAs**) in relevant policing operations closer to people than would otherwise be permitted under the 30 metre exclusion rule in Part 101 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Legislation — exemptions

Section 98 of the Act empowers the Governor-General to make regulations for the *Civil Aviation Act 1988* (the *Act*) and the safety of air navigation. Subpart 11.F of CASR deals with exemptions.

Under subregulation 11.160(1), and for subsection 98(5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98(5A). Subsection 98(5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160(2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160(3), CASA may grant an exemption on application, or on its own initiative.

Under subregulation 11.170(3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety.

For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A(1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

Under regulation 11.205, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation.

Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition.

Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230(1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230(3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person.

Under regulation 11.235, an exemption is not transferable (as between operators, aircraft, etc.).

Legislation — CASR Part 101

Under regulation 101.073 of CASR, without a CASA approval, it is an offence to operate an unmanned aircraft that is not within the operator's visual line of sight (beyond visual line of sight or **BVLOS**).

An unmanned aircraft is being **operated within the visual line of sight** if the person operating it can continually see, orient and navigate the aircraft to meet the person's separation and collision avoidance responsibilities, with or without corrective lenses, but without the use of binoculars, a telescope or other similar device.

Under regulation 101.095 of CASR, without a relevant permission or approval, a person must not operate an unmanned aircraft in or into cloud, or at night, or in other than visual meteorological conditions.

Under regulation 101.245 of CASR, without a CASA approval, a person must not operate an RPA within 30 m of another person who is not directly associated with the actual operation of the RPA. For a very small, a small, or a medium RPA, the RPA may be operated within 15 m of the other person if they have consented.

In addition, under section 7 in *CASA 22/22 – Operation of Certain Unmanned Aircraft – Renewal of Directions Instrument 2022*, without an applicable approval or authorisation, a person controlling an RPA (or a model aircraft) must ensure that the aircraft is not operated within 30 m from a person unless the person has duties essential to the control or navigation of the aircraft. The distance of 30 m is measured in every direction from the point on the ground or surface of the water directly below the aircraft.

Under regulation 101.280 of CASR, a person must not operate an RPA that does not have a certificate of airworthiness over a populous area at a height less than the height from which, if any of its components fails, it would be able to clear the area (the **critical height**).

Further, without a CASA approval, a person must not operate a certificated RPA over a populous area at less than the critical height.

Under subregulations 101.300(4) and (6) of CASR, it is a condition (among others) of a remote pilot licence that an RPA must be operated within the visual line of sight of the pilot unless the pilot is a certificated RPA operator approved to so operate, or a member of such an operator's personnel. Contravention of the condition would be an offence.

Background

Generally under Part 101 of CASR, an RPA must be operated within the visual line of sight of the operator, and not closer than 30 m from any third party. These rules impose serious constraints on police forces using RPA for law enforcement purposes or for the purposes of rescue or life-saving.

The exemption instrument now relaxes these rules for those kinds of operations, but subject to a range of safety conditions designed to address hazards and reduce or eliminate risks of injury, including detailed operating documents (documented practices and procedures) and risk assessments before operations.

Also, for example, only a micro RPA (gross weight does not exceeding 250 g) or a very small RPA whose gross weight does not exceed 1 050 g may be used at restricted

speeds and heights. (The prescribed maximum gross weight of a very small RPA is otherwise not more than 2 kg).

Different RPA operating speed restrictions apply depending on whether any person, who may be within 30 m or 5 m of a relevant police RPA, is shielded by obstacles or unshielded. In the latter case, for example, the RPA must have no exposed rotating parts that could lacerate human skin upon impact.

The RPA may not come closer to a person than 1 m and must be operated at the slowest practicable speed, including use of the hover, that is consistent with achieving a successful outcome to the operation.

The RPA must never be used intentionally, incidentally, or accidentally as a means of force. This condition is supported by the requirement that a relevant operation must not commence unless the risk of serious injury to a person is assessed as being so low that there is minimal probability of it occurring.

The RPA may only move in a direction where the remote pilot has visibility of the area in the direction of travel, whether that visibility is obtained through the remote pilot's own eyes, the use of an observer, or the use of live electronic images available to the remote pilot.

A police force or service that has used, or that intends to use, the exemption instrument must make arrangements, on written request by an Executive Manager of CASA, for a CASA officer to observe a relevant operation at CASA's expense.

All of the conditions are described in detail in Appendix 1 which also summarises the structure and other provisions of the instrument.

