

Explanatory Statement

Airspace Regulations 2007

Civil Aviation Safety Regulations 1998

CASA OAR 068/24 – Declarations and Directions in relation to Prohibited, Restricted and Danger Areas, Etc. – Permanent Instrument 2024

Purpose

The purpose of this declaration instrument is to create special use airspace areas by designating 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 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 Convention on International Civil Aviation (the *Chicago Convention*). Hence, the conditional access rules do not apply to foreign registered aircraft.

Australian-administered airspace

Australian-administered airspace is airspace that has been 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 the Civil Aviation Safety Authority (*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.

The *Airspace Regulations 2007* (*AsR 2007*) were amended on 30 November 2023 by the *Airspace Amendment (Danger Areas) Regulations 2023*. Relevantly, the amendments will:

- (a) provide for declaration of danger areas in Australian-administered airspace outside Australian territory (consistent with the Chicago Convention which proscribes restricted areas over the high seas but permits danger areas); and
- (b) provide for declaration of a new type of danger area known as a *military operating area* (*MOA*) to which conditions of entry can be applied for Australian aircraft only.

References to provisions of AsR 2007 in this document are references to the regulations as amended on 30 November 2023.

Under subregulation 6(1) of ASR 2007, CASA may make a declaration designating an area of **Australian territory** (up to the 12 nautical miles sea boundary) to be a prohibited or restricted area (**P** or **R area**).

Under subregulation 6(2) of ASR 2007, 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. (There are no prohibited areas.)

Under subregulation 6(3) of AsR 2007, 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 national security, to restrict the flight of aircraft over the area to aircraft flown in accordance with specific conditions.

Under new subregulation 6(5A), CASA may make a declaration designating an area of Australian-administered airspace to be a danger area (**D area**) (prior to 30 November 2023, such declarations were limited to areas of Australian territory). However, CASA must not declare a danger area unless, in the opinion of CASA, activities dangerous to the flight of aircraft may exist in the area at specified times.

Subregulation 6(5C) provides that such a declaration may designate danger areas as:

- (a) a MOA; or
- (b) another type of danger area, as specified in the declaration; or
- (c) a danger area of unspecified type.

The current declaration instrument does not designate any areas under paragraph (b).

Under new subregulation 6(5D), a declaration that designates an area as a MOA may impose conditions on the flight of aircraft in the area.

However, new subregulation 6(5E) limits the application of such conditions outside Australian territory to Australian aircraft only.

Under subregulation 6(6) and regulation 7 of AsR 2007, a 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 AsR 2007, a declaration ceases to have effect on the day, event or circumstances specified in the declaration.

Under new subregulation 9(2) of AsR 2007, if a volume of airspace has been declared under regulation 6 (as amended) to be a restricted area or a danger area, then 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 in accordance with the Chicago Convention.

Under subregulation 9(3), CASA must cause details of these varied services to be published in the AIP or NOTAM.

Legislation — directions

Under paragraph 11.245(1)(a) of the *Civil Aviation Safety Regulations 1998 (CASR)*, for subsection (5A) of the *Civil Aviation Act 1988 (the CA Act)*, CASA may, by instrument, issue a direction about 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 in the interests of safety, only if the direction is not inconsistent with the 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, 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.

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 30 November 2023.

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

The restricted (R) areas and danger (D) areas are published in the DAH. The new DAH for 13 June 2024 contains some revisions of the R and D areas since the previous issue by AA in November 2023.

In particular, since November 2023 a new schedule for MOAs appears. This is due to the Australian Defence Force having begun (but not yet finalised) the process to re-establish all restricted areas that include extraterritorial airspace as MOAs by 28 November 2024. The majority of such areas have been migrated in the new instrument, with the areas scheduled to be migrated in the 28 November 2024 instrument currently appearing in Schedules 3 and 4 of the new instrument.

The DAH revisions also include the following: replacement of two restricted areas at Dutson range that are no longer fit for purpose with a single, smaller one (and the creation of a new danger area to provide a less restrictive option for management of risk at the range); creation of a new restricted airspace volume at Amberley to simplify management of airspace above extant restricted areas; and, most significantly, the deletion and creation of numerous danger and restricted areas associated with expansion of the Shoalwater Bay Training Area.

It is necessary, therefore, for CASA, under regulation 6 of AsR 2007 to update its previous declarations and determinations instrument which was issued in November 2023.

