

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 67/24 — Operation of RPA in Sydney Harbour Restricted Areas, R405A and R405B (CASA-Verified Drone Safety App) Instrument 2024

Purpose

CASA 67/24 — Operation of RPA in Sydney Harbour Restricted Areas, R405A and R405B (CASA-Verified Drone Safety App) Instrument 2024 (the **instrument**) approves particular restricted areas in the vicinity of Sydney Harbour, New South Wales in, or over, which a remote pilot is permitted to operate an RPA (an **RPA**) under regulation 101.065 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Also, the instrument issues directions under regulation 11.245 of CASR to a remote pilot who is registered, using a CASA-verified drone safety app, to be authorised to operate an RPA in a defined area, which is within the permitted areas, described on the app.

Legislation

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

Paragraph 98(5A)(a) states that the Civil Aviation Safety Authority (**CASA**) may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft.

RPA operations

Under Part 1 of the CASR Dictionary:

Aeronautical Information Publication or ***AIP*** has the same meaning as in the *Air Services Regulations 2019*.

restricted area:

- (a) has the same meaning as in Annex 11 to the Chicago Convention; and
- (b) in relation to Australian territory — includes an area designated as a restricted area by a declaration made under subregulation 6(1) of the *Airspace Regulations 2007*.

Under section 3 of the Act:

Australian territory means:

- (a) the territory of Australia and of every external Territory;
- (b) the territorial sea of Australia and of every external Territory; and
- (c) the air space over any such territory or sea.

Under subsection 4(1) of *CASA OAR 068/24 – Declarations and Directions in relation to Prohibited, Restricted and Danger Areas, Etc. – Permanent Instrument 2024*, the areas identified as “YMMM/R405A SYDNEY” (**R405A**) and “YMMM/R405B SYDNEY” (**R405B**), and described in, Schedule 1 of that instrument are declared to be restricted areas.

Under regulation 101.021 of CASR, an **RPA** is a remotely piloted aircraft, other than the following:

- (a) a balloon;

- (b) a kite;
- (c) a model aircraft.

As far as is relevant, under subregulation 101.065(1), a person may operate an unmanned aircraft in, or over, a restricted area only with the permission of, and in accordance with any conditions imposed by, the authority controlling the area. Under subregulation 101.065(1A), an offence against subregulation 101.065(1) is an offence of strict liability.

As far as is relevant, under paragraph 101.065(2)(b), **authority controlling the area** means, in the case of a restricted area, the authority mentioned in AIP (as issued from time to time) as the controlling authority for the area. CASA is mentioned in AIP as being the controlling authority for R405A and R405B.

Directions

Regulation 11.240 of CASR states that Subpart 11.G of CASR provides for the issue by CASA of directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245(1)(a), CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245(2) provides that CASA may issue such a direction:

- (a) only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation; and
- (b) only if the direction is not inconsistent with the Act; and
- (c) only for the purposes of CASA's functions.

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

Documents incorporated by reference

Under subsection 14(1) of the *Legislation Act 2003* (the **LA**), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the LA, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

However, subsection 98(5D) of the Act states that, despite section 14 of the LA, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Background

The instrument facilitates the continuation by CASA of its Automated Airspace Authorisation Trial (the **AAAT**), which CASA initiated in 2021 in relation to areas in the vicinity of certain controlled aerodromes. CASA extended the AAAT to include R405A and R405B in 2023 under *CASA 65/23 – Approval and Permission for Operation of RPA within*

Sydney Harbour Restricted Airspace R405A/B Instrument 2023 (CASA 65/23). CASA 65/23 is repealed at the end of 15 November 2024.

The AAAT applies only in relation to the operation of a nominated RPA with a gross weight of not more than 25 kg.

In the normal course, each RPA operator that wishes to operate an RPA in, or over, R405A and R405B must apply to CASA (as the **authority controlling the area**), under regulation 101.065, for permission to do so. However, under the AAAT, once CASA has approved under that regulation R405A and R405B as areas in, or over, which a person is permitted to operate an RPA, a remote pilot who is an RPA operator, or member of the personnel of an RPA operator, may seek to utilise the permission. This is done by using a CASA-verified drone safety app to register to be authorised to operate a nominated RPA in a particular operating area within R405A and R405B. The operating area is the segment of airspace described on the app, defined by reference to horizontal and vertical limits within R405A and R405B. The airspace authorisation is given in near-real time to an RPA operator using the app, subject to safety constraints. Each airspace authorisation generated by the app states the period during which the authorisation may be utilised, up to a maximum period of 24 hours.

For the purpose of continuing the AAAT in relation to R405A and R405B, on application made by AUSTRALIAN ASSOCIATION FOR UNCREWED SYSTEMS INCORPORATED, ASIC Registration Number A39728, CASA approves, under regulation 101.065, R405A and R405B as restricted areas in, or over, which a remote pilot is permitted to operate an RPA. All RPA operators may utilise this permission, subject to the remote pilot complying with the directions under regulation 11.245 stated in the instrument.

A remote pilot who operates an RPA in accordance with an airspace authorisation, generated by a CASA-verified drone safety app, must comply with the directions under regulation 11.245 stated in the instrument. In particular, the pilot must, during the RPA operation, comply with any operating limitations, relevant to the operation, which are notified to the pilot on the app in relation to the registration for the authorisation. Also, the pilot must conduct the operation only as an aerial work operation, as defined in regulation 138.010 of CASR.

