Australian Government
Civil Aviation Safety Authority

Notice of Proposed Rule Making

Sport and Recreational Aviation Operations

Proposed Part 103 of the *Civil Aviation Safety Regulations 1998* (CASR)

Who this NPRM applies to

It is expected that this proposal will affect the following persons in the aviation industry:

Individuals, clubs and administering organisations engaging in the operation and maintenance of applicable aircraft for personal recreational aviation and certain additional activities that are administered by an organisation certificated by CASA; and manufacturers and maintainers of these aircraft, including amateur builders.

Applicable aircraft include:

- Aeroplanes not exceeding 600 kg MTOW that meet defined characteristics and are administered by an organisation certificated by CASA under the proposed Part 149. Weight-shift controlled aeroplanes and powered parachutes are included in the above.
- Rotorcraft not exceeding 600 kg MTOW that meet defined characteristics and are administered by an organisation certificated by CASA under the proposed Part 149.
- Manned balloons and hot air airships.
- Gliders (both rigid wing and weight-shift controlled) including powered variants.

Notes:

1. A MTOW of 650 kg applies to aircraft equipped to land and take-off on water.
2. The certification standards for gliders presently provides for a MTOW of 850 kg for pure gliders and for self-launching powered sailplanes.
3. The LSA standards for balloons and airships provide for a maximum mass of 560 kg. Balloons and airships that meet standard airworthiness categories or have experimental certificates may be larger than this.

Issued as part of the process of public consultation by
CASA's Regulatory Development Management Branch

Document NPRM 0603OS – December 2006

Foreword

Context of this NPRM

This Notice of Proposed Rule Making (NPRM) is issued by the Civil Aviation Safety Authority (CASA) under the Regulatory Reform Programme (RRP). The RRP aims to develop standards that are appropriate, clear, and concise and which are aligned with international practice to the greatest practicable extent.

It forms part of a suite of Civil Aviation Safety Regulations (CASR) Parts to set forth rules for the administration and operation of various recreational activities in aviation. By the very nature of sport and recreational aviation, many of the rules that are applicable to larger aircraft are not relevant to this sector, and the concept of a set of "simple rules for simple aircraft" has been developed.

Whilst the focus of the RRP has been on international harmonisation with the International Civil Aviation Organization (ICAO) standards and practices, there are very few applicable international standards for these activities. The approach taken by Australia in devolving the administration of sport and recreational aviation to the aviation community, and applying simplified forms of the ICAO rules, has been adopted by a number of other advanced aviation countries who have also reviewed their regulatory framework over the past decade. Thus the proposed rules in this NPRM bear a practical harmonisation to the rules of other developed aviation nations and form a workable template for nations whose aviation regulatory framework is less sophisticated.

The proposed CASR Part 103 has been developed as a separate rule set for all those aspects of sport and recreational aviation activities that are devolved to industry to administer, plus all the general flight rules for gliders and balloons. This allows for these rules to be segregated out of proposed Part 91 (General operating and flight rules) and for Recreational Aviation Administration Organisations (RAAOs) to make and enforce their own standards and procedures which are consistent with, but not necessarily as complex or prescriptive as, the rules for larger and more complex aircraft that the travelling public are exposed to.

Background

CASA initially published NPRM 9808RP on Sport and Recreational Aviation Operations (it was in reality a Discussion Paper setting out the proposed rules (lay-drafts) in plain language) in August 1998. This paper attracted over 500 responses which were taken into account when developing subsequent drafts.

NPRM 9808RP was subsequently followed by a set of rules drafted by the Attorney-General's Department Office of Legislative Drafting and Publishing (OLDP) – in NPRM 0008OS Recreational and Sport Aviation Operations – which was published in April 2000 but was withdrawn shortly afterwards by the then Director of CASA.

In 2002 the project teams were re-convened to define a set of policy guidelines for sport and recreational aviation. These were accepted by the then Minister for Transport following a meeting in July 2003 chaired by Mr Ted Anson (then chairman of the CASA Board) and subsequently published as CASA policy.

This set the framework for further development of proposed CASR Part 149 (Recreational aviation administration organisations) and allowed for proposed Parts 103 (Sport and recreational aviation operations) and 105 (Parachuting operations from aircraft) to be refined to their present status.

These rules were developed under the general guidance of the Standards Consultative Committee (SCC), a joint industry/CASA body that meets quarterly and advises CASA and the Minister on regulatory reform matters. The SCC has established a Recreational Aviation Standards Sub-committee to more immediately oversee the project teams developing this suite of CASR Parts, and to review the proposed legislation prior to its release for public consultation.

Proposed Changes in a Page

The **time-conscious reader** will obtain a quick appreciation of this NPRM through the **Proposed Changes in a Page** (NPRM Section 2).

A **text synopsis** of the proposed changes is provided as background (NPRM Section 3).

If you require **complete information** about the change, refer to the draft CASR Part 103 regulations at Annex A to this NPRM and the draft Advisory Circulars (ACs) issued subsequently for comment.

How you can help us

CASA is responsible under the Civil Aviation Act 1988, amongst other functions, for developing and promulgating appropriate, clear and concise aviation safety standards. In the performance of this function and the exercise of its powers, CASA must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations.

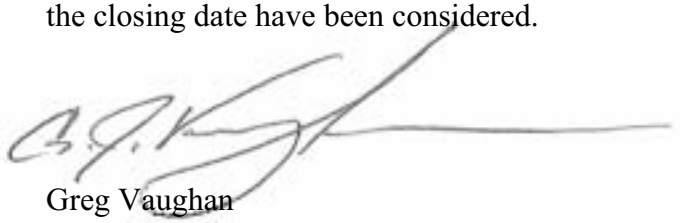
Civil Aviation Act 1988 Subsection 9(1)(c) and Subsection 16

"CASA is committed to working cooperatively with the aviation industry to maintain and enhance aviation safety. This is especially important as far as the development of standards and regulatory material is concerned."

CASA Standards Development and Rule Making Manual, 2.6.1

To ensure clear and relevant safety standards, we need the benefit of your knowledge as an aviator, aviation consumer and/or provider of related products and services **by completing the Response Form** (in this NPRM) **and returning it to CASA by the closing date. The closing date will be announced when the related NPRM on CASR Part 149 is issued, but will not be earlier than 19 February 2007.**

I would like to thank you for expressing interest in this proposal and emphasise that no rule changes will be undertaken until all NPRM responses and submissions received by the closing date have been considered.



Greg Vaughan
Group General Manager
General Aviation Operations

21 December 2006

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Abbreviations

AC	Advisory Circular
AGL	Above Ground Level
CAAP	Civil Aviation Advisory Publication
CAR	Civil Aviation Regulations 1988
CASA	Civil Aviation Safety Authority
CASR	Civil Aviation Safety Regulations 1998
CAO	Civil Aviation Order
ft	Feet
GA	General Aviation
ICAO	International Civil Aviation Organization
IFR	Instrument Flight Rules
kg	Kilograms
kt	Knots
LSA	Light Sport Aircraft
MOS	Manual of Standards
MTOW	Maximum Take-off Weight
NFRM	Notice of Final Rule Making
NM	Nautical Mile
NPRM	Notice of Proposed Rule Making
OLDP	Office of Legislative Drafting and Publishing
RAAO	Recreational Aviation Administration Organisation
SCC	Standards Consultative Committee
VFR	Visual Flight Rules
VMC	Visual Meteorological Conditions

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1. The Consultation Process

1.1 CASA is committed to working cooperatively with the aviation community to maintain and enhance aviation safety. The CASA Standards Consultative Committee (SCC) is a joint industry/CASA forum that brings together CASA staff and representatives from a diverse range of aviation industry organisations, to jointly develop regulatory change material. The SCC examines proposed regulatory changes to determine if they are worth pursuing and assists CASA in establishing and servicing change projects. CASA and industry experts work together in SCC Sub-Committees and project teams, to develop regulatory material (both new regulations and amendments).

1.2 The people involved in the development and formulation of the proposals contained in this NPRM consists of the following CASA and aviation community representatives.

Aviation Community

- Peter Bennett, representing Sport Aircraft Association of Australia
- Adrian Clements, representing Australian Ballooning Federation
- Daryl Connell, representing Gliding Federation of Australia
- Stephen Dines, representing Aircraft Owners and Pilots Association, AAFI and Australian Warbirds Association Limited
- John Evans, representing Australian Sport Rotorcraft Association
- Chris Fogg, representing Hang Gliding Federation of Australia
- Danny Galbraith, representing Australian Ballooning Federation
- Damien Gates, representing Hang Gliding Federation of Australia
- Dr Bob Hall, representing Australian Sport Aviation Confederation and Gliding Federation of Australia
- Bill Hamilton, representing Aircraft Owners and Pilots Association
- Peter Harris, representing Australian Sport Rotorcraft Association
- Henk Meertens, representing Australian Sport Aviation Confederation and Gliding Federation of Australia
- Trevor Merton, representing Australian Warbirds Association Limited
- Paul Middleton, representing Recreational Aviation Australia
- Lee Ungermann, representing Recreational Aviation Australia
- Mike Valentine, representing Gliding Federation of Australia and Recreational Aviation Australia
- Craig Worth, representing Hang Gliding Federation of Australia

CASA

- Mike Cleaver, Project Manager – Sport Aviation, General Aviation Operations
- George Dukats, Maintenance Standards, General Aviation Operations
- Mark Taylor, Maintenance Standards, General Aviation Operations
- Andrew Ward, Acting Section Head Sport and Recreational Aviation, General Aviation Operations Group

1.3 The consultation draft of indicative legislation contained at Annex A of this NPRM was developed from a draft prepared by the Office of Legislative Drafting and Publishing of the Attorney-General's Department. That Office will also develop the final legislation following the evaluation of your comments to this proposal.

1.4 Some Advisory Circulars and other guidance material may be published separately during the consultation period, rather than being included in this NPRM, to allow the widest possible circulation of the principal proposal.

What CASA does with your comments

1.5 At the end of the response period for public comments, all submissions will be analysed, evaluated and considered. Subsequent to the closing date for comments, a Notice of Final Rule Making (NFRM) will be prepared, and made publicly available in conjunction with the making of the Final Rule.

1.6 CASA is required to register each comment and submission received, but will not individually acknowledge a response unless specifically requested. However, the names of contributors will be published in the subsequent NFRM, except where CASA is specifically requested not to do so.

1.7 CASA and the industry project team will review the suggestions and comments received as a result of this NPRM, and CASA will decide on changes that will be incorporated into the final rule. These will then be referred to OLDP for drafting of the final rule for submission to the Governor-General to be made as a new regulation.

1.8 Because of these processes, and the fact that the draft published for consultation is not a fully cleared settled legal draft, it is probable that there may be some reasonably significant changes to the actual form of the regulations in the final rule. However, the policy intent to produce outcome-based regulations will result in rules with the same final outcome, except where the consultation indicates that a different outcome is desirable. The Notice of Final Rule Making (NFRM) will explain changes of this nature.

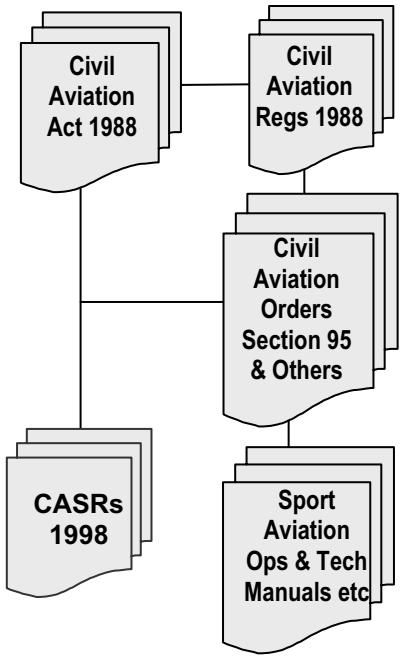
2. Proposed Changes in a Page

INTERNATIONAL STANDARDS

ICAO – nil

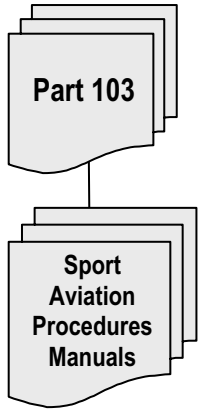
Federation Aeronautique Internationale – various sporting codes

EXISTING AUSTRALIAN STANDARDS



Existing standards to be replaced by CASR Part 103, including Advisory Circulars

CASR PART 103 – NEW STANDARDS



Supported by Published AMCs and Guidance Material

Objectives

- Consolidate all existing rules (operations, maintenance, personnel) applicable to sport & recreational aviation (including training and related activities) into a new CASR Part 103;
- Present the requirements for sport and recreational aviation as a stand-alone, enabling set of rules rather than a series of exemptions from the general rules – a parallel set of simplified rules rather than a variation;
- Place detailed requirements into the procedures manuals of administering organisations approved under CASR Part 149;
- Include "Air Experience" and other non-recreational activities administered by a Part 149 administering organisation in Part 103; and
- Provide for a "parallel path" for individuals to access personal sport and recreational flight operations and be responsible directly to CASA for their personal activities. This may be accessed via other CASR Parts for aircraft other than gliders or balloons.

Key Proposed Changes

- In line with policy approved by the Minister, sport and recreational aviation activities will be devolved to be administered by approved organisations to the maximum extent possible.
- Operations under CASR Part 103 would attract a lower priority and intervention by CASA beyond the need to protect the public on the ground, and other airspace users carrying passengers, from the effects of that activity.
- All rules relating to the private or sport and recreational use of gliders and balloons will be found in Part 103. The same operating rules will be included in Part 115, which may include further requirements for aerial work activities.
- Part 103 will rely heavily on the requirement for activities to be conducted in accordance with the procedures manual of the relevant organisation approved under Part 149.
- CASA will use the standards of the appropriate Part 149 organisation as a basis for approving an applicant who chooses to be directly responsible to CASA.
- Aircraft may be registered either by the administering organisations under Part 103 or by CASA under Part 47.

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3. Synopsis of Change Proposals

3.1 Purpose of this NPRM

3.1.1 The purpose of this NPRM is to publish for public consultation the proposed rule set that has been developed by CASA in conjunction with organisations that presently administer the sport and recreational aviation disciplines that would fall within the scope of the proposed rules.

3.1.2 Using CASA's regulatory reform objective of "Safety Through Clarity", the proposed CASR Part 103 has been developed as a set of "Simple Rules for Simple Aircraft" that are described by a set of criteria that limit the mass, speed, momentum and complexity of the aircraft in order to minimise the risks to which the public and other airspace users are exposed, and to provide for their administration by industry organisations to be authorised under the related proposed rule CASR Part 149 – Recreational aviation administration organisations – to the greatest extent possible.