The instrument would repeal *CASA OAR 228/23 – Declarations and Directions in relation to Prohibited, Restricted and Danger Areas, Etc. – Permanent Instrument 2023* (as amended), the previous instrument of declaration of prohibited, restricted and danger areas and determinations of services, and redeclare and redetermine them with changes effective on and from 13 June 2024. (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 continues existing arrangements for voice deactivation of a P, R or D area (including MOAs).

For subregulation 6(6) of AsR 2007, 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 13 June 2024. 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 to declare restricted areas under AsR 2007 are limited to Australian territory. Hence, it is necessary to use CASA's powers of direction to make appropriate designations of airspace outside Australian territory in Australian-administered airspace. Such directions, where applicable, would be enforceable for 12 months after the making of the instrument.

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.

Chicago Convention

While safety restrictions may be imposed (a) on *any aircraft* flying inside Australian territory, and (b) on any *Australian 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 – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace 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 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 that 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, since the issue of the December 2022 DAH instrument, these new requirements have been included in modified form in the PRD 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, the relevant nomenclature (updated for the current instrument) is:

- declared restricted areas (these are inside Australian territory)
- declared danger areas (these are anywhere in Australian-administered airspace, and as of 30 November 2023 include a new subtype known as military operating areas)
- directed notional restricted 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	Danger areas (excluding military operating areas) anywhere in Australian-administered airspace	Military operating areas anywhere in Australian-administered airspace	Directed notional restricted areas outside Australian territory	Straddle restricted areas straddling inside and outside Australian territory
Aircraft					
<i>Australian aircraft</i>	Access conditional on Controlling Authority	Access unconditional, subject to precautions	Access conditional on Administering Authority	Access conditional on Controlling Authority	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 or 5
<i>Foreign registered aircraft</i>	Access conditional on Controlling Authority	Access unconditional, subject to precautions	Access inside Australian territory conditional on Administering Authority Access outside Australian territory unconditional for foreign registered aircraft only, subject to precautions	Access unconditional, subject to precautions	

Airspace Amendment (Danger Areas) Regulations 2023

It was hoped that the AsR 2007 amendment (the *Airspace Amendment (Danger Areas) Regulations 2023*), that commenced on 30 November 2023, would 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.

However, in order to allow Defence sufficient time to re-establish their offshore restricted areas as MOAs in a controlled and systematic fashion, the directions are to be temporarily maintained to provide a transition period until the end of 27 November 2024.

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 the instrument containing them 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 was 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 in 6 months’ time when the next DAH comes into force.

Sunseting

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

AsR 2007 is, in effect, exempted from the sunseting 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 CASR is, in effect, exempted from the sunseting provisions under Part 4 of Chapter 3 of the LA.

Being such an aviation safety instrument, the instrument is, therefore, exempted from the sunseting 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 will be repealed on 28 November 2024 when the next DAH comes into force. Thus, in practice, no sunseting avoidance issues arise. The fact that the instrument is formally not subject to sunseting 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 airspace change proposal for the previously mentioned expansion of the Shoalwater Bay Training Area, that resulted in substantive changes to the declaration instrument, was made available for consultation through the Queensland Aviation State Engagement Forums (*AvSEFs*).

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.

Furthermore, extensive targeted consultation was undertaken by the Australian Defence Force. Any representations made by airspace users and others in the course of the consultation process are taken into account by CASA. While there were objections raised by local landowners in relation to the declaration of special use airspace areas overhead their land, CASA is satisfied that the significant concessions made by Defence in their final submission constitute a reasonable response to those concerns. These concessions had the practical outcome that low-level restricted areas that would have impacted landowners' flight operations were significantly reduced.

Overall, CASA is satisfied that the nature, extent, and duration of the consultation conducted for all of the current changes was adequate and that no further consultation would be appropriate or necessary in the circumstances.

The directions in the instrument are essentially technical facilitative machinery. CASA did not consider that consultation on the directions within the declaration instrument was practicable or appropriate, and remains satisfied that, in the context of ongoing 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 common-sense 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.

Similar to its predecessor (CASA OAR 228/23), the instrument contains provisions to subject Australian aircraft to certain offshore airspace access controls (these provisions are based on repealed direction instruments, CASA 26/21 and *CASA 36/21 – Direction – Airservices Australia – Air Traffic and Aeronautical Information Services in Australian-administered Airspace Outside Australian Territory Instrument 2021*, the latter to coordinate the role of AA). 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. 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.