The instrument will be in force for 6 months in the first instance in order for CASA to accumulate relevant operating data that may lead to a refinement of the safety conditions, and inform any decision to extend the scope of the exemptions to also cover other emergency service operations directly involved in rescuing or saving lives.

The instrument has been drafted to accommodate such a possible extension should it occur, and to facilitate a contemporaneous, if theoretical, extrapolation of the data collected by the police to other kinds of emergency services operations.

But for the first 6 months of the immediate life of the instrument – which is the data accumulation and evaluation phase – the scope and application of the exemptions have been strictly limited to police force use only.

Legislation Act 2003 (the LA)

The exemption instrument applies for the safe navigation and operation of unmanned aircraft and applies to classes of persons, namely, police forces and their relevant officers. As such, it is a legislative instrument under the Act and the LA and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Sunsetting

As the exemption instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions*

and Other Matters) Regulation 2015). The exemption instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators both domestic and international.

In this case, however, the exemption instrument expires after 6 months. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary oversight.

Incorporations by reference

Under subsection 98(5D) of the 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 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.

References to provisions of CASR are taken to be as they are in force from time to time by virtue of paragraph 13(1)(c) of the LA. CASR is freely available online on the Federal Register of Legislation.

The instrument incorporates the documented practices and procedures of the various Australian police forces. This document sets out the internal organisational requirements to be complied with, and the operational procedures to be followed, by the relevant police remote pilots in conducting RPA law enforcement, or rescue or life-saving operations in accordance with the exemption instrument.

The document contains the shared proprietary intellectual property of the individual police forces in right of their respective Commonwealth, State and Territory governments, who retain intellectual property in it. It is also, of necessity, a confidential policing and security document insofar as it may relate to law enforcement operations. The document would only be available for public access in accordance with the written agreement of the relevant Commissioners of Police.

Economic and cost impact, and sector risks

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.

In terms of economic and cost impacts for subsection 9A(3) of the Act, the exemption instrument imposes no direct or indirect cost impacts on any relevant parties.

Sector risks

The exemption instrument is operative for 6 months only with respect to specific unmanned aircraft used by Australian police forces in law enforcement, or rescue or life-saving, operations.

Environmental impact

Under subsection 9A(2) of the 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 negative environmental impacts as a result of the exemption instrument.

Consultation

Under section 16 of the 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.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult, where possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

There has been no formal public consultation on the exemption instrument. However, it has been developed in close informal consultation with the relevant police forces.

In the circumstances, CASA is satisfied that it has undertaken such consultation as it considers appropriate and reasonably practicable.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required because the exemption instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for exemption instruments (OIA id: 14507).

Statement of Compatibility with Human Rights

The Statement in Appendix 5 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. As that Statement indicates, the exemption instrument as such does not give rise to any direct, adverse impact on relevant human rights issues.

Relevantly, the exemption instrument provides positive, if indirect, protection of the right to life.

The exemption instrument requires CASA to be supplied with certain police operational data to facilitate evaluation of the safety effectiveness of the instrument.

However, this data must be provided in such a generic and de-identified form that no personal details of any individual or business will be provided to CASA.

Thus, under the instrument, there is no adverse impact of the right to privacy either under the relevant international instrument or the *Privacy Act 1988*, neither of which are, in the circumstances, enlivened for CASA.

Commencement and making

The exemption instrument commences on the day after it is registered, and expires at the end of 30 September 2024.

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

Details of:**CASA EX19/24 – Indoor Operation of RPA Near People and BVLOS – Exemption Instrument 2024**

1 Name of instrument

This section names the instrument.

2 Duration

Under this section, the instrument commences on the day after it is registered and is repealed at the end of 30 September 2024.

3 Definitions, etc.

Under this section, key words, phrases and abbreviations are defined, including: *beyond visual line of sight* or *BVLOS*, *emergency service RPA operation* or *ESRO*, *internal operation*, *relevant RPA*, *remote pilot*, *shield*, *shielded operation*, *transit operation* and *unshielded person*.

4 Application and non-application

Under this section, the instrument currently applies only to Australian police forces and their relevant remote pilots. The instrument also applies to training for the relevant police operations.

5 Exemptions

This section identifies the following provisions in Part 101 of CASR from which exemption is granted, namely:

- (a) regulation 101.073 (for BVLOS);
- (b) regulation 101.095 (for weather, and day only, limitations);
- (c) regulation 101.245 (for operations near people);
- (d) regulation 101.280 (for operations over a populous area);
- (e) paragraph 101.300(4)(b) (for certain remote pilot licence conditions);
- (f) subregulation 101.300(6), but only in respect of paragraph 101.300(4)(b) (concerning offences).