The term **operating area** is defined in section 3 of the instrument as follows:

operating area means the segment of airspace described on a CASA-verified drone safety app, defined by reference to horizontal and vertical limits within the relevant restricted areas, in which an RPA may be operated.

R405A and R405B are relevant restricted areas under the instrument. An operating area is determined by reference to “Grid Cell Definition” files compiled by CASA and takes into account the safest maximum height an RPA may be operated in, or over, R405A and R405B.

Content of instrument

Section 1 of the instrument states the name of the instrument.

Section 2 of the instrument states the duration of the instrument.

Section 3 of the instrument contains definitions of terms used in the instrument.

Section 4 of the instrument approves R405A and R405B as restricted areas in, or over, which a remote pilot is permitted to operate an RPA under regulation 101.065. In giving the permission, CASA has, in accordance with subsection 9A(1) of the Act, taken into account the likely effect on the safety of air navigation of the operation of unmanned aircraft in, or over, R405A and R405B.

Subsection 4(2) states that the operation of an RPA by a remote pilot in a relevant restricted area is subject to the directions stated in section 5.

Section 5 states the directions, under regulation 11.245, which a remote pilot operating an RPA in an operating area must comply with. In issuing the directions, CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation.

Documents incorporated by reference

The instrument incorporates the relevant RPA operator's documented practices and procedures. The instrument states the term *documented practices and procedures* has the meaning given by subsection 1.04(2) of the *Part 101 Manual of Standards*. The term is defined in the subsection to mean, for a certified RPA operator, the written practices and procedures of the operator, as existing or in force from time to time, which have been approved in writing by CASA. Subsection 1.04(3) states the requirements that apply in relation to the documented practices and procedures.

The documents containing the documented practices and procedures are not publicly, or freely, available. The documents are prepared, and used exclusively, by the relevant RPA operator, and will generally include commercial-in-confidence information about the operator's business. The documented practices and procedures are at the RPA operator-specific level and apply only to the operator and its personnel. The operator must give a copy of the documented practices and procedures, or any approved amendments of the practices and procedures, to the operator's remote pilots under paragraphs 1.04(3)(d) and (e).

Legislation Act 2003

Paragraph 98(5AA)(a) of the Act states that an instrument issued under paragraph 98(5A)(a) of the Act is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The directions in the instrument apply to a class of persons, being a remote pilot who operates an RPA in an operating area.

Accordingly, the instrument is a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument (in accordance with item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, the instrument will be repealed at the end of 11 November 2026, which will occur before the sunsetting provisions would have repealed the instrument, if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of the instrument.

Consultation

Consultation under section 17 of the LA has not been undertaken in relation to the instrument.

However, in December 2021 and January 2022, CASA conducted a survey of RPA operators about the conduct of the AAAT. The overwhelming majority of the respondents to the survey supported the continuation of the AAAT.

Also, the instrument continues the effect of CASA 65/23, albeit in a different way. CASA 65/23 was registered on the Federal Register of Legislation as a notifiable instrument and, accordingly, did not need to be consulted on.

In these circumstances, CASA is satisfied that no further consultation is appropriate, or reasonably practicable, for the instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A(3) of the Act states that subject to regarding the safety of air navigation as the most important consideration, in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, 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) that a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

The instrument obviates the need for an RPA operator to have to separately apply to CASA for a permission to operate an RPA in, or over, R405A and R405B. This means the operator avoids having to wait for such an application to be processed. Since the AAAT started in 2021, this has been beneficial to the development of the remote pilot aircraft system industry. Also, CASA avoids having to spend a lot of time administering such applications and issuing the permissions.

Also, as the instrument replaces an existing instrument (namely, CASA 65/23) with an instrument that achieves the same legislative outcomes, there will be no change to the economic or cost impact on individuals, businesses or the community by the instrument.

Impact on categories of operations

The instrument is likely to have a beneficial impact in relation to some RPA operations in, or over, R405A and R405B conducted by an RPA operator because, for these operations, the operator will not have to separately apply to CASA for a permission under regulation 101.065 to operate an RPA in, or over, R405A and R405B. Also, a remote pilot will be able, using a CASA-verified drone safety app, to register to be authorised to operate an RPA in a particular operating area, without recourse to CASA.

Impact on regional and remote communities

The instrument does not have an impact that is specific to regional and remote communities.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required for the instrument as the permission, and directions, stated in the instrument are covered by a standing agreement between CASA and OIA, under which an IA is not required for a permission or direction (OIA reference number OIA23-06252).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not directly engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not directly raise any human rights' issues.

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

The instrument commences on 16 November 2024 and is repealed at the end of 11 November 2026.

Statement of Compatibility with Human Rights

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Human Rights (Parliamentary Scrutiny) Act 2011*

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The 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 instrument approves particular restricted areas in the vicinity of Sydney Harbour, New South Wales in, or over, which a remote pilot is permitted to operate an RPA (an *RPA*) under regulation 101.065 of the *Civil Aviation Safety Regulations 1998 (CASR)*. Also, the instrument issues directions under regulation 11.245 of CASR to a remote pilot who is registered, using a CASA-verified drone safety app, to be authorised to operate an RPA in a defined area, which is within the permitted areas, described on the app.

Human rights implications

The 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*. The instrument does not engage any of the applicable rights or freedoms.

Conclusion

The 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*.

Civil Aviation Safety Authority