3.1.3 Part 103 has been developed to be a "one-stop shop" containing all the necessary operating, licensing and maintenance rules for the aircraft it applies to. Whilst containing some essential rules that are administered by CASA, including direct copies of the fundamental operating rules from CASR Part 91 (General operating and flight rules), it replaces all of these CASR Parts for aircraft subject to the Part, and devolves the details of how the principles are implemented to the administering organisations to establish procedures applicable and relevant to the kind of aircraft they administer. A detailed discussion of this is to be found at paragraphs 3.5.1 to 3.5.4 of this NPRM.

3.1.4 In the case of gliders and balloons (see below for a detailed explanation of these), Part 103 will also provide a parallel path by which these aircraft can be operated by an individual who does not subscribe to the membership rules of an organisation approved under Part 149. Such pilots will be directly responsible to CASA for their operations, but will be required to meet the same standards as pilots who choose to operate within the supervision of a Part 149 organisation. See the later discussion of the "Parallel Path" (beginning paragraph 3.5.16) for more information. In the case of aeroplanes and rotorcraft, this parallel path is available by a pilot meeting the rules of proposed CASR Part 91 (General operating and flight rules), Part 61 (Flight crew licensing) and Part 42 (Continuing airworthiness) which combines the previously-proposed maintainer's responsibilities and the operator's maintenance responsibilities.

3.2 Background

3.2.1 The rules in this proposal were developed by a joint CASA/industry project team, working under the oversight of the SCC Recreational Aviation Standards Sub-committee. The proposed rules build on the proposals circulated to the public and the aviation community in a Discussion Paper (though actually called an NPRM at that time) issued in August 1998, which received widespread acceptance from the affected sectors of industry.

3.2.2 Essentially, CASR Part 103 is designed to provide the simplified set of rules that are appropriate to the aircraft that are operated for sporting and recreational purposes and which are currently subject to various exemptions under the Civil Aviation Regulations 1988 (CAR) and associated Civil Aviation Orders (CAOs).

Applicability – aircraft

3.2.3 The aircraft to which Part 103 is proposed to apply include:

- All **manned balloons** (except those by their nature permanently tethered to a fixed ground location) and **manned hot-air airships** (which are effectively "powered balloons").
- All **gliders**. This term is used to denote aerodynes (fixed-wing aircraft) designed to be operated in sustained flight without reliance on an engine. The term includes traditional sailplanes with three-axis aerodynamic controls, traditional hang gliders controlled by the pilot shifting his or her weight relative to the airframe, as well as hybrid types with partial aerodynamic control using spoilers and similar devices, and traditional paragliders with a non-rigid wing that derives its lift-producing ability by being held inflated by the ram-air pressure of the airflow. It also includes variants of the above which have an engine (fixed or retractable) that can be used either to sustain the aircraft in flight but with inadequate power for independent take-off capability, or those whose engine can be used for take-off and initial climb to a position and altitude from which soaring flight is possible.
- **Aeroplanes and rotorcraft** that meet defined weight and speed parameters and technical descriptions, and which are administered by an organisation authorised to do so under the proposed CASR Part 149.
- The physical criteria include the same weight and stall speed as are used to define the class of **Light Sport Aircraft (LSA)** (refer to CASR 21.186) but also includes those aircraft which are not acceptable in that category due to lack of certification or the presence of design features outside the LSA certification standards. Thus any land aircraft with MTOW less than 600 kg, and any aircraft equipped to land/alight on water with MTOW less than 650 kg, is eligible to operate under Part 103 if its stall speed in the landing configuration does not exceed 45 knots calibrated airspeed. Under current rules such aeroplanes must, however, have a single internal combustion engine driving a single propeller.
- In addition to the above, any **low-momentum ultralight aeroplane** (being single-place, with a wing loading no more than 30 kg/sq m and a MTOW of 300 kg plus allowances of 35 kg if it is fitted with floats and 20 kg if it has a recovery parachute, but no limitation on engines or propellers (i.e. the existing CAO 95.10 category) may be operated under Part 103 if it is administered by a Part 149 organisation.
- **Rotorcraft** that meet these weight limits and have a rotor disc loading no greater than 20 kg/sq.m and one or more two-bladed teetering rotors, and a single propeller if a gyroplane, also come within the scope of Part 103 as proposed.
- As a further extension of this scope, CASA may approve an aircraft that falls within the broad scope of the above criteria but not strictly compliant with these descriptions, to operate as if it met the criteria. If the aircraft is an aeroplane or a rotorcraft, it must be under the administration of an approved organisation. For example, this may be applied to extend the applicability to suitable aircraft that

are turbine powered, or stall at slightly above the 45kt criterion, or meet the other criteria but are slightly in excess of the identified weight limit.

Applicability – operations

3.2.4 The operations for which the aircraft may be used under the proposal fall into two groups: one that is open to any pilot, and a second that is only available through a Part 149 administering organisation.

3.2.5 The first group (see draft regulation 103.009) includes all those activities currently classified as "private" which require no approval of an operator beyond the normal pilot certificate standards. Passengers may be carried on any of these provided the relevant procedures manual approves the carriage of passengers and the pilot holds a passenger endorsement.

3.2.6 The second group (see draft regulation 103.010) all require additional approval of an operator by the supervising RAAO, and include sport aviation flight training, the carriage of "Air Experience" passengers, and any activities that the RAAO has developed rules for that require additional training and supervision.

3.2.7 The carriage of "Air Experience" passengers will typically require additional training of the pilot, and rules for the conduct of the flight to provide a degree of protection for the passenger above and beyond the expectation for a private passenger. As such the passenger will be required to have access to membership liability insurance and to sign an assumption of risk as a member of the RAAO.

3.2.8 "Air Experience" flights will typically commence and terminate at the same location (or at a landing site associated with the take-off site in the case of hang gliders and balloons) though this does not preclude unforeseen landings during a cross-country flight in a glider that is planned to return to its departure location).

3.3 Reasons for change

Positive rules rather than exemptions

3.3.1 One of the fundamental principles behind CASA's regulatory reform has been to express aviation safety regulations in the form of enabling, positive requirements, and to remove exemptions from the rule set as far as possible.

3.3.2 Accordingly, the rules for sport and recreational aviation have been designed from the outset to be cast in the form of a discrete rule set for these activities, which follows the same principles and, where appropriate, uses the identical words as the "mainstream" rules. Other civil aviation regulators have chosen to publish their rules for sport and recreational aircraft as a partial rule set that only indicated differences from the mainstream General Operating and Flight Rules, and hence were totally dependent on, and subservient to, their respective Part 91 rules.

3.3.3 By having a discrete rule set for this large and growing sector of aviation (albeit one that should not attract too large a proportion of the regulator's effort in administering, auditing and enforcing the rules), Australia is able to have a very clear set

of relatively simple requirements for these aircraft. Part 103 seeks to avoid any possibility of confusion as to what does and what does not apply to these light and simple aircraft, as distinct from the rules that are generally applicable to larger aircraft that affect the public to a greater extent. Part 91 contains some quite specialised rules that are not role-specific for more complex operations, but only apply to a small proportion of the Australian aircraft fleet. Those rules are not relevant to the recreational aircraft that are the subject of the simplified rules in Part 103.

3.3.4 This makes for a simple, clear, concise and easily-understood set of rules ideally suited to a devolved administration of what CASA requires for recreational aviation activity. Part 103 is also designed to provide a clear separation of powers between the things that require, even at this level of complexity, to have the full force of the law available for CASA to enforce, and the things that can be administered by the RAAOs authorised under the proposed CASR Part 149.

Simplification

3.3.5 Even within the rules for sport and recreational aviation, each separate discipline (kind of aircraft) requires a slightly different set of rules. For example, neither gliders nor balloons are able to maintain a cruising level that is "appropriate to the direction of flight" in the same sense as the rules for separation of aeroplanes and rotorcraft that operate at generally higher levels in the atmosphere. Hence separation by cruising level is neither possible nor desirable for these aircraft. Similarly, neither of these kinds of aircraft are able to conform to a "standard" circuit pattern – not at all for balloons and not reliably enough to enable gliders to operate to these procedures by mandate. Hence a rule that requires each discipline to conform to a sub-rule relevant to them, but does not burden all the other disciplines with those rules, is appropriate where they are administered by an organisation as Part 149 envisages.

Consolidation and removal of anomalies and outdated procedures

3.3.6 Many of the limitations imposed by the current rules only exist for historical reasons. Some of the operating disciplines have been around for longer and so have gained greater acceptance among general aviation, whilst others have simply had their rules reviewed more recently than others and hence had their procedures updated. Even in the course of time, matters which have flowed on by virtue of changes consequential to amendments to general legislation have not always been recognised in the course of administrative amendments and have been unwittingly reimposed when Civil Aviation Orders (CAOs) have been re-made for legal and administrative convenience. By firstly having a discrete rule set for sport and recreational aviation, and secondly placing considerable reliance on the manuals of the individual administering body, this helps to protect against such anomalies being perpetuated. At the same time, a broad review such as has occurred in the development of Part 103 has led to differences between the rules in different CAOs being identified and harmonised.

3.3.7 A decision was taken early in the rule development process, and later confirmed by various review panels, that rather than rely on a Manual of Standards (MOS) (containing technical specifications, standards and procedures) in sport and recreational aviation, **considerable reliance would be placed on the procedures manuals of the administering organisations**, with appropriate expansion, clarification and explanatory material to be developed in the form of Advisory Circulars (AC). Only in a few cases –

notably the criteria for Visual Meteorological Conditions (VMC) and the Table of Cruising Levels for those aircraft capable of compliance with such a rule – would it be necessary and opportune to incorporate these standards by repeating content from CASR Part 91. This has been done by inserting the information in a table format in the Part 103 regulations, rather than as Appendices to the regulations.

3.3.8 The project team developing CASR Part 149 intends to publish its standard format for the rules that make up some elements of their procedures manuals in the form of Advisory Circulars rather than a Manual of Standards – amongst other reasons, to avoid confusion as to which "Manual" belonged to whom and applied in any particular case, and to present the guidance material in an authoritative form. However this will form an acceptable means of compliance that identifies the topics that need to be addressed in a procedures manual, rather than prescribe a set of words that must be used in those manuals.

3.3.9 This approach is consistent with the "European" style that has been adopted for the proposed "Maintenance Suite" comprising Parts 42, 66, 145 and 147 of the CASRs in order to harmonise them with the regulations of the European Aviation Safety Agency (EASA), and which CASA favours for development of future regulatory changes. This style includes the publication of explanatory text referred to as **Guidance Material** (GM), and standards which CASA has determined will achieve the intended outcomes of the regulations, referred to as **Acceptable Means of Compliance** (AMC).

3.3.10 The standards contained in the procedures manuals of the organisations certificated under the proposed CASR Part 149 as RAAOs to administer these activities would have the status of AMCs for Part 103.

3.4 Objective

3.4.1 The objective of CASR Part 103 is to consolidate, in one set of regulations, the rules applying to people who carry out aviation activities in a specified range of aircraft, for the primary purpose of the enjoyment of the activity. This includes not only training of people who seek to carry out these activities, but also the carriage of persons who seek to experience aviation at this level, under the supervision and administration of peer-group organisations established and authorised for the purpose.

3.4.2 CASR Part 103 is designed as a stand-alone "one-stop shop" for all aspects of these activities, including operations, maintenance, pilot and maintainer training and qualification, and certification of operators who adopt the rules and standards agreed by CASA and historically developed by the administering organisations. It is to be a set of simple rules for simple aircraft engaged in simple operations that have limited impact on the non-participating public.

3.4.3 The rules will give effect to Government policy that CASA devotes its major safety efforts to the safety of the travelling public and people on the ground, by devolving the responsibility for administering these recreational activities to industry organisations that have shown the ability to do so safely. The proposed Part 103 rules identify the responsibility of the individual participant, whilst the proposed Part 149 rules will spell out the requirements for the administering organisations.

3.4.4 Proposed CASR Part 103 will also establish a pathway for CASA to administer these activities in the case of individual participants who, for whatever reason, choose not to participate as members of these organisations – **the "Parallel Path Principle"**. This is further explored and explained in a draft Advisory Circular as Guidance Material, and is intimately involved in the conceptual relationship between CASR Parts 103 and 149.

3.5 Key change proposals

Regulatory philosophy

3.5.1 The key change in the philosophy of the proposed CASR Part 103 rules is that the activities of people who participate in aviation in small, light, low-momentum aircraft for the purpose of their own recreation and that of others of like mind, should be administered in a style where the rules of the regulatory authority confirm and support the procedures and practices of the industry administering body.

3.5.2 In this environment, the procedures immediately relevant to a participant are those of an industry body that administers them with the express consent of the Australian Government, and where the intended outcomes are both consistent with and able to be reinforced if necessary by regulations that have a basis and power in statute law.

3.5.3 The proposed CASR Part 103 rules will work in concert with CASR Part 149, which will form the basis for CASA to authorise and approve industry-based organisations to administer the activity, on behalf of the Australian people, on a day-to-day basis and in a manner consistent with the rules for related activities that are managed more directly by CASA.

3.5.4 Whilst CASA will retain overall responsibility for the standards and their safe application, CASA will not be required to enforce them on a day-to-day basis. Routine compliance will be carried out by the administering organisations as a part of their procedures. However, in the case of persistent, repeated or blatant breaches of CASA's standards, CASA will have recourse to escalate disciplinary matters to the level of prosecution for breaches of the *Civil Aviation Act 1988* or of the CASRs, either on the advice of the administering organisation in the event the administering organisation finds itself unable to adequately enforce the standards, or fails to meet its statutory responsibilities in this regard. In the latter case, CASA may also take action against the organisation if it has breached its responsibilities. **See also Section 3.6 where this is further addressed under the heading "Regulatory Enforcement".**

Classification of Operations – lowest level of CASA priority and intervention

3.5.5 Civil aircraft operations are classified by CASA that identifies, in a manner originally based on the ICAO classification system, how their safety is regulated in respect of aircraft certification and maintenance, pilot qualifications and regulatory supervision of the operator. CASA is currently reviewing its classification system with a view to moving from a purely operation-based scheme to a more contemporary risk-oriented activity-based system.

3.5.6 There are aspects of sport and recreational aviation that have not fitted easily into the traditional classification scheme. Because people who engage in sport and recreational aviation are voluntary participants in an aviation activity, where they have indicated an understanding and acceptance of the risks of participation, CASA proposes to regulate the activity on the basis that it involves informed 'participants' rather than as 'passengers' for whom the operator is responsible.

3.5.7 These activities would attract a lower priority and intervention by CASA beyond the need to protect the public on the ground, and other airspace users carrying passengers, from the effects of that activity. This includes the activities described in proposed regulation 103.010 where this supervision is to be carried out by an RAAO certificated under the proposed CASR Part 149, rather than directly by CASA.