The section also imposes the safety conditions that are set out in Schedule 1.

Schedule 1 Conditions

1 General

Under this clause the conditions must be complied with.

2 Risk assessment

Under this clause, before a relevant operation is conducted, a risk assessment must be carried out in accordance with the RPA operator's documented practices and procedures. It must take into account all factors that may cause the relevant RPA to impact on a person or property, including:

- (a) the causes and consequences of possible RPA mode interruption, malfunction or failure; and
- (b) the possibility that an RPA speed increase may be required in accordance with paragraph 4.5(b).

A relevant operation must not commence unless:

- (a) the risk of serious injury to a person is assessed as being so low that there is minimal probability of it occurring; and
- (b) the risk of damage to any property is assessed as being as low as reasonably practicable in the circumstances.

3 RPA not for use of force

Under this section, the relevant RPA must not be used by a remote pilot as a use of force.

4 RPA flight near a person

Under this section, the RPA may be operated within 30 m of a person provided that the RPA:

- (a) comes no closer than 1 m from the person; and
- (b) is operated at the slowest practicable speed, consistent with a successful outcome to the operation; and
- (c) only moves in a direction where the remote pilot has visibility of the area in the direction of travel, whether that visibility is obtained through the remote pilot's own eyes, the use of an observer, or the use of live electronic images available to the remote pilot; and
- (d) does not exceed the prescribed speed limitations or height restrictions; and
- (e) for an operation involving an unshielded person — has no exposed rotating parts that could lacerate human skin upon impact.

A Note explains that for a relevant operation that is a shielded operation there are no requirements that the RPA have no exposed rotating parts that could lacerate human skin upon impact. However, CASA strongly recommends that, as far as practicable, for all relevant operations, the RPA should have no exposed rotating parts that could lacerate human skin upon impact.

Before a relevant operation commences, the RPA flight controller must be set:

- (a) to limit the maximum speed of the RPA to 5 m/sec; and
- (b) in such a manner that only an intentional and deliberate overriding action by the remote pilot could cause that maximum speed to be exceeded.

For a relevant operation that is a shielded operation, the speed limitation of the RPA is 5 m/sec, with a height restriction of 3 m.

Note But paragraphs 4.1(a), (b) and (c) still apply to a shielded operation.

For a relevant operation involving any unshielded person, the instrument tabulates the speed limitations and the height restrictions in Table 4.4.

Table 4.4 — For unshielded persons

Item		Less than 30 m but not less than 5 m	Less than 5 m but not less than 1 m
1	Speed	Up to 3 m/sec	Up to 1.5 m/sec
2	Increased speed	Up to 5 m/sec	The speed may not be increased
3	Height	Up to 5 m	Up to 3 m

When operating an RPA within the distance from a person mentioned in the Table:

- (a) the speed of the RPA must not exceed the mentioned speed; and
- (b) the speed may be increased but only if the risk assessment has covered the safety implications of the increased speed; and
- (c) the height of the RPA above the ground or floor of the internal place must not exceed the applicable height mentioned in item 3 of the column.

Finally, there must be no continuous overflight of any person or moving vehicle.

5 Transit operations

Under this section, for a transit operation to approach to or depart from an internal place, the RPA must not be flown at a height greater than the height of the tallest structure within 150 m horizontally of the RPA.

6 Practices and procedures

Under this section, the RPA operator's documented practices and procedures must include a range of details, including the following:

- (a) relevant prescribed details of the actual RPA to be used, and the failsafe method to ensure that, when required, there are no exposed rotating parts of the RPA that could lacerate human skin upon impact;
- (b) if RPA speed and height restrictions are used to meet the requirements under clause 4 — instructions for the remote pilot and any other operating crew to ensure compliance with the requirements;
- (c) details of how a shield is assessed as fit for purpose in a proposed relevant operation;
- (d) both:
 - (i) details of how the remote pilot will monitor the control link integrity for the RPA; and
 - (ii) the procedures for loss of link;
- (e) procedures for the training and testing of relevant individuals in relation to conducting a relevant operation;
- (f) procedures for making and retaining records of the matters mentioned in paragraph (e);
- (g) how, for all for relevant operations, risk assessments are to be conducted, documented, made available to relevant individuals, and retained;
- (h) abnormal operating procedures related to internal operations.