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 228/23). 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 Branch Manager, Air Navigation, Airspace & Aerodromes, Air Navigation, Transformation & Risk Division, a delegate of CASA, in accordance with subsection 73(2) of the CA Act.

As required by subregulations 6(6) and 7(1) of AsR 2007, following registration, the instrument commences on 13 June 2024, the day it is published in the AIP DAH.

CASA OAR 068/24 – Declarations and Directions in relation to Prohibited, Restricted and Danger Areas, Etc. – Permanent Instrument 2024

1 Name

This section names the instrument.

2 Duration

Under this section, the instrument commences on 13 June 2024 and would normally be expressed to cease to have effect only if the instrument were repealed, or amended, and then only in accordance with the amendment. However, this section provides that the instrument is repealed immediately before 30 November 2024. A Note explains that the declarations only take effect when they are published in the AIP DAH on 13 June 2024. It goes on to explain that the express repeal date is necessary because the instrument contains directions for which the certainty of an expressed expiry date is necessary. Nevertheless, it is likely that the instrument will be replaced on 30 November 2024 with an instrument that does not incorporate directions and, as such, will no longer be required to have an express repeal date.

3 Repeal

Instrument *CASA OAR 228/23 – Declarations and Directions in relation to Prohibited, Restricted and Danger Areas, Etc. – Permanent Instrument 2023* (as amended) is repealed.

3A Definitions

Under this section, the meaning of key words and phrases, as they are used in the instrument, are defined, including:

Australian aircraft — this has the same meaning as in the CA Act, that is, an aircraft registered in Australia, or an aircraft in Australian territory, other than foreign registered aircraft and state aircraft; and

military operating area, or *MOA* — this means a type of danger area mentioned in paragraph 6(5C)(a) of AsR 2007 (as in force on and from 30 November 2023).

3B Directions for notional restricted areas

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

The directions require relevant areas **outside** Australian territory (*directed areas*) to be treated as if they were **notional restricted 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	Prohibited Areas
Schedule 1	Declared Restricted Areas inside Australian territory
Schedule 2	Danger Areas excluding Military Operating Areas
Schedule 2A	Military Operating Areas
Schedule 3	Directed notional Restricted Areas wholly outside Australian territory in Australian-administered airspace
Schedule 4	Straddle Areas R — combining declared Restricted Areas inside Australian territory, and directed notional Restricted 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 danger areas

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

5B All Australian aircraft — approvals and conditions for directed notional restricted areas outside Australian territory

Under this section, an Australian aircraft 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 Straddle areas R

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.

5E All Australian aircraft — approvals and conditions for military operating areas

Under this section, an Australian aircraft may only be flown in the airspace of a MOA if the pilot in command has approval from the Administering Authority.

5F All foreign registered aircraft — approval and conditions for military operating areas and take precautions for military operating areas

Under this section, a foreign registered aircraft may only be flown in the airspace of a MOA inside Australian territory if the pilot in command has approval from the Administering Authority.

A foreign registered aircraft may be flown in the airspace of a MOA mentioned in Schedule 2A that is outside Australian territory in Australian-administered airspace without the pilot in command having approval for the flight from the relevant Administering Authority mentioned in the Schedule for the area.

However, it is recommended that for such an aircraft in such a MOA, the pilot in command take such precautions, and make such contacts, as a reasonable pilot, in the same circumstances, would take and make for an area within or over which activities dangerous to the flight of an aircraft may exist at specified times.

Notes further explain the impact of these provisions.

6 Voice deactivation for prohibited, restricted and danger areas

Under this section, a prohibited area, a restricted area, a directed notional restricted area and a danger area (including a MOA) 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.

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

This section applies for an Australian aircraft in a declared restricted area, a declared danger area, including a MOA, and a directed notional restricted 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 determine 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 contacts for the declared danger areas in Australian-administered airspace (excluding MOAs).

Schedule 2A contains the coordinates, conditions and administering authorities for the declared MOAs in Australian-administered airspace.

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

Schedule 4 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 Australian-administered airspace.

Statement of Compatibility with Human Rights

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

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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 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 declaration 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 declaration 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