Descriptions of aircraft

3.5.8 Some of the descriptions of aircraft that may be operated under CASR Part 103 will be different from those ones that have been able to be operated under the exemptions from the *Civil Aviation Regulations 1988* granted in Part 95 of the *Civil Aviation Orders*. The descriptions of the aircraft have been developed to facilitate the inclusion of new technology in aircraft design, new ideas in operation, and to be more flexible in their operation.

3.5.9 Further, the descriptions will not be so restrictive on aircraft design. Arbitrary limits such as empty weight of aircraft, fuel tank capacity and other features of aircraft that do not necessarily conform to an approved or certificated type design will be demoted from the level of the regulations to the level of the procedures manual, which will include details of the aircraft that an authorised organisation has a desire and capacity to administer.

3.5.10 As an example, CASA intends to make use of the flexibility of the proposed regulation (see 103.005 (6) at Annex A of this NPRM) to encourage design improvements such as those that will enhance the safety of light sport gyroplanes by allowing aircraft types, or individual aircraft, that are slightly outside the target design and performance parameters to operate to this Part. However, because the overall intention is to encourage improved design and materials, it is not intended to permit aircraft that clearly go beyond the intent of the Light Sport Aircraft certification category to operate here, but rather to place such aircraft under the more rigorous regime of proposed CASR Parts 91 and 61.

3.5.11 Again, CASA acknowledges that regulation is never able to completely anticipate the inventiveness of the human mind and therefore will accommodate new concepts within Part 103 where the activity is primarily recreational and within the broad parameters of this Part of the regulations. For the same reason, the more 'traditional' single-place ultralight aeroplane that can be built within the existing CAO 95.10 rules will have its place within Part 103, allowing the operators of these aircraft to retain their existing privileges and limitations.

Stand-alone rules

3.5.12 Draft regulation 103.063 (see Annex A of this NPRM) is included in order to put beyond doubt that CASR Part 103 is a stand-alone set of rules for the aircraft and people that it applies to, and that other CASR (or remnant CAR) regulations do not automatically apply if they are in conflict with a provision in Part 103.

Aircraft registration

3.5.13 Draft regulation 103.065 (see Annex A of this NPRM) is included in order to provide the sport and recreational aviation pathway for registration of aircraft by the administering organisations instead of by CASA. Prior to an amendment of the *Civil Aviation Act 1988* (the Act) that took effect in September 2004, aircraft that were registered by the administering organisations were legally neither Australian aircraft nor foreign aircraft, but were effectively treated as foreign aircraft that were allowed to operate in Australia but did not have the nationality of an ICAO contracting state.

3.5.14 At the time the changes to the Act came into force, exemptions were added to the sport aviation CAOs to exclude certain rules that previously applied to 'all Australian aircraft'. While the CASRs will provide for only the rules that are intended for these aircraft to be applied to them, the matter of a separate registration regime was fundamental to the administering organisations.

3.5.15 As a result, Part 103 provides the pathway for an aircraft owner or operator to register an aircraft that will be operated under Part 103 either with CASA – primarily for gliders and balloons which have a standard airworthiness certificate – or with an approved administering organisation. CASR Part 149 has been drafted to authorise the administering organisations to register aircraft and to include the details of their processes that parallel CASR Parts 47 (Registration of aircraft and related matters) and Part 45 (Display of nationality and registration marks and aircraft registration identification plates) in their procedures manuals.

3.5.16 There will also be an obligation on the administering organisations to provide information to CASA about the aircraft that they have registered, in order that CASA may meet its international obligations and be able to 'claim' and report on all Australian aircraft in the international arena. However, it is not intended that all of this information (particularly registered ownership details) would be available to the public, and CASA would register a difference from this provision in ICAO Annex 7 to the effect that only the registering RAAO would be identified to the public.

3.5.17 This methodology provides an ICAO-compliant process acceptable to both CASA and the administering organisations for the registration and marking of all Australian aircraft.

The "Parallel Path Principle" and ownership of standards

3.5.18 In draft regulations 103.100 and 103.105 (see Annex A of this NPRM) among others, the purpose of distinguishing between RAAO-administered aircraft and CASA-administered aircraft is to clarify the way in which the "parallel path principle" is to be administered.

3.5.19 CASA and the administering organisations have reached agreement that the standards which were over past years developed for these aircraft by the administering organisations, and sponsored, accepted and partially funded by CASA and its predecessors, should be "owned" jointly by CASA and the organisation that developed them. These standards would be the applicable standards for the operation of the aircraft, and the qualification of people operating and maintaining them.

3.5.20 Because these would be the standards adopted by CASA for these aircraft, and no glider or balloon standards exist in Part 91, they are the standards CASA will apply to a person who seeks to operate a glider or a balloon under CASA supervision. This is not necessarily the case for aeroplanes or rotorcraft, for which standards exist under Part 91 which can be applied to these aircraft.

3.5.21 Thus it is proposed that Part 103 would contain the rules for people who wish to exercise their perceived right to operate gliders and balloons in personal recreational flight by being directly responsible to CASA instead of to an administering organisation, as well as the rules for people who wish to exercise their right to be administered by an administering organisation comprised of their peers.

3.5.22 For those people intending to operate aeroplanes and rotorcraft, Part 103 will contain the operating procedures for people who choose to be administered by an approved peer organisation, whilst Parts 42, 61 and 91 will contain the rules for people who wish to be administered by CASA.

3.5.23 Readers should also note that an approach has been made to CASA by a group of organisations and individuals who wish to administer certain aviation activities of a personal flying nature (including flying training) without the limitations on aircraft size that are contained in Part 103. Details of this proposal are still under development, but will be the subject of ongoing consultation through the processes developed by the SCC, including the issuing of NPRMs and related proposals. CASA expects that these proposals will be entirely separate from the development of CASR Part 103 through the present NPRM.

Day VFR operations

3.5.24 With the exception of balloons, which derive their stability by the simple pendulum effect of having their mass concentrated at the bottom, the operation of aircraft under CASR Part 103 will be limited to VMC in daylight, unless CASA issues a specific approval under either regulation 103.145 (see Annex A of the NPRM) or CASR Part 11 (Regulatory administrative procedures).

3.5.25 The vast majority of recreational pilots will not be qualified, and their aircraft will not be equipped, for flight at night or without a visual horizon reference. In the absence of such a limitation, the administering organisations would be required to devote considerable effort to developing standards and procedures to train and authorise pilots for these activities for the use of probably between two and five per cent of their members to use. It is felt that, if there is significant future demand for night or IFR flight, pilots will obtain a CASA qualification to carry out the activity.

Balloon VFR considerations

3.5.26 When standards were promulgated for balloon operations in 1985, a provision was inserted into the rules to permit balloons to operate in fog (with a visibility down to 100 metres) when operating below 500 feet AGL and beyond 10 nautical miles from an aerodrome with an instrument approach. This has been continued under the *Civil Aviation Regulations 1988* by the making of specifications for VMC under regulation 172 of CAR 1988.

3.5.27 However, there is now general agreement that the assumption of very light winds when fog is present, and hence the distance of 100 metres being "safe", is not always valid. With greater knowledge of the visibility of obstacles, particularly electricity supply cables, and the speeds that can be encountered, has come the realisation that whilst 100 metres visibility can be safe to allow a take-off to climb to higher levels above the fog and even to allow a landing in very light winds, it is not necessarily safe for cruising flight below the tops of obstacles.

3.5.28 For this reason, regulation 103.214 has been drafted to provide for safe operation to take off and land, whilst requiring 400 metres visibility for prolonged low level flight in balloons.

3.5.29 Further, a provision has been created in 103.214 (2) to define areas on an individual location-specific basis wherein flight is possible within 10 NM of aerodromes with instrument approach procedures without compromising the safety of IFR operations using those approaches, and subregulation 103.214 (6) provides a procedure for a balloon to establish VMC above low fog or cloud in such areas in order to operate to the standard VMC rules and procedures other than the existence of fog below the balloon.

Dropping things

3.5.30 It is proposed that detailed instructions about dropping things from aircraft should be contained in the procedures manuals of the relevant RAAOs, and should be consistent with the current regulation 150 of CAR 1988 requirements. In particular, the sport of ballooning invokes a set of rules for the dropping of markers (small sandbags with a streamer attached) in competition events. These rules can readily be placed in a ballooning procedures manual and given legal support by the proposed regulation 103.215. Likewise, procedures for dropping of water ballast, and tow ropes and fittings used for launching, are best located in the procedures manuals for gliders and hang gliders.

Air Displays

3.5.31 For events performed for a public display, or which the public are invited to attend as spectators, that are conducted by a member of an organisation approved under Part 149 to administer sport and recreational aviation activities, the regulation proposes that there should be no need for individual CASA approval. The requirements for any flying in front of a public audience are one of the things that should be addressed in the procedures manual of the administering organisation. This includes sporting competitions that invite public spectators, as well as "air shows" in the more traditional sense. However, for an event that only involves aviation participants (commonly known as a "fly-in") there is no requirement for CASA to have regulations additional to those

that normally apply to the conduct of those flying events, because the public are not exposed to any greater degree than in the course of regular operations. If the administering organisation wishes to establish standard procedures these can be a part of the organisation's procedures manual.

Operating at aerodromes

3.5.32 Draft regulation 103.250 gives enhanced effect to the current regulation 91 of CAR 1988 (use of aerodromes by aircraft of Contracting States), and is particularly relevant in ensuring that sport and recreational aircraft are not discriminated against by aerodrome operators. Given that since September 2004 these aircraft have formally had Australian nationality, there can be no grounds for such an action. It further gives Australian aircraft the same rights to use aerodromes as regulation 91 of CAR 1988 accords to foreign-registered aircraft. Currently the Act defines a "Contracting State" as a foreign country that is a party to the Chicago Convention, thus denying this right to Australian aircraft, which has now been recognised as an anomaly.

3.5.33 Draft regulation 103.255 carries over the existing requirement from regulation 92 of CAR 1988 (use of aerodromes) that an aircraft should only be operated from an area that is suitable for the flight characteristics of the aircraft. This has been identified by the project team as a rule requiring Guidance Material, carrying across existing Civil Aviation Advisory Publications (CAAP) into Advisory Circulars (AC) that would form an Acceptable Means of Compliance (AMC), and possibly including the content from several organisations' procedures manuals to allow wider distribution of the information.

3.5.34 Draft regulation 103.260 provides for the different capabilities of different kinds of aircraft to be described in the rules that are applied to them through the procedures manuals. For instance, aeroplanes will for the most part comply with the same procedures as general aviation aeroplanes; whilst balloons are not capable of flying a circuit and so should be flown so as to avoid conflict with other traffic that is flying a circuit. Gliders will normally follow a standard circuit pattern but must have the flexibility to vary this for safety reasons without being penalised. The procedures manuals will be expected, and required, to invoke procedures that are compatible with the rules of the air (see 3.5.44) and current procedures established for particular locations or by the rules for use of airspace generally.

Minimum heights and distances

3.5.35 The rules applicable to general aviation aircraft for heights over built-up areas will in general be equally applicable to sport and recreational aircraft. However, in deference to the generally slower speeds at which they can be flown, the horizontal distance from which these heights are measured does not need to be the same 600 metres as for general aviation aircraft, and has been set at 300 metres for Part 103. This also provides a safe margin for a pilot to be able to glide clear of occupied areas in the event of engine failure.

3.5.36 In the case of balloons, which travel very slowly and need to be able to use low-level wind currents for their safe navigation, the heights and distances over built-up areas have been further reduced to conform with the rules that have been in place under Transport Canada's regulations, being 500 feet above the highest obstacle within 150 metres – or 500 feet vertically and horizontally from obstacles when expressed in a

single set of units. This has been found to be reasonable in Canada, and is considered an adequately safe distance which also gives reasonable noise and privacy protection to the public when a balloon is flown having reasonable regard to these issues.

3.5.37 In the case of aircraft taking-off or landing at a suitable aerodrome, including practising a "baulked approach" or premeditated "go-around", either at an aerodrome or some other place where the owner or controlling authority for the land has given their consent, the general rules for minimum heights do not apply. This is consistent with the existing provisions in regulation 157 of CAR 1988 and existing exemptions from provisions in regulation 157 of CAR 1988 to allow small slow aircraft to be operated differently from other general aviation aircraft.

3.5.38 Gyroplanes were not permitted until very recently to fly higher than 500 feet above ground level. This is a hang-over from the early days of ultralight aircraft flying, when there were no approved designs and no two-place training. Ultralight aeroplanes developed more rapidly than rotorcraft, and this limitation was removed from them in 1990. However, in order to give those gyroplane pilots who have not yet gained approval to fly above 500 feet a very small height band for operations, gyroplanes are still allowed to operate down to 300 feet above ground level. (In the very early days, when landowner permission was required for all flying areas, 300 feet was the upper limit permitted. CASR Part 101 now allows model aeroplanes to operate up to 400 feet above ground level.) Some gyroplane pilots have asked for this lower limit of 300 feet to remain, rather than requiring them to operate above 500 feet unless they have landowner permission to fly lower, and the draft has been written this way to retain the status quo for consultation purposes. **Feedback on this question is particularly requested, with supporting comment for consideration.**

3.5.39 In the course of either making use of certain kinds of lift to sustain flight, gliders (the term includes sailplanes, hang gliders, paragliders and powered variants of these when not operating in "aeroplane mode") need to be allowed to fly closer to terrain than the generally-applicable 500 feet for aeroplanes and rotorcraft in general aviation. This is provided for in the rules, and the procedures manuals of the relevant RAAOs will include details. This also allows high-performance sailplanes to use their aerodynamic efficiency to complete a flight away from their intended landing place and return at a flat trajectory, so that they may still be some distance from the intended landing place (aerodrome or gliding field) when they descend below 500 feet above ground, and have adequate energy to then fly all or part of a circuit prior to the final landing approach.

3.5.40 Whilst balloons flying by day do not have any safety requirement to maintain a particular height, and may indeed be flown very close to the surface to use subtle variations in wind speed or direction, the rule has also been drafted to stipulate adequate terrain clearance for safety when balloons are operated under visual flight rules at night.

3.5.41 It is also intended that for particular areas, or particular aircraft with characteristics that make these rules undesirable, or for particular events, it will be possible for CASA to issue a direction under draft regulation 103.145 to either increase or decrease these distances.

Distances from unrelated persons or buildings

3.5.42 In the case of gliders, which can vary from 30 metre wingspan self-launching high-performance sailplanes to paragliders that can skim the surface at speeds down to walking pace and have their seated pilot as the lowest part of the aircraft (with an inflated wing in an arc above the pilot), the minimum safe distance from non-participating people and buildings is more a function of the weather conditions, size and speed of the aircraft, and pilot skill and judgement. This also is relevant to their ability, and occasional need, to land at public recreation facilities. In these situations, setting a prescriptive distance in a regulation can be counter-productive in either setting unrealistically large distances which are not respected or supportable on safety grounds, or allowing an unsafe distance to be justified by the fact that a rule says it is legal. For this reason the factor of potential collision risk has been used in drafting the rules.

3.5.43 The question has been asked why such a criterion should not also be applied to the required separation from people and buildings. For this reason subregulation 103.285 (3) has been drafted in this style instead of the originally-proposed 50 feet for other kinds of aircraft and 10 feet for balloons.

Rules of the Air – Prevention of Collisions

3.5.44 The draft rules proposed in Division 103B.5 have been rewritten from the sequence in which they appear in the Civil Aviation Regulations, specifically in order to conform more closely with the actual wording and the established variations to the international statement of principle in ICAO Annex 2 (Rules of the air). This includes making the most important rule appear first in the regulations, so that one does not have to read from the bottom to determine the priority of pilot actions. Educational and explanatory guidance material may be developed in the organisations' procedures manuals or contained in an Advisory Circular.

Gliders and balloons operating near other aircraft

3.5.45 There are occasions in the normal course of glider flight and balloon flight when the simple statement "must not be flown so close to another aircraft as to create a collision hazard" is sufficiently open to interpretation that the organisations representing these pilot groups have sought a particular set of words to be drafted in regulations 103.310, 103.335 and 103.345. This leaves no doubt that they sometimes fly very close together, without pre-arrangement that would qualify it to be "formation flight", and this is in effect a potential risk that these pilots agree to accept, according to a code of conduct to be set out in RAAOs' relevant procedures manuals.

Sport aviation flight training

3.5.46 The sport and recreational aviation community has long treated the training for their sporting and recreational activities as an integral part of this activity. Indeed, in previous rule sets there was a specific exclusion from the requirement to be licensed by the regulatory body of the day to operate a flying school. Suggestions in a Notice of Proposed Rule Making (NPRM 0115SS, issued in September 2001) to require a form of Air Operator Certificate for this were overwhelmingly rejected by the industry. It is consistent with the whole concept of sport and recreational aviation being administered by responsible RAAO's that they, and not the regulator, should administer entry control in this area of activity.

3.5.47 The standards for pilot qualifications have been developed jointly by CASA and these administering organisations over the past 50+ years, and CASA and industry have agreed to their being jointly owned between CASA and the relevant industry administering organisations. In particular, training is regarded as the preserve of the administering organisations and not to form part of any "parallel path" for individual operators to participate in. Note however that both aeroplanes and rotorcraft may be operated under Part 91, and balloons under proposed Part 115B, where training standards and entry control are exercised by CASA.

Limitations on amateur-built aircraft

3.5.48 The ability to build and fly your own aircraft has long been an essential part of sport and recreational aviation, and indeed was the *raison d'etre* for many sport aviation disciplines. The airworthiness and certification rules of CASR Part 21 for experimental aircraft do not necessarily match these historical precedents, and therefore some aircraft that operate under Part 103 may not be subject to the rules currently embodied in CAR Part 14 Division 6 (Air Service Operations – Operating limitations for aircraft certificated in certain categories and experimental aircraft). These limitations and restrictions will be more severe for an aircraft undergoing a test period, either whilst establishing their integrity, reliability and handling characteristics, or following a major modification or a major repair. Accordingly, Subpart 103.C has been drafted so as to apply the essential requirements for the protection of the public within this Part, and apply some of the rules that apply to experimental and special category aircraft in Part 91.

3.5.49 A particular case that highlights these exceptions is that, in Australia as in the USA, amateur-built gyroplanes are commonly used in flight training because there is an absence of certificated designs for two-place training aircraft. Whilst Australia has not gone so far as to enshrine this in the certification rules for Light Sport Aircraft by excluding gyroplanes from special certificates of airworthiness, the absence of certificated factory-built aircraft means that it is not feasible or reasonable at this time to preclude amateur-built aircraft from the training fleet. This may change over the next several years and will be monitored with a view to tightening the rules if the situation changes.

Maintenance rules

3.5.50 Subpart 103.M has been drafted to require that aircraft are maintained according to the following fundamental principles:

- Where an aircraft is designed to a standard, it must be maintained so that it continues to meet that standard;
- The primary source of maintenance data is the manufacturer's instructions and documentation;
- The person carrying out maintenance tasks must be suitably trained and qualified; and
- The primary responsibility for maintenance of an aircraft rests with its operator.

3.5.51 Because these principles are to be embodied in the procedures manuals of the approved administering organisations, these manuals will form the principal reference

source for pilots and maintainers. The procedures for type-certificated aircraft must ensure that the aircraft does not fly unless it continues to meet the relevant standard.

3.5.52 Aircraft that are operated by a person who has chosen to be administered by CASA will therefore need to be maintained by a person who is qualified by CASA to carry out the maintenance – in most cases these people will be issued an Aircraft Maintenance Specialist certificate by CASA in accordance with proposed Part 66 of the CASR, as Aircraft Maintenance Engineer Licences will not necessarily include ratings that are appropriate for these kinds of aircraft, and may invoke a level of training that is beyond what is necessary to protect the general public on the ground and other airspace users. Participants in sport and recreational aviation are regarded by the regulations as being informed persons who have given their informed consent to being involved in the activities and to voluntarily inform themselves of procedures for their own protection and safety.

3.5.53 However, the expectation and requirement of the administering organisations is that they will require a greater level of training and supervision for people who maintain aircraft used by students under training and by prospective participants in sport and recreational aviation, where such a higher standard is not universally applied by the relevant organisation.

3.5.54 Likewise the concept of "approved data" for maintenance is embodied by making the aircraft manufacturer primarily responsible for publishing the actions that a maintainer must follow in order to keep that aircraft adequately airworthy to the applicable standard (if any) to which the aircraft is certified.

3.6 Benefits and impacts

3.6.1 The proposed regulations have been developed by a joint Industry/CASA working group established under the SCC Recreational Aviation Standards Sub-committee. The proposed regulations conform to a model that has been developed over the past 50 years, and that conforms to existing CASA policy and to the Charter Letters issued by Mr John Anderson as Minister for Transport and Regional Services, and endorsed by the House of Representatives Standing Committee on Transport Safety in 1987.

3.6.2 This continues existing policy but on a more formal footing, with the rules spelled out in positive requirements rather than by exempting from a set of regulations with conditions applied by a lower level of rules.

3.6.3 This policy has the effect that sport and recreational aviation have been identified at Ministerial level as suitable areas for self-administration by industry organisations that meet the criteria to be established in the development of proposed CASR Part 149.

3.6.4 Proposed CASR Part 149 will spell out the relationship between these organisations and CASA, and set formal standards for their participation in the administration of sport and recreational aviation activities – parachuting, model aircraft, and operation and maintenance of the aircraft identified in this NPRM. The comment

period for this NPRM will remain open until a common closing date to be announced when the NPRM for Part 149 is issued for public comment.

Benefits and costs of the proposal

3.6.5 The proposed regulatory style has shown itself over the years to achieve an adequately safe level of operations, with only slightly more accidents than the more highly regulated forms of aviation where the public have greater exposure to the activity. However, in sport and recreational aviation, risk is under the control of informed participants who are encouraged to take responsibility for the consequences of their own actions but given the responsibility to make such informed choices.

3.6.6 At the same time, the cost to the nation of ensuring compliance is retained at the lowest level consistent with desired safety outcomes. The rules will be, as in the past, administered in the most efficient and effective manner by devolving the responsibility to proven and mature organisations who can most cost-effectively carry out this role, subject to audit and oversight by a small group of specialist CASA staff.

3.6.7 The proposals do not cause a great departure from existing practice, other than to simplify the process of maintaining a set of rules by placing the detail of all but the most fundamental rules under the control (with general supervision and surveillance of government) of the persons involved. Hence there will be little impact on participants.

3.6.8 Costs will be contained and effective administration of the rules encouraged by this proposal. By devolving the administration of the activities to the industry organisations that have successfully administered them on a less formal legal footing for, in the most notable examples, over half a century, the participants are insulated from the financial impact of the rising cost of the CASA bureaucracy and retain the level of self-interest and self-determination they have done in the past. This model has been adopted, to a greater or lesser degree, by most of Australia's peer nations, including the UK, Canada, New Zealand and South Africa, and even the USA with its adoption of the Light Sport Aircraft/Sport Pilot rules in 2004. CASA retains the power to direct standards in the interests of public safety and to set rules that conform to international standards and practices. This, and the willingness of the administering organisations to accept the responsibility for encouraging compliance with the rules, justifies permitting continued, and in some areas enhanced, access to shared airspace on an equitable footing.

Regulatory Enforcement

3.6.9 The primary aim in sport and recreational aviation is to encourage participants to comply voluntarily with standardised safe practices and safety rules. However, on occasion breaches will occur, either through lack of knowledge or skill, or more rarely through a conscious decision not to conform to the norms of society.

3.6.10 There are a number of regulatory enforcement tools available to CASA to provide an appropriate response mechanism, ranging from counselling and remedial training, through infringement notices, up to court action. The most serious and blatant disregard for the rules can lead to cancellation of privileges as well as financial penalties. Not all these tools are currently available for the RAAOs to apply, and at

times this leads to inappropriate application of the means that are available, either too severe or too lax.

3.6.11 Under the proposed administration scheme, it is suggested that the RAAOs should be partners with CASA to prevent infringements. They would be able to access advice from CASA's regulatory enforcement system, with the encouragement to make the best possible use of their own disciplinary systems. Also, they may have recourse to tools such as infringement notices and demerit points, with the ability to refer the rare cases of wilful and blatant disregard for safety rules for resolution through the courts.

3.6.12 Many requirements for pilots operating under Part 103 will be governed primarily by the procedures manuals of the RAAOs, and will be enforced by them. Infringements with sufficient gravity to be given the force of law have been identified as offences in Part 103 and allocated penalties in accordance with the Criminal Code. These include the requirement for compliance with CASA directions given to those people who choose to operate under the CASA "Parallel Path", including CASA's enforcement systems.

3.6.13 **Penalties and Penalty Units.** It is the policy of the Commonwealth Government, as espoused by the Criminal Code, that the maximum penalty that a court can impose for a regulatory breach is identified against the regulation that establishes the offence. The most serious breaches of the Civil Aviation Safety Regulations attract a maximum penalty of 50 penalty units and in general, values of 1, 5, 10, 25 and 50 penalty units are used.

3.6.14 Penalties that are consistent with other penalties for similar offences under the CASR will be established during the settling of the final rule, by consultation between CASA and the Attorney-General's Department.

3.6.15 **Strict Liability,** as used to describe an offence, implies that the offence is such that there is no requirement to show a criminal intent in order to prove a breach. These are used extensively in the CAR 1988 and CASR 1998, and where a CASA involvement in enforcement becomes necessary, provide a pathway for the use of infringement notices with a significantly lesser penalty than the maximum.

3.6.16 An Advisory Circular will be drafted to further explain, with reference to the *CASA Enforcement Manual*, how Part 103 would be enforced.

3.7 Persons and organisations affected

3.7.1 The persons and organisation affected by the provisions in CASR Part 103 will be those persons and organisations who currently engage in sport and recreational aviation, and new participants who choose to become so involved in the future. These may include existing industry participants in general aviation who see the sport and recreational area as a more cost-effective way to participate in aviation, or to provide this level of aviation participation to others within the community.

3.7.2 These include:

- individual pilots;

- flying clubs, including existing sport and recreational aviation clubs;
- existing aviation businesses who wish to expand their involvement by joining an administering organisation and subscribing to their standards and administration; and
- existing aviation manufacturing and support businesses who see this area as a fertile market for their products and services.

The right of individuals to be administered by CASA

3.7.3 Some "individual rights" issues will be resolved by enshrining the rights of individuals to "opt out" of the administration by the organisations and elect to operate under direct CASA supervision. This establishes the so-called "CASA Parallel Path".

3.7.4 A parallel path participant is able to operate under the rules set up by CASA for the operation of aeroplanes and rotorcraft in general aviation within CASR Parts 42, 61 and 91, and within the scope of CASR Part 21 for aircraft certification.

3.7.5 However, those CASR Parts do not, for simplicity, contain rules for gliders or balloons. The rules for gliders will all be contained in Part 103 whilst aerial work balloon operations will be placed in a stand-alone proposed Part 115B being developed concurrently. Instead, the "parallel path" participant is proposed to be administered by undertaking to CASA to adhere to the rules and standards of the gliding and ballooning communities. While these options may be more costly to the participant, due to the involvement of a government bureaucracy, financial policy determines that these participants must pay the "fee for service" for CASA's involvement and so will not impose a drain on the public purse. This will have a modifying effect on the likely numbers of people who choose this option.

3.7.6 At the same time, CASA is deliberately harmonising its standards in a manner that provides equitable access to a single set of operating and safety standards. These standards apply both for those individuals and groups who seek to have approved organisations administer these rules, and for those who seek to operate to the same standards whilst being under the closer and more direct supervision of the government regulatory authority. This is particularly so in the case of small aeroplanes that conform to the broad criteria for Light Sport Aircraft. Rather than having two playing fields that may be at different levels, it is CASA's intention to administer a relatively small playing field at the same level as already has been successfully conducted by the sporting organisations, and to make it easy to transition from there to higher levels of aviation complexity where CASA is the only administrator.

3.7.7 CASA intends that there should be an identifiable point of equivalence, where an operator of a LSA-style aeroplane under CASR Parts 42, 61 and 91 does not have to do anything fundamentally different from an operator of an identical aeroplane under Part 103.

3.7.8 In doing this, CASA is also mindful of the expressed desire of certain existing organisations to seek greater involvement in administering areas of personal general aviation traditionally fully controlled and regulated by CASA, and to develop mechanisms for industry administration of certain areas that would fall within the compass of CASR Parts 42, 61 and 91. Detailed discussion of this is outside the scope of

this NPRM, but would probably be established as a separate rulechange project based on similar principles to those embodied in CASR Parts 103, 105 and 149.

3.8 Implementation and review

3.8.1 It is anticipated that, because no major departures from existing practice are called up by the new regulations, less cost and time will need to be devoted to this than other sectors of industry subject to more significant change in their regular operations. A period of time will be necessary for the updating of manuals and standards of the existing organisations, but this will be within the likely time-frame of normal review and revision cycles for the most part, and will not involve lengthy delays negotiating for CASA approval of detailed word-for-word text.

3.8.2 The monitoring and review of the new regulations would be conducted on an ongoing basis during the implementation/transition phase, and in a standard post-implementation review approximately 12 months after the commencement of the new regulations. Thereafter, monitoring and review would be conducted on an as required basis as required by the Government.

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NPRM 0603OS Response Form

SPORT & RECREATIONAL AVIATION OPERATIONS – PROPOSED CASR PART 103

Please complete your response by *19 February 2007*
(or as advised in the Part 149 NPRM)
and return it by one of the following means:

Online (preferred method*) rrp.casa.gov.au/respond

Fax 1800 653 897 (free call in Australia)

Post (no stamp required in Australia)
CASA Regulatory Development Management Branch
Reply Paid 2005, Canberra ACT 2601, Australia

E-mail (use the response format in this NPRM)
nprm0603os@casa.gov.au

*** A web-based online response form is offered as an alternative to the printed form in this NPRM. Online submission is the preferred method of sending your comments to CASA. If you are connected to the Internet, type rrp.casa.gov.au/respond into your web browser and follow the links for this NPRM.**

Your Details

Please provide relevant information below and indicate your acceptance or otherwise of the proposal presented in this Notice of Proposed Rule Making by ticking [✓] the appropriate boxes.

Your name: _____ ARN* (if known): _____

Organisation: _____ ARN* (if known): _____

Address: _____

_____

*Aviation Reference Number, usually your CASA-issued licence or certificate number

Your telephone number (optional): _____(to enable the Project Manager to contact you as necessary)

Do you consent to have your name published as a respondent to this NPRM? YES [ ] NO [ ]

Signed: …….. Date: ……..…

How are you responding to this questionnaire/proposal, i.e. whose views are represented in your response?

☐ Private individual ☐ Aviation industry body/association ☐ Staff association/ union ☐ Government agency/authority/ department/council ☐ Aviation business owner/ service provider ☐ Other

Please advise your main involvement in aviation:

☐ Passenger/ public consumer of aviation services ☐ Air crew for passenger-carrying activities ☐ Air crew for non-passenger-carrying activities ☐ Ground support for passenger-carrying activities ☐ Ground support for non-passenger carrying activities ☐ Other (specify below*)

*** Details:** _____

Are you satisfied with CASA's consultation on this issue?

☐ Very satisfied ☐ Satisfied ☐ No opinion ☐ Dissatisfied ☐ Very dissatisfied

Key Change Proposals (refer to NPRM Section 3)

CASA invites you to advise your comments on the subject matter proposed in this NPRM by indicating your preference by ticking [✓] the appropriate box and commenting below:

Regulatory Philosophy – Industry administration
[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Classification of Operations – lowest level of CASA priority and intervention
[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Descriptions of aircraft
[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Stand-alone rules
[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Aircraft registration – Industry administrative process

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

The "Parallel Path Principle" and ownership of standards

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Day VFR operations and Balloon VFR considerations

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Dropping things

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Air Displays – RAAO may replace CASA involvement

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Operating at aerodromes – RAAO procedures compatible with aircraft capability

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Minimum heights and distances – Recognition of rules for different types of aircraft

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Distances from unrelated persons or buildings – Regulatory flexibility

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Rules of the Air – Prevention of Collisions – Conforms with best practice

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Gliders and balloons operating near other aircraft – Code of conduct

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Sport aviation flight training – Integral recreational aviation activity

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Limitations on amateur-built, kit-built, experimental LSA aircraft and aircraft with limited flight status – Airworthiness and certification issues

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

Maintenance rules – Maintained to manufacturers standards by qualified/trained people

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

_____

_____

_____

Regulatory Enforcement

[ ] acceptable without any changes
[ ] acceptable but would be improved if changes were made
[ ] not acceptable but would be acceptable if changes were made
[ ] not acceptable under any circumstances
[ ] no opinion

Additional explanation (and, if appropriate, an estimate of any consequential impacts including costs): _____

_____

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General and Specific Comments

Your response to the draft Part 103 Regulations:

Having read the draft Part 103 Regulations (**NPRM Annex A**) are there specific issues that you wish to see addressed? Please indicate by specifying the relevant Regulation Number, any change to that Regulation you believe will add value to draft Part 103, and a short explanation of your reason for proposing the change.

Regulation No.	Change(s) that you consider appropriate (please suggest change)	Explanation
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Any Additional Comments
…… ……

Thank you

Your responses ensure balanced consideration by CASA of the interests of the aviation community and consumers.

Annex A

Unsettled Consultation Draft – Proposed Civil Aviation Safety Regulations (CASR) Part 103 – Sport and recreational aviation operations

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ANNEX A UNSETTLED CONSULTATION DRAFT 8 December 2006

Part 103 Sport and recreational aviation operations

Subpart 103.A General

Note Make-up of this Part

This Part is made up as follows:

Division 103.A.1 Preliminary

103.003 Applicability of this Part — people

(1) This Part applies to anybody (including a corporation) who or that engages in aeronautical activity in an aircraft included in regulation 103.005 that is conducted primarily for sport or recreation, or for a purpose that meets the criteria in regulation 103.008.

(2) This Part does not apply to anybody who conducts an operation described in Parts 115B, 121, 133, 135, 136 or 137.

(3) This Part does not apply to a person who conducts an activity described in subregulation 103.008 (4) who is not authorised by the procedures manual of the relevant RAAO.

103.005 Applicability of this Part — aircraft

(1) This Part applies in relation to aircraft of the following kinds:

(a) gliders;

(b) manned free balloons and manned hot air airships;

(c) low-momentum ultralight aeroplanes registered by an RAAO;

(d) aeroplanes other than low-momentum ultralight aeroplanes, including powered parachutes and weight-shift aeroplanes, that meet the criteria for subregulation (3) and are registered by an RAAO;

(e) rotorcraft that meet the criteria for subregulation (4) and are registered by an RAAO;

(f) aircraft approved under subregulation (6).

(2) For paragraph (1) (c), a ***low-momentum ultralight aeroplane*** is an aeroplane that:

(a) has only 1 seat; and

(b) has a MTOW is no more than:

(i) 300 kilogram; or

(ii) if it is equipped to land on water — 335 kilogram; or

(iii) if it is equipped with a recovery parachute system – 320 kilogram; or

(iv) if it is equipped to land on water and is equipped with a recovery parachute system — 355 kilogram; and

(c) has a maximum wing loading that is no more than 30 kilogram per square metre.

(3) An aeroplane meets the criteria for this subregulation if:

(a) it has 1 or 2 seats; and

(b) its stalling speed is no more than 45 knots; and

(c) its MTOW is no more than:

(i) 600 kilogram; or

(ii) if it is equipped to land on water — 650 kilogram.

(4) A rotorcraft meets the criteria for this subregulation if:

(a) it has 1 or 2 seats; and

(b) it has only 1 engine and, if it is a gyroplane, only 1 propeller; and

(c) its rotor disc loading is no more than 20 kilogram per square metre; and

(d) its MTOW is no more than:

(i) 600 kilogram; or

(ii) if it is equipped to land on water — 650 kilogram.

(5) For subsection 20AA (3) of the Act, an aircraft may be issued a certificate of airworthiness under Part 21 or by a RAAO as otherwise authorised under Part 149.

(6) CASA may approve an aircraft for operation under this Part if it is similar to a kind of aircraft mentioned in one of paragraphs (1) (a) to (e).

103.008 Applicability of this Part – flight activities

(1) This Part applies to flights of the kinds described by regulations 103.009 and 103.010 that are conducted in aircraft that meet the criteria in regulation 103.005.

Note: This Part does not affect the operation of an aircraft to which Part 91 applies: see definition of ***aircraft*** in regulation 103.015.

103.009 Flight activities – all pilots

(1) A flight for the following purposes may be conducted by a pilot in command who is qualified and authorised by CASA or by a RAAO:

(a) the personal transport of the pilot;

(b) the personal sport or recreation of the pilot, including flights conducted to seek sponsorship or to compete for a prize, trophy or award;

(c) practice in flying the aircraft;

(d) taking the aircraft to or from a place where maintenance on the aircraft can be done, or has been done, or where the aircraft is to be demonstrated or delivered to another person;

(e) carrying out a test, demonstration or display of the aircraft, including but not limited to air displays and demonstrations for sale.

(2) A passenger may be carried on any flight that meets the criteria in subregulation (1) and is authorised by the procedures manual of the relevant RAAO or, if the aircraft is not administered by any RAAO, authorised by CASA.

Note: In regulation 103.009 private arrangements apply between the pilot and passenger in accordance with the parameters set out in the relevant RAAO manual.

103.010 Flight activities – pilots authorised by RAAO

(1) A flight for the following purposes may only be conducted by a pilot in command who is qualified by the relevant RAAO to conduct those flights:

(a) giving or receiving ***sport aviation flight training*** in the aircraft.

Note: See Division 103.B.8 and regulations 103.409 and 103.427 for more detail.

(b) carrying passengers for an ***air experience flight*** in an aircraft.

(c) engaging in other activities defined in the procedures manual of the relevant RAAO, including but not limited to activities that, but for regulation 103.012, would be classified as [XXXX subject to the outcome of the classification of operations policy], if:

(i) the aircraft used is of a kind mentioned in paragraphs 103.005 (1) (a), (b), (d), (e) or (f); and

(ii) the activity is permitted by the rules of, and supervised by, the relevant RAAO; and

(iii) the pilot in command is qualified, and the flight is conducted, in accordance with the procedures for that kind of activity that are included in the procedures manual of the relevant RAAO.

(2) For paragraph (1) (b) a flight is an ***air experience flight*** if:

(a) the purpose of the flight is for each passenger to experience a flight in the aircraft;

(b) the procedures manual of the relevant RAAO contains procedures for the authorisation of operators and pilots to conduct air experience flights;

(c) the flight is conducted in accordance with the procedures for air experience flights contained in the procedures manual of the relevant RAAO;

(d) each passenger is a member of the RAAO.

Note: The purpose of membership for an air experience passenger is to ensure that the passenger has acknowledged that the flight does not meet the safety requirements that would apply to an airline flight and to provide a measure of compulsory insurance protection to the passenger and the RAAO.

103.012 Classification of Part 103 activities

(1) An activity undertaken under this Part is a XXXX - [subject to the final outcome of the classification of operations policy] operation and is not a prescribed purpose for section 27 of the Act.

103.015 Definitions for this Part

(1) In this Part:

aircraft (except where the contrary intention appears) means aircraft to which this Part applies.

closely settled area, in relation to an aircraft, means an area that, because of human-created obstructions such as buildings, the aircraft could not be landed in the area without endangering the safety of unrelated persons and property present in the area. *[See 103.271 for **unrelated** persons.]*

glider includes the following:

(a) a sailplane;

(b) a powered sailplane;

(c) a power-assisted sailplane;

(d) a hang glider;

(e) a powered hang glider;

(f) a paraglider;

(g) a powered paraglider;

(h) a parasail.

hang glider means a glider that has an empty weight not exceeding 70 kilograms, and where applicable includes a powered hang glider or powered paraglider (whether it has a motorised harness and is launched and/or landed on its pilot's feet, or whether it has wheels, skis or a lightweight trike base unit).

Maintenance standards means what, when and how maintenance is to be carried out, and who may carry out that maintenance. *[The term 'maintenance standards' is not used in the 'maintenance suite' of CASR, so it does not need to be in the Dictionary.]*

owner, of land that is not unalienated Crown land, includes any person entitled to exclusive possession of the land.

paraglider means a glider without rigid wings that is able to be launched by its pilot's feet, and has an empty weight not exceeding 70 kilograms.

Note – this definition is not intended to preclude the use of skis or wheels for landing or, in some circumstances, for take-off.

parasail means a parachute tethered to a point or vehicle on the ground or to a watercraft and deriving lift chiefly from aerodynamic reactions on flexible surfaces remaining fixed under given conditions of flight.

powered paraglider means an aircraft without rigid wings that has an empty weight not exceeding 70 kilograms and:

(a) is launched by its pilot's feet; or incorporates a lightweight trike base, and

(b) is powered by a power unit worn on its pilot's back or incorporated into a lightweight trike base.

powered parachute means an aeroplane without rigid wings that has an empty weight in excess of 70 kilograms.

Note – a powered parachute must meet a certification standard defined in Part 21 or an RAAO's procedures manual that is acceptable to CASA.

production built aircraft means an aircraft:

(a) that was manufactured for sale by the holder of:

  (i) a certificate of approval granted under regulation 30 of CAR 1988, or regulation 21.123 or 21.134 of CASR 1998, that covers the manufacture of the aircraft; or

  (ii) a production certificate, or an equivalent certificate from a Contracting State or an organisation authorised by a Contracting State, that covers the manufacture of the aircraft; or

  (iii) a type certificate that covers the manufacture of the aircraft; or

(b) that has been shown to comply with an approved airworthiness standard, including a standard for light sport aircraft mentioned in regulation 21.186.

RAAO or ***recreational aviation administration organisation*** means an organisation authorised under Part 149 to administer sport and recreational aviation that is carried out using a particular kind of aircraft.

relevant RAAO, for an aircraft, means the RAAO that is authorised under Part 149 to administer the operation of the kind of aircraft concerned.

sport aviation flight training means flying training administered by an RAAO.

103.020 Meaning of *limited flight status*

(1) For this Part, an aircraft has ***limited flight status*** if:

(a) it has never completed its test program; or

(b) since it most recently completed its test program it has undergone major repair or major modification; or

(c) it is being tested to determine whether its operating limitations may be extended (for example, by increasing its operating weight or setting different limiting speeds).

103.025 Meaning of *test program*

(1) For this Part, an aircraft completes its ***test program*** when:

(a) it has been test flown and found by the test pilot:

(i) to have no hazardous operating characteristics or design features; and

(ii) to be controllable throughout its recommended speed range and during any manoeuvre that it is permitted to execute; and

(b) it has completed the minimum number of flight hours required by the procedures manual of the relevant RAAO or by CASA.

103.063 Inconsistency with other provisions

(1) If a provision in this Part is inconsistent with a provision elsewhere in these Regulations, the provision in this Part prevails to the extent of the inconsistency.

Division 103.A.2 Registration

103.065 Registration and marking of aircraft

(1) For subsection 20AA (1) of the Act, an aircraft that has an empty mass of more than 70 kilograms must:

(a) be registered, and display a registration mark, in accordance with the procedures manual of an RAAO; or

(b) be registered under Part 47 (Registration of aircraft and related matters) and carry a registration mark in accordance with Part 45 (Marking of aircraft).

Penalty: **^insert units^** penalty units

(2) An offence against subregulation (1) (a) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Unless subregulation (1) (a) applies penalties under Parts 45 and 47 will be invoked.

Subpart 103.B Operating rules

Division 103.B.1 General

103.100 Pilot must be qualified

(1) A person must not fly an aircraft as pilot in command unless he or she:

(a) holds an appropriate pilot qualification issued by the relevant RAAO; or

(b) if no RAAO administers the operation of the aircraft — holds an appropriate pilot qualification issued by CASA; or

(c) flies the aircraft:

(i) while training to gain an appropriate pilot qualification; and

(ii) under the supervision of a person who is permitted, by these regulations or the procedures manual of the relevant RAAO, to conduct the training.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.105 Aircraft must be operated in accordance with procedures manual

(1) A person must not operate an aircraft under this Part except in accordance with:

(a) the procedures manual of the relevant RAAO; or

(b) if the aircraft is a glider or a balloon and is operated by a person other than a member of an RAAO — a procedures manual that is approved by CASA.

Penalty: ^**insert units**^ penalty units.

Note: An aircraft, other than a glider or a balloon, (i.e. an aeroplane or rotorcraft) may be operated under Part 91 rather than in accordance with the procedures manual of an RAAO.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.106 Flight manual to be carried

(1) The pilot in command of an aircraft that has a flight manual must carry the aircraft's flight manual so that it is accessible during a flight if:

(a) the aircraft manufacturer specifies that the manual should be carried; or

(b) the procedures manual of the relevant RAAO requires the pilot to carry the flight manual; or

(c) CASA directs the pilot to do so.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.120 Powers and duties of pilot in command

(1) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of the aircraft.

(2) In an emergency relating to an aircraft, its pilot in command may deviate or authorise deviation from any rule of this Part to the extent necessary to meet the emergency.

(3) If the pilot in command of an aircraft takes action under subregulation (2) that results in a breach of a provision of this Part he or she must tell CASA or the relevant RAAO in writing about the breach and how it occurred:

(a) within 10 days afterwards; or

(b) if the relevant RAAO so requests —as soon as practicable.

Penalty: ^**insert units**^ penalty units.

Note: A report may also be required under Part 3 of the *Transport Safety Investigation Act 2003*.

(4) In an emergency that endangers the safety of an aircraft, its pilot in command may manoeuvre contrary to an ATC direction to any extent necessary to preserve the safety of the aircraft or anybody on board the aircraft.

(5) If a pilot manoeuvres under subregulation (4) in a manner that is contrary to an ATC direction, he or she must, as soon as practicable:

(a) tell ATC about the contravention; and

(b) return to compliance with the ATC direction, or seek an alternative direction from ATC.

Penalty: ^**insert units**^ penalty units.

(6) An offence against subregulation (3) or (5) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.122 Mercy flights

Note: Final text will be subject to a review of Mercy Flight rules in Part 91 and may not be in the form of a regulation. The draft prior to review reads:

(1) If a provision of these regulations is contravened in the course of carrying out a flight, it is a defence to a charge of contravening the provision that:

(a) before the contravention, the pilot in command of the aircraft concerned declared the flight to be a mercy flight; and

(b) the contravention did not expose anybody to a level of hazard that was, in the circumstances, unreasonable.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subregulation (1): see the *Criminal Code*, s 13 (3).

(2) A declaration that a flight is a mercy flight has no effect for subregulation (1) unless:

(a) the flight is for the purpose of relieving a person from grave and imminent danger arising out of an urgent medical necessity, flood or fire or similar situation, at a time where failure to make the flight is likely to result in serious or permanent disability or loss of life; and

(b) there is no practical alternative to the flight; and

(c) it is not practicable to get an exemption from the provision before the flight begins.

Note: In relation to mercy flights generally, see Advisory Circular 91.170

(3) A pilot in command must not undertake a mercy flight if:

(a) the occupants of the aircraft concerned will be exposed to undue hazard; or

(b) relief or rescue can be delayed until a more suitable aircraft or more favourable operating conditions are available.

Penalty: ^**insert units**^ penalty units.

(4) The pilot in command of a mercy flight must:

(a) submit a flight notification as if the flight were an air transport flight; and

(b) mark on the notification the words "MERCY FLIGHT"; and

(c) state in the notification the reason for the flight, and specify any regulation that will not be complied with; and

(d) specify, in the notification, reporting times or times when contact with air traffic services will be made; and

(e) specify in the notification any special procedures to be used and any special assistance to be required of the ground organisation

Penalty: ^**insert units**^ penalty units.

(5) The pilot in command of a mercy flight must not carry more persons in the aircraft than the minimum required to conduct the flight.

Penalty: ^**insert units**^ penalty units.

(6) The pilot in command must report the circumstances of the flight to CASA within 10 days after the flight.

Penalty: ^**insert units**^ penalty units.

(7) An offence against subregulation (3), (4), (5) or (6) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.143 Smoking or creating fire hazard near aircraft

(1) A person who is on board, or within 5 metres of, an aircraft must not smoke or create a fire hazard.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.145 CASA may give direction about operation of particular aircraft

(1) For the purpose of ensuring the safety of air navigation, or the safety of a particular aircraft or kind of aircraft, CASA may give a written direction about how the aircraft is or are to be operated.

Note: 1. The procedures manual of an RAAO may allow an officer of the RAAO to issue instructions relating to the operation of aircraft.

2. Part 149 will empower CASA to require an RAAO to include in its procedures manual items about aircraft that it administers.

(2) Such a direction may require an aircraft to be operated in a specified way for:

(a) one or more specified flights; or

(b) flights of a specified kind or for a specified purpose.

(3) If CASA has issued a direction in relation to the operation of an aircraft, a person who is subject to the direction must comply with the direction.

Penalty: ^**insert units**^ penalty units.

Note: It is expected that a person who knows of a direction in relation to an aircraft will take reasonable steps to inform other people who may operate the aircraft.

(4) An offence against subregulation (3) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Division 103.B.2 Conduct of flight

103.181 Pilot to be at controls

(1) The pilot in command of an aircraft must ensure that an appropriately qualified person is at the controls of the aircraft at all times while the aircraft is operating.

Penalty: ^**insert units**^ penalty units.

(2) Subregulation (1) is complied with if the pilot in command can give appropriate instruction to the person at the controls of the aircraft, or take over control if necessary.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.182 Starting engines

(1) Before a person attempts to start an engine of an aircraft, he or she must be satisfied on reasonable grounds that, if the engine starts:

(a) nobody will be endangered; and

(b) property will not be damaged.

Penalty: ^**insert units**^ penalty units.

(2) Despite regulation 103.181, the pilot in command of an aircraft may leave the controls to start an engine if:

(a) there is no qualified person present to assist the pilot; and

(b) the pilot ensures that the aircraft is adequately restrained.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.185 Operating aircraft after taking alcohol or drug

(1) In this regulation:

drug means:

(a) a therapeutic substance; or

(b) a substance that is a narcotic substance within the meaning given by the *Customs Act 1901*.

therapeutic substance means a substance that is therapeutic goods within the meaning of the *Therapeutic Goods Act 1989*.

(2) A person must not operate an aircraft while their capacity to safely operate the aircraft is impaired by alcohol or a drug.

Penalty: ^**insert units**^ penalty units.

(3) A person must not operate an aircraft within 8 hours after:

(a) drinking an alcoholic drink; or

(b) subject to subregulation (4) — taking a therapeutic substance containing alcohol.

Penalty: ^**insert units**^ penalty units.

(4) It is not a contravention of paragraph (3) (b) for a person to operate an aircraft within 8 hours after taking a therapeutic substance containing alcohol if, during that period:

(a) the person took no more of the substance than recommended by its manufacturer; and

(b) no single dose of the substance taken was greater than recommended by its manufacturer.

(5) An offence against subregulation (2) or (3) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.191 Flights to be by day and under the VFR

(1) Subject to subregulation (2), a person may operate an aircraft only by day and only in accordance with the VFR.

Penalty: ^**insert units**^ penalty units.

(2) A person may operate:

(a) a balloon under this Part by day or night in accordance with the VFR; or

(b) an aircraft by day under VMC conditions in Class A airspace in accordance with the procedures manual of the relevant RAAO or approved procedures.

Note: 1. A flight permitted by paragraph (2) (b) requires an ATC clearance: see regulations 103.245 and 103.350. The approved procedures also must account for navigation tolerances, areas of operation, communications and possible electronic identification (transponder or ADS-B). Sport & recreational aircraft may be provided with services and separation equivalent to those in Class C airspace under these procedures.

2. The visual meteorological conditions are to be included in each RAAO's procedures manual as applicable to the aircraft that they administer. An AC may be necessary for "deemed IFR" operations in VMC above FL 200.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.198 Aerobatic flight

(1) A person may only operate an aircraft in aerobatic flight in accordance with:

(a) the aircraft's flight manual or an equivalent document published by its manufacturer; and

(b) to the extent that it is not inconsistent with the flight manual — the procedures manual of the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(2) Despite subregulation (1), CASA or the relevant RAAO may approve aerobatic flight by a particular person in a particular aircraft if the aircraft and the person can safely conduct flight of that kind.

(3) CASA or the relevant RAAO may impose conditions on the approval (for example, a condition that particular manoeuvres must not be carried out).

(4) A person must not contravene a condition imposed by CASA or the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(5) An offence against subregulation (1) or (4) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.200 Other prohibited operation

(1) A person must not operate an aircraft:

(a) over a public gathering, except in the course of normal navigation, or with the prior approval of CASA or the relevant RAAO; or

(b) in a prohibited area; or

(c) in a restricted area, unless the flight complies with any conditions applicable to the restricted area.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.205 Altitude that must be kept

(1) Subject to subregulation (2), if a person operates an aircraft (except a balloon or a glider) in level cruising flight at or above 5 000 ft AMSL, he or she must maintain a cruising level:

(a) appropriate for the direction of the flight, as set out in Table 103.205; or

(b) as instructed by ATS.

Penalty: ^**insert units**^ penalty units.

Note: altitudes below 5000 ft AMSL or below 2000 ft AGL are suggestions only.

(2) Subregulation (1) does not apply to an aircraft that is operating less than 2 000 feet above terrain.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Magnetic tracks	***From 000 through east to 179***	***From 180 through west to 359***
Cruising altitudes (area QNH)	1500	2500
	3500	4500
	5500	6500
	7500	8500
	9500	
Cruising Flight Levels (1013.2 hPa)		105 (Only if QNH > 1031)
	115 (only if QNH > 997)	125 (only if QNH > 963)
	135	145
	155	165
	175	185
	195	

Table 103.205

Note: When VFR is approved or 'deemed IFR' is used as per 103.191 (2) (b) levels above FL 200 continue according to the sequence in the table.

Penalty: ^**insert units**^ penalty units.

103.210 Visibility and distance from cloud — all aircraft

(1) Subject to regulations 103.212 and 103.214, the pilot in command of an aircraft must maintain the visibility and separation from cloud set out in Table 103.210.

Penalty: ^**insert units**^ penalty units.

Airspace Class	***Height***	***Flight Visibility***	***distance from cloud***	
			Horizontal	***Vertical***
C, D, E	At or above 10 000 ft AMSL	8 km	1500 m	1000 ft
C, D, E	Not above 10 000 ft AMSL	5 km	1500 m	1000 ft
GAAP	Any	5 km	Clear of cloud	Clear of cloud
G	At or above 10 000 ft AMSL	8 km	1500 m	1000 ft
G	Not above 10 000 ft AMSL	5 km	1500 m	1000 ft
G	Not above 3 000 ft AMSL or 1000 ft AGL (whichever is higher) **and monitoring the appropriate VHF radio frequency**	5 km	Clear of and in sight ground or	cloud of water
C, D, GAAP	See regulation 103.212 for variations that ATC can authorise			
G	Below 1500 ft AGL	See -	regulation	103.212

Table 103.210

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.212 ATC may authorise flight (special VFR)

(1) A pilot may conduct a flight that is not in accordance with regulation 103.210 or 103.214 if the flight complies with subregulation (2) or (3) and has been authorised by ATC.

Penalty: ^**insert units**^ penalty units.

(2) The flight must take place:

(a) in Class C or D airspace, or in GAAP airspace, that is:

(i) in a control zone; or

(ii) in a control area next to a control zone and be for the purpose of entering or leaving the zone; and

(b) under conditions in which visibility in the direction of the flight is more than 3 000 metres in the case of an aeroplane or a glider, or 800 metres in the case of a rotorcraft or balloon.

(3) Despite paragraph (2) (b), if the aircraft is a balloon and the flight is at a height below 500 ft AGL, visibility need only be 400 metres.

(4) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.214 Low-level operation of a balloon

(1) This regulation allows the operation of a balloon:

(a) that is not in accordance with regulation 103.210; and

(b) that is conducted at a height of less than 1 500 ft AGL.

Note: Balloons may operate by day or night: see regulation 103.191.

(2) For a flight by day or night, the area in which a balloon operates must be:

(a) subject to subregulation (6), more than 10 nautical miles from an aerodrome for which an instrument approach is published in AIP; and

(b) in Class G airspace;

unless:

(c) CASA has authorised the use of the area; and

(d) the operator complies with any conditions imposed by CASA in relation to flights by the operator in the area.

(3) For a flight by day or night, if the balloon is at or above 500 ft AGL:

(a) visibility in the general direction of the balloon's flight must be at least 5 kilometres; and

(b) the balloon may be above cloud or fog, the top of which is below 500 ft AGL.

(4) For a flight by day, if the balloon is below 500 ft AGL, horizontal visibility must be at least 400 metres.

(5) By day only, despite subregulations (2), (3) and (4):

(a) if the balloon is descending to land, visibility need only be enough to allow the pilot to see the landing site and any obstacles on the flight path that the balloon would take in the event of a baulked landing; and

(b) if the balloon is climbing to a height of 500 ft AGL or more, visibility need only be enough for the pilot in command to see that the conditions at that height are those mentioned in paragraphs (3) (a) and (b); or

(c) if the balloon is climbing to a height below 500 ft AGL, visibility near the ground must be sufficient for the pilot in command to see that subregulation (4) will be complied with at the height at which sustained flight will take place.

(6) Despite subregulation 2 (a) the pilot of a balloon that is within 10 nautical miles of an aerodrome for which an instrument approach is published in AIP and which is in contact with ATC or another operator on the approved VHF radio frequency used by traffic conducting the instrument approach procedure may, by day only, in the absence of traffic conducting an instrument approach, take off in compliance with subregulation 5 (b) and climb without delay to a height where it can comply with subregulation (3).

103.215 Dropping things from aircraft

(1) The pilot in command of an aircraft in flight must not drop anything from it, or allow anything to be dropped from it, unless:

(a) the dropping is in accordance with the procedures manual of the relevant RAAO; or

(b) if the operation of the aircraft is not administered by any RAAO, CASA has given permission for the dropping, and

(c) the pilot has taken reasonable precautions to ensure that the dropping:

(i) does not endanger the aircraft or anybody on board it; and

(ii) does not create an unreasonable hazard to life or property.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.217 Parachuting operations

(1) A person must not conduct a parachuting operation from an aircraft except in accordance with:

(a) the procedures manual of the relevant RAAO for the aircraft; and

(b) the procedures manual of the RAAO that administers the parachuting.

(2) If a parachuting operation or the operation of the aircraft is administered by CASA the operation must be in accordance with a procedures manual approved by CASA.

Penalty: ^**insert units**^ penalty units.

(3) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.220 Towing

(1) The pilot of an aircraft that is approved for towing must not allow anything to be towed by the aircraft except:

(a) a glider; or

(b) something else approved by the relevant RAAO for the aircraft or CASA.

Penalty: ^**insert units**^ penalty units.

(2) The pilot of an aircraft that is towing a glider must ensure that the glider is towed in accordance with the procedures manual of the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(3) The pilot of an aircraft that is towing anything other than a glider must tow the thing in accordance with:

(a) the approval for towing the thing; and

(b) the procedures manual of the relevant RAAO; and

(c) any direction given by CASA.

Penalty: ^**insert units**^ penalty units

(2) An offence against subregulation (1), (2), or (3) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.230 Air displays

(1) A person must not conduct, or participate as a pilot in command or aircraft operator in, an air display unless it been approved by CASA or an RAAO.

Penalty: ^**insert units**^ penalty units.

(2) A person who conducts, or participates as a pilot in command or aircraft operator in, an air display must do so in accordance with:

(a) the procedures manual of the relevant RAAO; or

(b) directions issued by CASA.

Penalty: ^**insert units**^ penalty units.

(3) In this regulation, ***air display*** has the meaning given in Part 91.

Note: This regulation does not apply to a fly-in.

(4) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.235 Carrying infants

(1) The pilot of an aircraft must not allow an infant to be carried in the aircraft unless the infant is appropriately restrained.

Penalty: ^**insert units**^ penalty units.

(2) For the purposes of subregulation (1) an infant is a child who has not yet reached the age of 3 years.

Note: The procedures manual of each RAAO sets out any requirements for the restraints to be used by aircraft passengers who are 3 years old and over.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.240 Use of oxygen

(1) The pilot in command of an aircraft must supply the occupants of the aircraft with supplemental breathing oxygen from an accepted system if the aircraft is operating:

(a) at or above FL 140; or

(b) for longer than 30 minutes above FL 125, but below FL 140.

Penalty: ^**insert units**^ penalty units.

(2) In spite of subregulation (1), the pilot in command must supply a passenger in a balloon or a person who intends to descend from the aircraft by parachute with supplemental breathing oxygen from an accepted system if the aircraft is operating above FL 150.

Note: for aircraft other than balloons all occupants other than parachutists are considered to be flight crew members.

(3) For subregulations (1) and (2), a system is ***accepted*** if it is approved by, or meets a standard approved by, the relevant RAAO or CASA.

(4) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.245 Operation in controlled airspace

(1) If an aircraft is operated in controlled airspace (other than in VMC in Class E airspace), its pilot in command must, subject to subregulation (3):

(a) obtain any necessary air traffic control clearance; and

(b) operate the aircraft in accordance with the clearance and with any air traffic control instructions.

Penalty: ^**insert units**^ penalty units.

(2) For subregulation (1), ***controlled airspace*** includes airspace classes A, B, C, D and GAAP airspace, and class E airspace when VMC does not exist.

(3) If the pilot in command cannot comply with an air traffic control clearance or instruction, he or she must tell ATC as soon as possible and ask for other instructions.

Penalty: ^**insert units**^ penalty units.

(4) An offence against subregulation (1) or (3) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Division 103.B.3 Use of aerodromes

103.250 Right to use public aerodromes

(1) An aircraft may take-off from, or land at, an aerodrome that is certificated or registered under Part 139 and is available for use by the public as an aerodrome.

103.255 Take-off and landing areas to be suitable

(1) The pilot in command of an aircraft must ensure that, before taking off or landing at a place, the take-off or landing can be carried out in accordance with:

(a) the aircraft's flight manual (or an equivalent document); and

(b) to the extent that it is not inconsistent with the flight manual — the procedures manual of the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.260 Operating at non-controlled aerodrome

(1) The pilot in command of an aircraft must ensure that any take-off or landing at a non-controlled aerodrome is carried out in accordance with the procedures manual of the relevant RAAO and any requirements for the aerodrome that are published in the AIP.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Division 103.B.4 Heights and distances

103.271 Definition for Division

In this Division:

unrelated person or building, in relation to an aircraft, means a person who, or a building that, is not associated with the operation of the aircraft.

103.275 Minimum heights and distances over closely settled areas

(1) An aircraft, other than a balloon, must not be flown over a closely settled area at a height lower than the lower of:

(a) the height from which it can land clear of the area without engine power; and

(b) 1 000 ft above the highest obstacle within 300 m of the point vertically below the aircraft.

Penalty: ^**insert units**^ penalty units.

(2) A balloon must not be flown over a closely settled area at a height lower than 500 ft above the highest obstacle within 150 m of the lowest part of the balloon.

Penalty: ^**insert units**^ penalty units.

(3) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.285 Height during landing or take-off

(1) In spite of this Division, there is no minimum height that an aircraft must maintain during:

(a) taking off and climbing-out from, or descending to land at, a place that is suitable for it to take off or land; or

(b) carrying out, or practising, a baulked approach at a place that is suitable for it to do so.

(2) However, subregulation (1) does not apply unless:

(a) the place is an aerodrome available for public use; or

(b) the owner of, or a person having legal right to control access to, the place has given permission for the landing or take-off, or the practising of the baulked approach.

(3) During take-off or landing an aircraft must not pass over an unrelated person or building so closely as to create a collision hazard.

Penalty: ^**insert units**^ penalty units.

(4) An offence against subregulation (3) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.286 Minimum heights and distances — aeroplanes and rotorcraft

(1) This regulation applies in relation to a flight by an aeroplane or rotorcraft over an area if:

(a) the area is not a closely settled area; and

(b) the owner or owners of the land comprising the area, or a person having legal right to control access to the area, has given permission for flight below the height mentioned in the regulation.

(2) The aircraft must not be operated at a height less than:

(a) if the aircraft is an aeroplane or helicopter — 500 feet; or

(b) if the aircraft is a gyroplane — 300 feet;

above the highest surface feature or obstacle within 300 m of the point vertically below the aircraft.

Penalty: ^**insert units**^ penalty units.

(3) Subregulation (2) does not apply to an aeroplane or rotorcraft that:

(a) is being operated for the direct purpose of a task authorised by the owner of, or a person having legal control over, the land over which the aircraft is flying; and

(b) is carrying only people necessary for the task.

(4) An offence against subregulation (2) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.290 Minimum heights and distances — gliders

A glider must not be flown so close to an unrelated person or building that it creates a collision hazard.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.291 Minimum heights and distances — balloons

(1) During the day, a balloon must not be flown so close to an unrelated person or building as to create a collision hazard.

Penalty: ^**insert units**^ penalty units.

(2) At night, the pilot in command of a balloon must, after take-off, climb to a height that is at least 500 ft above the highest obstacle that is located within the following distance from the balloon:

(a) if the ambient light allows the pilot to determine the balloon's position — 1 nautical mile; or

(b) if the pilot has surveyed the flight area by daylight — 1 nautical mile; or

(c) in any other case — 3 nautical miles.

Penalty: ^**insert units**^ penalty units.

(3) In spite of subregulation (2), the pilot in command of a balloon may, when the balloon's ground crew is nearby and on hand to render assistance, make an approach for training purposes to land at a suitable place that has been surveyed by day and found free of obstacles.

Note: An aerodrome is a suitable place.

(4) A tethered balloon must not be located:

(a) so the highest part of the balloon is more than 300 ft above the ground; or

(b) closer than 3 nautical miles from an aerodrome, or permanent helicopter landing site, unless:

(i) the balloon is clear of the approach or departure path used by aircraft; or

(ii) CASA or ATC at the aerodrome has given permission; or

Penalty: ^**insert units**^ penalty units.

(5) An offence against subregulation (1), (2), or (4) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Division 103.B.5 Prevention of collisions

103.295 Meaning of *aircraft* for this Division

(1) A reference in this Division to an aircraft that must give right of way is (as elsewhere in this Part) a reference to an aircraft to which this Part applies.

(2) However, a reference in this Division to an aircraft that has right of way includes any aircraft, whether this Part applies to it or not.

103.305 Basic rule — "see and avoid"

(1) The pilot in command of an aircraft must keep a proper lookout and exercise vigilance to enable him or her to see and avoid other aircraft, whether in flight or on the surface.

Penalty: ^**insert units**^ penalty units.

(2) For subregulation (1), ***vigilance*** includes, in the case of an aircraft equipped with radio, monitoring radio transmissions when it is appropriate to do so.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.310 Operating near other aircraft

(1) The pilot in command of an aircraft in flight must not operate it so close to another aircraft as to create a collision hazard.

Penalty: ^**insert units**^ penalty units.

(2) The pilot in command of an aircraft must not operate it on the ground in such a manner as to create a hazard to itself or to another aircraft.

Penalty: ^**insert units**^ penalty units.

(3) For subregulation (1), a glider is not taken to be creating a collision hazard if it is flown close to another glider in accordance with the procedures manual of the relevant RAAO.

(4) An offence against subregulation (1) or (2) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.315 Giving right of way

(1) The pilot in command of an aircraft must give way to, or keep out of the way of, another aircraft that has right of way over it.

Penalty: ^**insert units**^ penalty units.

Note The rules about which aircraft has right of way are set out in the table in regulation 103.320, below.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.320 Who has right of way

(1) The table that follows subregulation (5) sets out the rules about which aircraft has right of way when there is a danger of collision between 2 or more aircraft.

(2) Nothing in this Division relieves the pilot in command of responsibility to take any action necessary to prevent a collision.

(3) The pilot in command of an aircraft that has right of way must maintain its heading and speed, and must not alter course except in a manner that increases the separation between the aircraft and reduces the risk of collision.

Penalty: ^**insert units**^ penalty units.

(4) An aircraft has right of way over another aircraft that must, under those rules, give way to it.

(5) If 2 or more of the rules apply to a particular situation, right of way is to be decided in accordance with the lower-numbered of the applicable rules.

(6) An offence against subregulation (3) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Table 103.320 Rules about right of way in the air

Rule 1 Aircraft compelled to land

An aircraft must give way to another aircraft if the first aircraft's pilot in command knows or believes that the other aircraft is compelled to land or is in an emergency.

Rule 2 Landing aircraft

An aircraft that is operating on ground or water, or is in flight, must give way to an aircraft that is landing, or is aligned for landing on its final approach.

Rule 3 Lower aircraft generally has priority for landing

If 2 aircraft are approaching for landing together, the higher aircraft must give way to the lower, except that an aircraft that is on its final approach need not give way to another aircraft (other than a glider) that is not on its final approach.

Rule 4 Aircraft in the vicinity of an aerodrome

An aircraft that is in the vicinity of an aerodrome, but not intending to land, must give way to an aircraft that is manoeuvring to land.

Rule 5 Balloons

If there is the danger of a collision between 2 balloons, the higher must give way to the lower.

Rule 6 Gliders

If 2 or more gliders are flying close together, any of them must give way to any other whose pilot's view is restricted by its structure.

Rule 7 Aircraft overtaking another aircraft

An aircraft that is being overtaken has right of way over the aircraft overtaking it, and the aircraft that is overtaking has the responsibility of maintaining separation until the overtaking manoeuvre is completed and the overtaking aircraft is clear.

Rule 8 Other categories of aircraft

An aircraft of a particular kind must give way to anything listed above it in the following list:

- balloon
- somebody descending by parachute

- glider
- airship
- aircraft that is towing something (including another aircraft)
- rotorcraft
- aeroplane

Rule 9 Aircraft on converging headings

If 2 aircraft at approximately the same altitude are on converging headings, the aircraft that has the other on its right must give way to the other.

Rule 10 Approaching head on

If 2 aircraft are approaching head on or nearly so, and there is danger of collision, each aircraft must alter its heading to the right, except that if 2 gliders are hill soaring, the glider that has the hill on its left must give way by turning away from the hill.

103.325 How to give right of way

(1) The pilot in command of an aircraft that is required to give way to, or keep out of the way of, another aircraft must not pass ahead of the other aircraft, or directly over or under it, so closely that there is a danger of collision.

Penalty: ^**insert units**^ penalty units.

Note: See the procedures manual of the relevant RAAO for other procedures relating to giving way and overtaking.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.330 How to overtake

(1) The pilot in command of an aircraft that is overtaking another aircraft must keep out of the way of the aircraft that is being overtaken, even if the aircraft being overtaken alters course while being overtaken.

Penalty: ^**insert units**^ penalty units.

Note: See the procedures manual of the relevant RAAO for other procedures relating to giving way and overtaking.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.335 Formation flying

(1) The pilots in command of two or more aircraft must not fly in formation unless:

(a) each pilot in command:

(i) is trained and appropriately endorsed (in accordance with the procedures manual of an RAAO) to fly in formation in that kind of aircraft; or

(ii) is being trained for such an endorsement; and

(b) the pilots-in-command have agreed to fly in formation.

Penalty: ^**insert units**^ penalty units.

(2) For subregulation (1):

(a) gliders flying close together while soaring are not flying in formation; and

(b) balloons flying close together (including for ATC purposes) are not flying in formation.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.340 Aircraft on, or close to, water

(1) The pilot in command of an aircraft that is manoeuvring on the surface of water, or is taking off from or landing on water, or flying low over water, must keep away from watercraft and must avoid impeding their navigation.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.345 Balloons not to be allowed to touch

(1) The pilot in command of a balloon must not allow the basket of the balloon to contact the envelope of another balloon that is in flight, or is about to take off.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Division 103.B.6 Radio communication requirements

103.350 When radio equipment required

(1) The pilot in command of an aircraft must not fly the aircraft in a class of airspace mentioned in subregulation (2) unless:

(a) the aircraft is fitted with, or the pilot carries, serviceable radio communication equipment; and

(b) the pilot maintains an effective listening watch; and

(c) the pilot makes any reports and broadcasts required

(i) by or under these Regulations; or

(ii) if the requirement is not inconsistent with these Regulations — by the procedures manual of the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(2) The classes of airspace are the following:

(a) Class A airspace;

(b) Class B airspace;

(c) Class C airspace;

(d) Class D airspace;

(e) GAAP airspace;

(f) in relation to an aircraft that is less than 1 500 m horizontally or less than 1 000 ft vertically from cloud — the airspace below the higher of the following:

(i) 3 000 ft AMSL;

(ii) 1 000 ft AGL;

(g) a restricted area where continuous contact with a controlling authority is required, or that may be subject to recall while the aircraft is in it;

(h) any other airspace, if the authority that controls it requires all aircraft operating in it to be fitted with radio communications equipment.

Note: this includes, but is not limited to, the vicinity of aerodromes denoted as CTAF<R>.

(3) The pilot in command of an aircraft may enter Class A, Class B, Class C or Class D airspace only with the approval of air traffic control (whether or not the aircraft is fitted with, or its pilot carries, serviceable radio communications equipment).

Penalty: ^**insert units**^ penalty units

(4) An offence against subregulation (1) or (3) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.355 Requirements for balloons at night

(1) A person must not operate a balloon in free flight at night except in accordance with this regulation.

Penalty: ^**insert units**^ penalty units.

(2) The balloon must be fitted with, or its pilot must carry, serviceable radio communications equipment and use it in accordance with subregulation 103.350 (1).

(3) Except when taking off or landing, the balloon must display a white strobe light and a red light, that are:

(a) located between 5 m and 10 m (inclusive) below the lowest part of the balloon; and

(b) visible for at least 4 kilometres.

(4) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.360 Obligation to maintain radio listening watch

(1) If an aircraft is fitted with serviceable radio communication equipment and a serviceable means of generating electrical power sufficient to enable the

equipment to be operated continuously, the aircraft's pilot in command must:

(a) maintain an effective listening watch; and

(b) make any reports and broadcasts required:

(i) by or under these Regulations; or

(ii) if the requirement is not inconsistent with these Regulations — by the procedures manual of the relevant RAAO.

Note: This regulation applies to all radio-equipped aircraft that are capable of continuously powering a radio, whereas regulation 103.350 and subregulation 103.355 (2) apply to all aircraft when they are in the stated situation, regardless of their electrical generating capability.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.366 Use of distress and urgency signals

(1) The pilot in command of an aircraft may make an aviation distress signal only if he or she knows that the aircraft or its passengers or both are in grave and imminent danger and require immediate assistance.

Penalty: ^**insert units**^ penalty units.

(2) It is a defence to a charge of contravening subregulation (1) if all of the following conditions are satisfied:

(a) at the time, the defendant believed that the aircraft or its passengers or both were in grave and imminent danger;

(b) according to the defendant's knowledge at the time of the circumstances, the belief was reasonable;

(c) there was no practicable way in which the defendant could have obtained more information.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2) — see the *Criminal Code*, s 13 (3).

(3) A person on board an aircraft, other than its pilot in command, may make an aviation distress signal if:

(a) the pilot is incapacitated; or

(b) if the pilot is not incapacitated — if the aircraft's pilot in command directs or authorises the person to make the signal.

Penalty: ^**insert units**^ penalty units.

(4) Strict liability applies to a contravention of subregulation (3).

(5) An aircraft's pilot in command may give a direction or authorisation referred to in subregulation (3) only if he or she knows that the aircraft or its passengers or both are in grave and imminent danger.

Penalty: ^**insert units**^ penalty units.

(6) It is a defence to a charge of contravening subregulation (5) if all of the following conditions are satisfied:

(a) at the time, the defendant believed that the aircraft or its passengers or both were in grave and imminent danger;

(b) according to the defendant's knowledge at the time of the circumstances, the belief was reasonable;

(c) there was no practicable way in which the defendant could have obtained more information.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subregulation (6) — see the *Criminal Code*, s 13 (3).

(7) If an aviation distress signal is used and the danger passes, the person who made the signal must try to cancel it.

Penalty: ^**insert units**^ penalty units.

(8) The pilot in command of an aircraft may use an aviation urgency signal only to give an urgent message concerning the safety of an aircraft, or a ship, person or vehicle.

Penalty: ^**insert units**^ penalty units.

(9) An offence against subregulation (1), (3), (5), (7) or (8) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

(10) Nothing in this regulation prevents the testing of an ELT as set out in regulation 91.608.

Division 103.B.7 Carriage and use of firearms

103.370 Firearms not to be brought on board aircraft

(1) A person must not bring a firearm on board an aircraft except with the consent of the pilot in command, and the operator, of the aircraft.

Penalty: ^**insert units**^ penalty units.

(2) However, if a State or Territory law requires the person to have a licence to carry the firearm, the consent of a pilot or operator under subregulation (1) has no effect for that subregulation unless:

(a) the person actually holds such a licence; and

(b) the licence is in effect; and

(c) the person has shown the pilot the licence.

(3) Before giving a consent for subregulation (1), the pilot in command or operator must ensure that everybody who is, or will be, on board the aircraft while the firearm is on it knows how to stow the firearm safely.

Penalty: ^**insert units**^ penalty units.

(4) The pilot in command or operator may impose a condition as to stowing the firearm, or any other condition necessary for the safety of the aircraft, or anybody on board it or on the ground.

(5) The person who carries the firearm must comply with such a condition.

Penalty: ^**insert units**^ penalty units.

(6) Nothing in this regulation affects any law of a State or Territory about the possession or carrying of firearms.

(7) An offence against subregulation (1), (3) or (5) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Division 103.B.8 Sport aviation flight training operations

103.380 Applicability of this Division

This Division applies to sport aviation flight training operations.

103.390 Requirements for training

(1) An operator or instructor may only give sport aviation flight training using an aircraft:

(a) under the supervision of an operator who is authorised by the relevant RAAO; and

(b) by an instructor who is qualified in accordance with the procedures manual of the relevant RAAO; and

(c) in accordance with the procedures manual of the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.400 Occupants of aircraft

(1) The operator and the pilot of an aircraft, other than a balloon, that is being used for sport aviation flight training must ensure that the aircraft carries no passengers.

Penalty: ^**insert units**^ penalty units.

(2) For subregulation (1), ***passenger*** means a person who is neither the instructor nor the person receiving the instruction.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Subpart 103.C Amateur-built, kit-built and experimental LSA and limited flight status aircraft — limitations

Division 103.C.1 General

103.401 Applicability

(1) This Subpart applies in relation to the following:

(a) an amateur-built aircraft;

(b) a kit-built aircraft;

(c) an experimental light sport aircraft;

(d) a production-built aircraft that is not being maintained in accordance with its manufacturer's instructions;

(e) an aircraft that is being tested following major modification or major repair;

within the respective meanings given those expressions in Part 21 and regulation 103.105.

Division 103.C2 Aircraft that do not have limited flight status

Note: see regulation 103.020 for ***limited flight status.*** The rules in this Division apply to an amateur-built or kit-built aircraft, or an experimental LSA or other aircraft that has an experimental certificate under Part 21 (or similar provisions for aircraft not subject to Part 21 that a RAAO has authorised to fly). It relates to aircraft that have completed a test period, including low-momentum ultralight aeroplanes.

103.404 Flight over closely-settled areas

(1) A person must not operate an aircraft to which this subpart applies over a closely settled area unless CASA or the relevant RAAO has authorised that aircraft to be flown over such an area, and must observe any conditions directed by CASA or the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.407 Balloons at night

(1) A person must not operate a balloon to which this subpart applies at night unless CASA or the relevant RAAO has authorised that balloon to be flown at night, and must observe any conditions directed by CASA or the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.409 Limitation on flight training

(1) The operator, owner and instructor must each ensure that flight training in the aircraft is given only to the owner or builder of the aircraft, or if more than 1 person owns or built the aircraft, each individual who is an owner or builder of the aircraft.

Penalty: ^**insert units**^ penalty units.

Note: AC/AMC 103.395-1 will identify that the intent of this regulation is to permit individual natural persons to be trained in an aircraft they collectively built or own, but to preclude an aircraft that is owned by a corporate owner from being used for the training of members or shareholders of that corporation.

(2) Subregulation (1) does not apply if the aircraft is a gyroplane or powered parachute and the relevant RAAO has approved the use of the aircraft for flight training of persons who are not the owner or builder of the aircraft.

Note: this recognises the lack of availability of suitable production-built gyroplanes or powered parachutes at the present time and is consistent with overseas practice. In time it is likely that suitable special LSA aircraft, or kit-assembled LSA aircraft, will become available for training.

(3) A person may be given sport aviation flight training in the aircraft if the person already holds a qualification, other than a student pilot certificate, that entitles him or her to fly as pilot in command of an aircraft of the same category or class.

(4) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.411 Air Experience passengers not to be carried

(1) An aircraft to which this subpart applies, other than a gyroplane or a powered parachute that has been approved by the relevant RAAO as being suitable for flight training of persons who are not the owner or builder of the aircraft, must not be used for the carriage of passengers under paragraph 103.010 (1)(b) *[air experience passengers]*.

Penalty: ^**insert units**^ penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Division 103.C.3 Aircraft with limited flight status — limitations

103.415 Where limited flight status aircraft can be flown

(1) A person must not operate an ~~a~~aircraft that has limited flight status outside the test area assigned to it under regulation 103.417.

Penalty: ^**insert units**^ penalty units.

Note: 1. This may be an aircraft that is being tested following modification or repair, or an amateur-built or kit-built aircraft.

2. If the aircraft is subject to Part 21, it can be granted a temporary flight permit under regulation 21.200.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.417 Assigning test area

(1) A test area may be assigned to an aircraft by the relevant RAAO, CASA or an authorised person.

(2) The area:

(a) may include a closely-settled area only to the extent necessary to allow the aircraft to conduct safe arrivals and departures from an aerodrome, or other place, where it is permitted to land and take off; and

(b) must otherwise be over open water or in a sparsely populated area, and in an area that has light air traffic.

103.421 Limited flight status aircraft — restrictions on use

(1) An aircraft that has limited flight status may be used only for:

(a) any flight that is necessary to complete its test program, carrying only persons needed for the program; or

(b) the personal transportation of its owner or its test pilot.

Penalty: ^**insert units**^ penalty units.

(2) Paragraph (1) (a) does not prevent the aircraft being used to participate in a competition if the participation forms part of the test program.

(3) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

103.427 Limited flight status aircraft — limitation on flight training

(1) An aircraft that has limited flight status may not be used for the purpose of flight training.

Penalty: ^**insert units**^ penalty units.

Note: Refer to regulations 103.390 and 103.409 for limitations applicable to flight training.

(2) An offence against subregulation (1) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

Subpart 103.M Maintenance

103.440 Maintenance standards for aircraft

(1) The maintenance standards for an aircraft that is administered by an RAAO are the standards set out in the procedures manual of the relevant RAAO.

[The SCC Sport & Rec Subcommittee recommends that the relevant RAAO standards are the standard that CASA should adopt for maintenance of CASA-administered aircraft. Part 42 may not contain standards relevant to gliders or balloons. It is proposed that CASA standards for the maintenance of balloons will be contained in Part 115B.]

(2) The maintenance program for a glider or a balloon that is administered by CASA consists of the requirements that are set out in the manufacturer's manual, plus any directions issued by CASA under regulation 103.451.

103.448 Maintenance of aircraft

(1) A person who operates an aircraft must not permit it to be flown unless it has been maintained to the standards mentioned in regulation 103.440.

Penalty: ^**insert units**^ penalty units.

(2) A person must not act as pilot in command of an aircraft unless it has been maintained to the standards mentioned in regulation 103.440.

Penalty: ^**insert units**^ penalty units.

(3) A person must not carry out maintenance on an aircraft that is registered with an RAAO unless that person is qualified, or is directly supervised by a person who is qualified to supervise the maintenance, in accordance with the procedures manual of the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(4) A person must not carry out maintenance, other than approved pilot maintenance, on an aircraft that is registered by CASA under Part 47 and administered by an RAAO, unless that person holds an appropriate qualification issued by the relevant RAAO.

Penalty: ^**insert units**^ penalty units.

(5) A person must not carry out maintenance, other than approved pilot maintenance, on an aircraft that is administered by CASA unless that person holds an appropriate AMS certificate issued by CASA.

Penalty: ^**insert units**^ penalty units.

(6) An offence against subregulations (1), (2), (3), (4) or (5) is an offence of strict liability.

103.451 CASA may give directions about maintenance

(1) For the purpose of ensuring the safety of air navigation, or the safety of a particular flight operation, CASA may give a person a direction about how an aircraft must be maintained.

Note: 1 The procedures manual of an RAAO may allow an officer of the RAAO to issue instructions relating to the maintenance of aircraft.

2 Part 149 will provide CASA with the ability to require an RAAO to include in its procedures manual matters relating to the maintenance of aircraft that it administers.

(2) The direction may require the aircraft to be maintained in a particular way for the purpose of a particular flight operation.

(3) A person must comply with a direction given by CASA under subregulation (1).

Penalty: ^**insert units**^ penalty units.

(4) An offence against subregulation (3) is an offence of strict liability.

Note: for ***strict liability***, see section 6.1 of the *Criminal code.*

[2] Dictionary, Part 1

insert the following definitions in the appropriate alphabetical positions (determined on a letter-by-letter basis):

AMSL means above mean sea level.

controlled aerodrome has the same meaning as in the Air Services Regulations.

fly-in means an aviation event that is not open to the general public.

Limited flight status – see regulation 103.020.

MTOW means maximum take off weight.

Test program – see regulation 103 025.

Unrelated person or building – see regulation 103.271.

[3] Regulations 200.001, 200.002, 200.003, 200.004, 200.005, 200.013 and 200.014

omit

[4] Dictionary, Part 2, after …

insert

x References to pilot in command

In these Regulations, a reference to the pilot in command of an aircraft is, in relation to an aircraft that is carrying only 1 pilot, a reference to that pilot.

Notes

The implementation of these rules will also render the existing CAOs that relate to sport and recreational aircraft redundant, and these can be repealed when the Part takes effect.

Affected CAOs are:

95.4
95.8
95.10
95.12
95.12.1
95.14
95.32
95.54
95.55

Note: These changes will not necessarily cause the repeal of CAO 95.4.1, but some changes may be necessary for it to continue to operate.

Please forward your response to CASA by *19 February 2007* *(or as advised in the Part 149 NPRM)* by one of the following means:

Online (preferred method)
rrp.casa.gov.au/respond

Fax
To: Regulatory Documentation Coordinator
1800 653 897 (free call) or international +612 6217 1691

Post (no stamp required in Australia)
Reply Paid 2005
Regulatory Documentation Coordinator
CASA's Regulatory Development Management Branch
Canberra ACT 2601, Australia

E-mail (use the response format in this NPRM)
nprm0603os@casa.gov.au

Additional information is available from:

Mike Cleaver, CASR Part 103 Project Manager

Post (no stamp required) Reply Paid 2005
Civil Aviation Safety Authority
Canberra ACT 2601, Australia

E-mail mike.cleaver@casa.gov.au

Telephone: 02 6217 1752 or 131 757 (for the cost of a local call)
International +61 2 6217 1752

Fax: 02 6217 1757
International +61 2 6217 1757