A relevant operation must be conducted in accordance with the RPA operator's documented practices and procedures.

In the event of conflict or inconsistency between anything in the exemption instrument and the documented practices and procedures, the instrument is to prevail.

7 Data collection and reporting to CASA

Under this clause, it is a condition that the relevant Police Commissioners collect and provide to CASA before the end of each month de-identified details of their relevant operations, including the following:

- (a) a description of the relevant internal place;
- (b) whether a transit operation was involved and to what effect;
- (c) what minimum distance from a person was involved;
- (d) the RPA used in the operation;
- (e) whether during the operation any relevant RPA collided with any of the following, and if so, with what consequences:
 - (i) a person;
 - (ii) a shield;
 - (iii) a part of the internal place;
- (f) whether, and with what consequences, during the internal operation, any such collision caused the relevant RPA, or material from the RPA or from the shield or from the internal place, to cause injury to any person inside or outside the place, or caused damage to any property inside or outside the place;
- (g) whether, and with what consequences, abnormal operating procedures were used.

In addition, if an RPA impacts a person or damages any property during a relevant operation, the details mentioned above must be provided to CASA within 72 hours of completion of the operation.

8 CASA observers

Under this clause, a police force or service that has used, or that intends to use, the instrument for the purpose of the trial, must make arrangements, on written request by an Executive Manager of CASA, for a CASA officer to observe a relevant operation at CASA's expense.

Statement of Compatibility with Human Rights

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

CASA EX19/24 – Indoor Operation of RPA Near People and BVLOS – Exemption Instrument 2024

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 exemption instrument is to permit licensed remote pilots, who are officers of an Australian police force that holds a relevant operating certificate, to operate remotely piloted aircraft (**RPA**s) in relevant policing operations closer to people than would otherwise be permitted under the 30 metre exclusion rule in Part 101 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Generally under Part 101 of CASR, an RPA must be operated within the visual line of sight of the operator, and not closer than 30 m from any third party. These rules impose serious constraints on police forces using RPA for law enforcement purposes or for the purpose of saving or protecting lives.

The exemption instrument relaxes these rules for such operations, but subject to a range of safety conditions designed to address hazards and reduce or eliminate risks of injury.

The instrument will be in force for 6 months in the first instance in order for CASA to accumulate relevant operating data that may lead to a refinement of the safety conditions, and inform any decision to extend the scope of the exemptions to also cover other emergency service operations directly involved in rescuing or saving lives.

The instrument has been drafted to accommodate such a possible extension should it occur, and to facilitate a contemporaneous, if theoretical, extrapolation of the data collected by the police to other kinds of emergency service operations.

But for the first 6 months of the immediate life of the instrument – which is the data accumulation and evaluation phase – the scope and application of the exemptions have been strictly limited to police force use only.

Human rights implications

The legislative instrument engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the **ICCPR**) (to the effect that every individual has the right to life, protected by law, and without being arbitrarily deprived of it)

- the right to privacy under Article 17 of the ICCPR (to the effect that no-one shall be subjected to arbitrary or unlawful interference with their privacy).

The right to life under the ICCPR

The instrument will have indirect effects on the right to life under the ICCPR through its detailed safety conditions designed to ensure the safe conduct of police law enforcement, and rescue and life-saving operations that use or are supported by relevant RPA.

The right to privacy under the ICCPR

The instrument will have an indirect effect on the right to privacy under the ICCPR insofar as police forces will be required to provide CASA with descriptive data about their use of the exemption instrument.

The purpose of this data is to enable CASA to evaluate the ongoing safety and effectiveness of the exemption instrument in order to inform future decisions whether to amend its conditions to improve safety outcomes, or to extend its application to other rescue and life-saving emergency service operations.

This data already in the hands of the police may refer to commercial or other premises, and to persons involved in law enforcement, or rescue and life-saving efforts.

However, all data to be supplied to CASA must be de-identified by the relevant police service before it is received by CASA and hence there will be no adverse effect on the applicable human right.

The instrument does not require the collection of new data, or impose on a police service a requirement to collect data that it will not already have as a necessary part of its policing operations.

The instrument requires only the provision of de-identified information already held by a police service for the purposes of its relevant RPA operations.

The privacy protection of any original data will be a matter for the police services in accordance with their established procedures and processes for the appropriate protection of privacy in accordance with their statutory obligations and the requirements of the criminal justice system.

Human rights implications

This legislative instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life. The measures in the instrument are considered to be reasonable, necessary and proportionate in the interests of aviation safety.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority