



# SUMMARY OF CONSULTATION



## Approved self-administering aviation organisations

Civil Aviation Legislation Amendment (Part 149) Regulation 2018



<b>Date</b>	December 2018
<b>Project number</b>	SS 99/05
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## Overview

CASA NPRM 1502SS, including consultation drafts of the proposed Part 149 of the *Civil Aviation Safety Regulations 1998* (CASR) and the proposed Part 149 Manual of Standards (MOS), was published on the CASA website for consultation between 22 August and 21 October 2016. At the request of the Australian Airports Association and Recreational Aviation Australia, the consultation period was extended to 28 October 2016.

## Key proposals

The Notice of Proposed Rule Making (NPRM 1502SS) – Approved self-administering aviation organisations, published on 22 August 2016, outlined seven key proposals.

### Key Proposal 1

Extension of the self-administration regime to a wider field of activities in which the potential advantages of such arrangements may exist—for particular sectors of the aviation industry, prospective ASAOs and CASA alike.

### Key Proposal 2

Devolution of detailed provisions from the regulation to the Part 149 Manual of Standards.

### Key Proposal 3

Change management procedures to be specified in an ASAO's exposition.

### Key Proposal 4

Applicants for an authorisation to provide specified safety-related information to the issuing ASAO and to CASA.

### Key Proposal 5

CASA to have powers under Part 149 of CASR to request an ASAO vary, suspend or cancel an authorisation.

### Key Proposal 6

Surrender of documents by an ASAO ceasing operations and interim transfer of administrative control to another ASAO or CASA.

### Key Proposal 7

Information relating to registration of aircraft/authorisations issued by ASAOs to be made available to CASA, but not necessarily to the public.

## Responses

Table 1 summarises the kinds of responses received during the public consultation phase:

Table 1: Survey response	Total
Blank or incomplete online survey responses	153
Completed online survey responses, including: - useable responses (survey completed, written responses entered) - unusable responses (survey completed but no written input on proposals)	62 3
Of the 62 useable online responses: - sport aviation organisation responses - GFA member responses (including 30 form responses) - other parties	5 47 10
Offline written submissions, including: - from sport aviation organisations - from individuals and non-sport aviation organisations	8 6

Table 2 provides a breakdown of the 62 useable online submissions received in relation to the key proposals described in the NPRM.

Table 2: Response to key proposal 1 to 7	KP1	KP2	KP3	KP4	KP5	KP6	KP7
Acceptable without change <sup>1</sup>	47	48	49	48	49	48	50
Acceptable with change	4	3	3	4	3	5	5
Not acceptable under any circumstances	7	6	5	5	6	5	4
Not applicable	3	3	3	3	3	3	2
Nil response	1	2	2	2	1	1	1

The responses received were generally supportive of the key proposals and those that provided significant written comment are noted below. Some responses resulted in amendments to the draft provisions.

### **Key proposal 1 – Extension of the self-administration regime to a wider field of activities in which the potential advantages of such arrangements may exist—for particular sectors of the aviation industry, prospective ASAOs and CASA alike**

Two individuals and the ASAC, ABF, GFA, APF, HGFA, MAAA, HCAPA and RAAus supported the extension of Part 149 of CASR as a positive self-regulation framework that can deliver better safety outcomes.

Two individuals commented that self-administration is viewed by a high percentage of the industry as not being a regulation and is motivated by CASA attempting to avoid responsibility for non-commercial aviation.

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<sup>1</sup> 29 acceptable without change GFA form responses for KP6, 30 for all others

### **Key proposal 2 – Devolution of detailed provisions from the regulation to the Part 149 MOS**

Three individuals and the GFA, SAAA, ASAC, APF ASRA, MAAA and RAAus supported the three-tiered approach to regulatory structure and the agreed with the use of the MOS.

### **Key proposal 3 – Change management procedures to be specified in an ASAO's exposition**

HCAPA, ASRA, APF, ASAC, MAAA and SAAA supported the change management process being specified in the ASAO's exposition.

One individual stated that change management activities are poorly handled by CASA and change management should not be overseen, directed, or reviewed by CASA.

### **Key proposal 4 – Applicants for an authorisation to provide specified safety-related information to the issuing ASAO and to CASA**

One individual noted information sharing will give all sides comfort, whereas another individual stated information sharing rules should be justified on a risk management basis. ASAC, APF, MAAA, SAAA, GFA, ASRA and RAAus supported the proposal.

### **Key proposal 5 – CASA to have powers under Part 149 to request an ASAO vary, suspend or cancel an authorisation**

Three individuals agreed in principle that these powers are important and should be subject to consultation with an ASAO. GFA, ASRA, SAAA, APF, ASAC. RAAus also supported the proposal provided there is transparency in communication.

### **Key Proposal 6 – Surrender of documents by an ASAO ceasing operations and interim transfer of administrative control to another ASAO or CASA**

Four individuals supported the provision of documents, with one stating that these should be provided to CASA only. Another stated this would streamline the new application (for a replacement ASAO). One individual noted that some copyrighted documents might be difficult to transfer. The APF, SAAA, ASAC, GFA and RAAus supported this proposal. The MAAA did not support the proposal on the basis that it would not want another organisation to make use of its manuals.

### **Key Proposal 7 – Information relating to registration of aircraft/authorisations issued by ASAOs to be made available to CASA, but not necessarily to the public**

One individual supported this proposal, two individuals and ASAC expressed concern about the registration information being made public. GFA, ASRA, RAAus and SAAA supported the proposal in principle.

## CASA's response

The detailed submissions, CASA's responses and actions can be reviewed at Appendix A for responses relating to key proposals and the NPRM preamble and Appendix B for responses relating to specific Part 149 regulations and the exposure draft Part 149 MOS.

CASA has considered the suggested changes to the regulations. As outlined in the appendices under the headings 'CASA's disposition', CASA has indicated the amendments made to the regulations.

## Notice of final rulemaking

Part 149 was made on 12 July 2018 and was registered on the Federal Register of Legislation on 13 July 2018.

The Part 149 MOS underwent additional legal drafting and industry stakeholders received a briefing on the MOS at a meeting in Canberra on 06 August 2018. Industry provided feedback on the MOS at this meeting and, following further legal drafting to address industry suggestions, the Part 149 MOS underwent additional public consultation between 21 September 2018 and 21 October 2018. The Summary of Consultation for the Part 149 MOS (CD 1710SS) is published simultaneously with this SOC.

## Implementation and transition

Part 149 will commence on 14 July 2019 unless commenced earlier by notifiable instrument. Existing organisations will have three years to become Part 149 ASAOs, after which they will need to apply for an exemption from CASA if they wish to continue to operate.

In the 18-month period after commencement, CASA will waive the fees for existing sport aviation bodies to include activities as approved functions in a Part 149 exposition if the organisation has existing CASA approval to administer activities that are the same in substance as the activity to be administered as a Part 149 function. That is, existing sport aviation bodies will be able to transition existing delegated activities to approved functions on a like-for-like basis, without incurring a charge from CASA for reviewing and approving the activities transferred to their exposition.

If an existing sport aviation body wishes to transition to Part 149 and simultaneously include in their exposition additional activities as new approved functions (where an existing approval is not held for those additional activities), then CASA will recover costs in relation to the inclusion of the additional activities. A sport aviation body that transitions after the 18-month transition period would be subject to full cost recovery in respect of all its functions and activities. Whether extant or new, an organisation that does not currently hold any CASA approvals for any form of self-administration will be subject to full cost recovery.

At the end of the three-year period following commencement, an existing sport aviation body that has not become a Part 149 ASAO will need to apply for an exemption from Part 149 in order to continue to operate.

## **Appendix A**

### **Summary of consultation on key proposals**

## **Key proposal 1 – Extension of the self-administration regime to a wider field of activities in which the potential advantages of such arrangements may exist—for particular sectors of the aviation industry, prospective ASAOs and CASA alike**

### **Self-administration policy**

John Alldis (Alldis Aviation Advisory Services) stated:

The entire concept of self-administration is viewed by a high percentage of the industry as no regulation and the amount of reported and unreported poorly repaired and damaged aircraft under suspicious circumstances is well known.

Unannounced inspections by CASA on an irregular cycle is the only method that works.

Matthew Bambling stated:

I support the proposal for a positive self-regulation framework. This is an excellent start and would hope to see a closer relationship around rule and procedure development between RA and CASA evolve over time.

Respondent stated:

In the current form ASAOs have too much power and are abusive to their members are not responsive to their members unless there is a benefit such as responding to this Part 149 comment.

Arnold Geerlings stated:

Specific aviation sectors vary due to their inherent operational differences. Allowing more self-regulation increases safety and operational efficiencies, thus I support increasing this self-management spectrum.

Peter Thomas stated:

This proposal appears to be motivated by CASA attempting to avoid responsibility for non-commercial aviation.

Air Sport Australia Confederation stated:

The combination of the Industry Organisation and CASA can deliver better safety outcomes. Accordingly, extension of the application of self-administration must not be allowed to dilute the essential principle of self-administration in order to allow its application in a field not suited to this approach....

ASAC believes all self-administering organisations must the requirement that the combination delivers better safety outcomes than CASA on its own....

### **CASA's response**

Under the *Civil Aviation Act 1988* (the Act) CASA has the function of conducting the safety regulation of civil air operations in Australian territory. Part 149 provides a uniform regulatory framework for self-administration and will form an integral part of this approach by encouraging the aviation industry to maintain high standards of aviation safety.

CASA's policy is that an applicant for an ASAO certificate must demonstrate to our satisfaction that their organisation possesses the appropriate capability and capacity to conduct the aviation administration functions set out in their exposition. Any instances of potential non-reporting of defect issues should be raised with CASA or a CASA regional office.

CASA can only grant an ASAO certificate in accordance with the provisions of regulation 149.075 of CASR. If an ASAO certificate is issued, CASA may approve only those functions for which the applicant has met the requirements of regulation 149.075. Part 149 also includes provisions to ensure an acceptable level of aviation safety is consistently upheld by all ASAOs. Regulation 149.085 of CASR sets out the conditions that apply to each certificate and regulation 149.340 of CASR specifies the minimum requirements that must be included in an ASAO's exposition.

Not all ASAOs will apply for the same aviation administration functions and the authorised functions of any particular organisation may change over time. A Part 149 exposition provides a flexible mechanism by which ASAOs can develop processes and procedures applicable to the aviation administration functions that they have the capability and capacity to perform, while maintaining a level of aviation safety that satisfies CASA. This flexibility allows an ASAO to apply for approval to conduct further aviation administration functions as they gain the capacity and capability to undertake these functions safely. Overall, CASA anticipates developing a more collaborative relationship with the ASAOs as they establish greater capability and capacity to service an increased scope of aviation administration functions and incorporate those respective processes and procedures into their expositions.

CASA is of the view that the relationships between ASAOs and their members/affiliates are governed by the respective constitutions, articles or rules of those organisations. CASA's interest in this is limited to:

- maintaining freedom of affiliation both with the ASAO and with associated organisations that are authorised by the ASAO to act on its behalf
- ensuring that ASAOs are able to oversee their authorisation holders such that they are unlikely to have an adverse effect on the safety of air navigation
- ensuring ASAOs have due regard to natural justice and procedural fairness when taking enforcement and related action against an authorisation holder.

## **AME training**

John Alldis (Alldis Aviation Advisory Services) stated:

The situation created by the plethora of "self-administered" operators that are competing on the open market with CASA regulated organisations is driving the good operators out of business. It should be no surprise that there are very few AME apprentices in training. The ill-considered EASA incorporation of licencing for LAMES and the Cat A limits that prevent a seamless transfer to the B class licence that is still not settled has the industry in a mess.

## **CASA's response**

Although unrelated specifically to this NPRM, CASA is addressing regulatory issues with AME training. In July 2016, CASA approved project [MS16/05](#) (*Post implementation review of CASR Part 66 - Continuing airworthiness - aircraft engineer licences and ratings*), to review the

requirements for aircraft maintenance engineer licences and ratings. Following the postponement of the small aircraft licensing changes, a priority of this project is to address the issues identified with the previous proposal and provide a small aircraft licensing system that is more efficiently integrated into a progressive licensing system.

### **Arrangements for a defunct ASAO**

Respondent stated:

Concerns regarding the ASAO becoming defunct. I understand from the NPRM that individuals are able to apply for an ASAO.

### **CASA's response**

CASA expects that most, if not all, ASAOs will be corporate entities, although individuals may apply for and hold an ASAO approval. These entities will only receive an ASAO approval if CASA is satisfied they are able to maintain the organisational structure, capability and capacity necessary to perform their approved aviation administration functions and comply with the regulations (including the surrender provisions of regulation 149.550 of CASR).

A small ASAO or individual operating as an ASAO will only be authorised to administer a correspondingly limited set of aviation administration functions—those that it has the capacity and capability to administer—which could readily be assumed by another individual or organisation taking on the functions of that ASAO. If necessary, further safeguards include provision for CASA to assume direct regulatory oversight of the functions of a defunct ASAO in order to maintain aviation safety until such time as another ASAO could assume the functions.

### **Arrangements for existing RAOs**

Air Sport Australia Confederation stated:

The suggestion that an RAO not wishing to become a Part 149 organisation continue under more conventional forms of regulatory oversight is totally unacceptable to ASAC and the ASAC organisations on safety grounds. Such an approach cannot avoid the development of competition bases upon minimisation of surveillance and safety standards.

The Australian Parachute Federation stated:

The APF agrees approved self-administering aviation organisation model, supported by an appropriate manual of standards and individual organisational expositions is the preferred option.

The APF has no objection to CASA extending the self-administration regime to a wider field of activities provided the regulation does not compromise or inhibit how ASAOs will operate....

The APF holds the view that allowing RAOs not wishing to embrace Part 149 but establish alternative arrangements to continue under more conventional forms of regulatory oversight has the potential to permit different standards to apply across the same discipline. This is not acceptable....

CASA should not allow one organisation to operate to Part 149 and another serving the same sector to have alternative arrangements.

Gliding Federation of Australia stated:

Key proposal 1 is acceptable without change.

Recreational Aviation Australia stated:

RA-Aus has no in-principle objections to the proposal to allow a wider range of activities to be administered by private sector organisations. We do, however, take issue with different requirements being made applicable to different players in the sector....

A uniform regulatory framework applying to all participants is a key requirement to providing equality in the sector. It is our view that having a confusing and complex set of standards applying to various players will perpetuate a lack of transparency and openness.

Sport Aircraft Association of Australia stated:

SAAA agrees that approved self-administering aviation organisation model, supported by an appropriate manual of standards and individual organisational expositions is the preferred option.

It is our view that that potentially allowing another organisation to conduct similar activities under an alternative arrangement would not be beneficial.

Honourable Company of Air Pilots, Australia stated:

It is incumbent on the regulator to apply its oversighting responsibilities fairly and consistently. We strongly support these regulatory principles. CASA must use its powers to direct self-administering organisations in line with these principles, in particular to consult fully prior to taking any action.

The Illawarra Flyers Inc. stated:

The Illawarra flyers support CASA extending the self-administration regime to a wider field of activities.

The Illawarra flyers support allowing current RAOs not wishing to embrace Part 149 to establish alternative arrangements provided such arrangements are transitional in nature and/or that RAO is the only RAO/ASAO covering that sector.

### **CASA's response**

Existing RAOs operate in accordance with their respective deeds of agreement and under instruments of delegation held by the organisations' officers, as well as applicable civil aviation legislation. The procedures and processes that an RAO follows are usually transparent as these organisations make their operations, procedures and technical manuals publicly available via their websites. CASA welcomes further discussion with Recreational Aviation Australia to understand the basis for the claims that the Part 149 rules will perpetuate a lack of transparency and openness.

Existing RAOs that do not wish to become Part 149 ASAOs may continue to service their members and authorisation holders in accordance with the provisions of their existing delegations. They can operate in accordance with the functions and procedures contained in their approved manuals. At the end of the three-year period following commencement, such an organisation would need to apply for an exemption from Part 149 in order to continue to operate. Each application for exemption would be considered by CASA on its merits. To ensure the

safety of air navigation, any exemption approved by CASA from the requirement to hold an ASAO certificate to perform an aviation administration function, will be subject to conditions that will set out the privileges and limitations on the organisation's functions and activities. If an application for exemption is approved, the approved functions and activities will be limited, at best, to those currently approved by CASA for the RAAO. As the provisions of these approvals and their associated safety regimes to existing RAAOs are well established, CASA considers that a compliant non-transitioned RAAO will continue to maintain an acceptable level of aviation safety so long as the aviation environment, conditions and systems in which the RAAO operates remains unchanged.

Approval under an exemptions regime will be subject to the RAAO being the only non-transitioned organisation operating in a particular aviation administration sector and its ongoing adherence to maintaining an acceptable level of safety. If another organisation applies for an ASAO certificate in the same sector in which a non-transitioned organisation is operating under an exemption and CASA is satisfied that it would grant the ASAO certificate to the applicant in accordance with regulation 149.075 of CASR but for the requirement in subregulation 11.055(1A) in relation to an adverse effect on the safety of air navigation and the adverse effect would result from the granting of the certificate resulting in more organisations active in the sector than CASA would otherwise limit in accordance with regulation 149.060, CASA will repeal the exemption of the non-transitioned organisation before granting the certificate to the applicant.

Once the transition period for Part 149 has ended, an exempted RAAO that wishes to expand the scope of its aviation administration functions beyond those approved under the terms and conditions of its exemption, or issue new or additional kinds of authorisations, will need to become a Part 149 ASAO.

CASA has no intention of deliberately compromising parachuting operations. Administration of parachuting activities under the proposed Part 105 of CASR will be a defined aviation administration function under Part 149. This means that an applicant seeking to operate under proposed Part 105 would also need to be a Part 149 ASAO.

Refer also to CASA's response at *Multiple ASAO arrangements* under the *NPRM Preamble* section of this SOC.

### **CASA's disposition**

If necessary, at the end of the three-year transition period, CASA will implement an appropriate and properly conditioned exemptions regime to permit non-transitioned RAAOs to continue to operate as outlined above, provided that issuing the exemption would not be likely to have an adverse effect on the safety of air navigation.

### **Funding arrangements**

Peter Cesco stated:

Funding agreements must be pre-agreed before completion of Part 149 activities and changes. Activities that are required to be conducted by CASA, but are, for efficiency and productivity reasons conducted by ASAO's should have agreed funding and no charge.

## **CASA's response**

CASA has negotiated deeds of agreement with a number of sports aviation bodies and recreational aviation administration organisations (RAAOs) to help them to meet the costs of performing certain self-administration functions set out in their Statement of Expectations. These agreements are separate from the instruments of delegation held by these organisations and/or their office bearers. CASA recognises that the focus, scope and nature of these self-administration functions may undergo some degree of change when an organisation seeks to become a Part 149 ASAO.

Deeds of agreement include provisions for amending the statement of expectations. CASA expects that an organisation applying for the issue of an ASAO certificate will identify certain aviation administration functions that it considers are not covered by the existing statement of expectations and seek agreement with CASA for a new statement of expectations. In the meantime, CASA in collaboration with the Department of Infrastructure and Regional Development, will continue to explore possible funding arrangements.

## **Key proposal 2 – Devolution of detailed provisions from the regulation to the Part 149 Manual of Standards**

### **General comments**

Matthew Bambling stated:

A necessary part of the reform.

Arnold Geerlings stated:

Devolution relieves government organisations work load and generally improves overall efficacy as long as the recipient organisation is mature and seriously seeking safety and efficiency.

Peter Cesco stated:

Detailed provisions should take into account the long, stable and effective history of some ASAO's, and their abilities to conduct effective and efficient activities in a more cost effective manner than CASA.

Gliding Federation of Australia stated:

Key proposal 2 is acceptable to the GFA without change.

Sports Aircraft Association of Australia stated:

The SAAA accepts the sound logic of the three tiered approach to regulatory structure and the validity of the use of the MOS.

## **CASA's response**

CASA acknowledges that some sports aviation organisations have a long history of self-administration and recognises that self-administration is an effective alternative to more conventional regulatory approaches. On that basis, Part 149 has been drafted to provide an optimal devolved regulatory framework for a wider field of aviation-related activities and operations.

CASA expects that the ASAO provisions in Part 149 will lead to improved safety outcomes in these organisations. Part 149 enables a greater delivery of services by ASAOs, through a broader scope of approved aviation administration functions that are directly relevant to their members.

### **Provisions to be outcome-based**

Air Sport Australia Confederation stated:

ASAC and the ASAC organisations strongly support the view that Part 149 needs to be outcome based to the maximum extent possible....

ASAC believes the Part 149 regulations should only contain those matters necessary to define the regulatory relationship between CASA and the organisation and to meet the requirements placed on the sector by the Act.

ASAC believes that the specifics of each self-administering organisation are so different that even the MOS needs to be entirely outcome based. Specific requirements would be detailed in the individual exposition as required to achieve the outcomes specified in the MOS. If this is achieved, it is difficult to see how changes in technology etc., would require changes to the MOS...however if changes are required the protection provided by the fact that the MOS is a disallowable document would be sufficient.

Australian Parachute Federation stated:

The regulation...should specify only those requirements to protect other airspace users, persons and property on the ground and meet CASA's responsibilities under the Act.

The Part 149 regulations need to be outcome based. Anything that could inhibit opportunities and practices should be relegated to the MOS.

References in the regulation to the MOS must have a corresponding entry in the MOS. Amendments to the MOS must be consulted.

Model Aeronautical Association of Australia stated:

It is important for the MOS to be specifically drafted for each ASAO due to the diversity of operations.

Australian Sports Rotorcraft Association stated:

Acceptable with change.

ASRA believes that pushing process and detail into the expositions gives each organisation the best opportunity to create and manage a regulatory environment that meets their needs.

Recreational Aviation Australia stated:

Given the nature of Part 149 and its applicability to multiple ASAOs which may vary significantly in structure, it is critical that the MOS and its contents remain at a strategic level and are written in an outcome based manner.

## CASA's response

CASA's regulations are drafted in accordance with [DAS Directive 01/2015](#)<sup>2</sup>, with the intention that the regulations will give effect to intended safety outcomes. Where known or likely safety risks cannot be addressed effectively using an outcome-based approach (in whole or in part), more prescriptive requirements will be specified. This principle also applies to the Part 149 MOS.

Part 149 is drafted using this flexible, outcome-based approach, in that it allows ASAOs to define their own organisational outcomes if CASA is satisfied that an acceptable level of aviation safety is maintained. It achieves this by permitting an ASAO to specify in their exposition:

- activities they wish to administer
- procedures they will follow to effectively administer the activities
- processes they will use to make changes.

Where Part 149 contains prescriptive requirements, these are considered to be necessary to enable CASA to perform its functions under the Act.

CASA envisages that the Part 149 MOS would be revised to incorporate aspects unique to the aviation administration functions of individual organisations, particularly during the transition period. The Part 149 MOS would also be updated to address innovative aviation activities and new technologies that require regulatory oversight. Any future changes to the Part 149 MOS will be subject to CASA's normal public consultation process.

## Acceptable levels of safety and risk

Honourable Company of Air Pilots, Australia Inc. stated:

We consider that the standard called up by 11.055 (1B) is the correct and appropriate level of safety to be applied to the kind of activities that CASA elects to co-regulate – an “acceptable” level of safety. Guidance material as to what statistical risk is considered “acceptable” should be embodied in at least guidance material if not the MOS. Whilst an ASAO may choose for itself to aim for a lesser risk (higher level of safety) – and perhaps a different level of risk depends on the nature of the activity itself – it should be the prerogative of CASA to determine and publish what level of risk is “acceptable” in conjunction and consultation with stakeholders including “informed participants”.

## CASA's response

CASA must be satisfied that the aviation administration functions of an ASAO are not likely to have an adverse effect on the safety of air navigation. An application for an approval to operate as an ASAO will be assessed against the generally applicable standard in subregulation 11.055(1A) of CASR. This requires CASA to grant the approval if doing so ‘would not be likely to have an adverse effect on the safety of air navigation’. Refer also to CASA's response at *The standard of assessment for ASAO approval* under the *Part 149 Regulations and MOS* section of this SOC for an explanation of this approach.

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<sup>2</sup> A full list of DAS Directives is available at <https://www.casa.gov.au/publications-and-resources/standard-page/directives-and-policies>.

## Industry best practice

The Illawarra Flyers Inc. stated:

Sharing of best practices between the various ASAOs should be strongly encouraged by CASA across the various ASAOs.

### CASA's response

CASA has a safety-related function<sup>3</sup> to encourage a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety. This includes:

- the provision of safety education and training programs
- accurate and timely aviation safety advice
- fostering awareness in industry management and within the community generally, of the importance of aviation safety and compliance with relevant legislation.

CASA considers that a prerequisite for continuing aviation safety is ongoing cooperation and information sharing between ASAOs, particularly those operating in the same or closely related sectors. To ensure aviation safety, CASA expects prospective and/or current ASAOs to reach information sharing agreements, which will form part of an ASAO's exposition.

### CASA's disposition

CASA has incorporated in Part E of the Part 149 MOS, which prescribes requirements for the content of an exposition, a provision that an ASAO must provide, if required by CASA, copies of all agreements reached between the ASAO and other ASAOs operating in the same sector that describe the information sharing arrangements and operational co-operation procedures between the ASAOs.

## Key proposal 3 – Change management procedures to be specified in an ASAO's exposition

### Include aircraft operating and maintenance rules in the Part 149 MOS

The Honourable Company of Air Pilots, Australia Inc. stated:

Given the current state of discussions about what rules will be required in CASR Part 103 or 105 and what aircraft operating and maintenance rules are to be contained in the organisation's exposition, should these not be identified as items to be included in the exposition and not varied without approval by CASA? Or an identification in the exposition that CASR Part 61, Part 91 or Part 43 rules apply to these aircraft.

Operating, certification and maintenance requirements for most aircraft operated by RAOs are included in the Part 95 Civil Aviation Orders (CAOs), which provide exemptions from the requirements of the *Civil Aviation Regulations 1988* and the *Civil Aviation Safety Regulations 1998* subject to certain conditions. Those conditions include the need to operate and/or maintain aircraft in accordance with RAO operational regulations, technical manuals or manuals of standard procedures that form part of the suite of documents that, subject to CASA's approval,

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<sup>3</sup> Under subsection 9 (2) of the *Civil Aviation Act 1988*.

would be included in an ASAO's exposition. The requirements of the Part 95 CAOs will be incorporated within their respective CASR Parts when those Parts are made.

### **Change management process - exposition and CASA oversight**

Australian Sports Rotorcraft Association stated:

ASRA believes that pushing process and detail into the expositions gives each organisation the best opportunity to create and manage a regulatory environment that meets their needs.

The Illawarra Flyers Inc. stated:

The Illawarra Flyers support the change management process being specified in the ASAO's exposition.

Peter Cesco stated:

Change management activities are poorly handled by CASA and change management should not be overseen, directed, or reviewed by CASA. The risk management outcomes should be responsibility and managed by the ASAO.

Australian Parachute Federation stated:

The APF accepts that change management should be specified in the ASAO's exposition and that changes made in accordance with the procedures described (in the approved exposition) will not need prior CASA approval before the change is implemented....

CASA will be asked to accept an exposition that describes the organisation and then references all the documents that collectively contain the regulations, policy, procedures and processes that define and proscribe how the organisation operates. In most cases, change would be to the referenced documents and CASA would be advised of the change so it might review the referenced documents....

Changes will be to an already approved set of documents - and many of the documents previously not seen by CASA will be referenced because this is necessary to fully describe the scope of operation of the APF in areas not previously of particular interest to CASA.

Air Sport Australia Confederation stated:

ASAC agree that this process must be defined (separately) in the individual Exposition - but clear guidelines are necessary to ensure that this important process meets the principles espoused throughout this response....

It is...not true that all 'technical and operational rules' are currently subject to approval by CASA. Many technical issues and rules are purely sporting and are not subject to approval by CASA under any circumstances. This Key Proposal needs to be suitably proscribed to include only those technical and operations issues which are safety related before it would be acceptable by ASAC and the ASAC Organisations....

Self-administering Organisations have limited expert resources - some of whom will also be volunteer officers. Also, on occasions, the Organisation may need to act promptly. Overly onerous and time-consuming approval processes will have a very significant negative effect on safety outcomes....

ASAC is of the view that the following classification is appropriate: Significant matters of safety affecting other airspace users and/or the public may justify prior approval.

## SUMMARY OF CONSULTATION ON APPROVED SELF-ADMINISTERING AVIATION ORGANISATIONS

Matters affecting the safety of participants and which are within the expertise of the Organisation should be decided by the Organisation and accepted by CASA and approved by the Board of the Organisation. Matters relating to sporting issues should be approved by the Board of the Organisation. The Board of the Organisation is then responsible and accountable for these decisions....

Where CASA insists on prior approval, then CASA must accept that their response must be prompt, take due regard for the expertise within the Self-administering Organisation, and not involve ongoing requests for information and/or changes as suggested may be the case in 149.115....

Finally, the ASAC Organisations believe that it is appropriate that CASA recognise that the Air Sport Organisations at least, already have a long track record in managing and improving safety standards, procedures and processes, and that considerable latitude is already justified

### Sports Aircraft Association of Australia stated:

The SAAA accepts need for change management processes to be specified within the organisation's Exposition provided that the processes are developed and approved on the basis that only significant changes require CASA involvement and that all other changes can be managed internally in accordance with the approved Exposition procedures.

### Model Aeronautical Association of Australia stated:

Key Proposal 3 requires each ASAO to include change management procedures in its exposition. CASA currently recognises MAAA policies and its Manual of Procedures but does not require MAAA to seek CASA's consent each time changes are made. Greater flexibility will assist MAAA to operate more efficiently, in particular in relation to Display Procedures and other exempt activities such as night flying. Therefore, MAAA submits that the regulations should be drafted in such a way that it would not be required to seek consent from CASA each time it amended or updated its Manual of Procedures or other policies. It is important for the MOS to be specifically drafted for each ASAO due the diversity of operations.

### **CASA's response**

In principle, CASA agrees that an organisation should administer exposition change processes, with the proviso that CASA must be satisfied with the integrity and suitability of these processes to ensure there is no likely adverse effect on the safety of air navigation.

Each applicant for an ASAO certificate must demonstrate to CASA's satisfaction that they possess the appropriate capability and capacity to administer the aviation administration functions set out in their exposition, including change management functions. Any change management activity that is recorded in an approved exposition as an approved aviation administration function will not require further approval by CASA. However, CASA must continue to be satisfied that an ASAO remains able to comply with the conditions of its ASAO certificate. If it should be necessary to do so, CASA is empowered to give directions to that end.

CASA agrees that the management of the organisational risk arising from the activities of an ASAO's members, affiliates and authorisation holders is the responsibility of the ASAO. However, as noted above, CASA must still fulfil its statutory obligation by maintaining oversight of an ASAO's risk management processes insofar as they pertain to ensuring the safety of air

navigation. CASA will manage this obligation by ensuring that an appropriate level of change management oversight is embodied in an ASAO's exposition.

The change management process is a key component of the exposition. However, CASA does not consider that the 'one size fits all approach' outlined by ASAC is appropriate. This is also recognised by ASAC, which, in its submission to key proposal 2, acknowledged that the 'specifics of each self-administering organisation are so different that specific requirements would be detailed in the individual exposition'. CASA considers that a change management process that is tailored to the capability and capacity of each organisation would be more productive and prudent for both the organisation and for CASA. This approach would take into consideration the risk profile of the aviation administration functions and recognise the organisation's proven capacity and capability to conduct these functions to an acceptable level of aviation safety.

Part 149 is designed to accommodate different kinds of organisations. It is not limited only to organisations administering currently recognised sport aircraft or pilot activities. This diversity of operations is evident with the existing RAOs, using aircraft ranging from model aircraft through to balloons, gliders, rotorcraft, and aeroplanes of varying sizes and complexity. The size, scope and complexity of the aviation administration functions conducted by these organisations varies greatly, even without considering the potential for further variation that may be introduced by new entrants (e.g. remotely piloted aircraft, aerodromes etc.). ASAOs will be able to tailor their approved functions in a way that both meets their needs and suits their capabilities through documenting, in their exposition, the detail of how they will administer their approved functions. CASA will collaborate with each organisation to ensure that their change management processes are acceptable and are incorporated in their exposition.

Under the current regulatory regime of exemptions and delegations, RAOs require CASA's approval to make changes to any operational or technical matters described in their manuals. These manuals essentially advise CASA how the organisation will conduct their operations and technical matters in accordance with the delegations and exemptions to the relevant conditions of the CAOs. CASA limits its involvement in sporting matters to situations that require some form of CASA approval (e.g. an air display approval) or investigating a safety concern that comes to CASA's attention.

Part 149 prescribes flexible outcome-based regulations that permit ASAOs to specify, in their exposition, the activities they wish to administer, the procedures they follow to achieve that outcome and the processes they use to make changes to those procedures. This is fundamentally different to the existing approval regime in that it provides a framework for ASAOs to manage and/or modify the processes used to administer their approved functions without necessarily seeking CASA approval. In seeking the greater autonomy of self-administration, self-administering organisations will need to demonstrate that they possess the capability and capacity to safely carry out the activities that comprise their approved functions. An ASAO's organisational processes must have sufficient rigour, and its management expertise must be consistently and continuously focused, to ensure that CASA remains satisfied that the integrity and suitability of these processes will preserve an acceptable level of aviation safety. CASA considers that, in the interest of improving safety standards (and as noted by ASAC), an approach to approving change processes that builds on demonstrated capabilities and the track record of an organisation is warranted.

CASA agrees that we should respond in a timely manner to an application for approval of an exposition change, and not unduly delay such approval. The 21-day decision requirement at subregulation 149.115 (3) is intended to help ensure such a timely response. However, CASA is also of the view that it is sensibly necessary for the regulation to provide for the provision of further information. CASA approval of exposition change management processes will be ASAO-specific.

CASA considers that it would be acceptable, in principle, for an exposition to describe the organisation and then reference all the documents that collectively contain the regulations, policy, procedures and processes of the organisation. However, it would be incumbent on the ASAO to ensure that the exposition is compliant with Subpart 149.C and Subpart 149.F, which pertain to expositions. An exposition held on file by CASA, that was submitted for approval on the prescribed form, bears the accountable manager's signature and has been approved by CASA and identified with reference to the ASAO certificate number issued (or reissued in the case of approved changes), will be the official record of the approved exposition. Any electronic version of the exposition would be expected to accurately reflect, at all times, the CASA approved version in respect of those items that require CASA approval. For changes to an exposition that do not require CASA approval, the electronic version may differ from the CASA approved version as long as notification of the changes is made to CASA within the period specified in the exposition. In order to prevent confusion as to what constitutes the current approved version of the exposition, an ASAO will identify the exposition by version number. Each exposition should include a revision history specifying previous version numbers, and either the date of CASA approval or the date CASA accepted the ASAO's change notification (for changes not requiring approval).

### **CASA's disposition**

CASA has amended regulation 149.340 to require that an exposition include the version number and a revision history table that specifies previous version numbers and the date of CASA approval, or the date CASA accepted the ASAO's change notification (for changes not requiring approval), for each version.

### **Fees charged by CASA to review an exposition**

Gliding Federation of Australia stated:

Part 149 requires CASA to review amendments to the Exposition and associated documents. GFA contends that such review is not undertaken as a 'service' but as an obligation pursuant to the Legislation, and that such functions should not be subject to the *'Civil Aviation (Fees) Regulations 1995'*. GFA would like to see this written into Part 149.

Recreational Aviation Australia stated:

RA-Aus has been troubled by the suggestion that CASA would charge for the review of documents and procedures that govern our operations. RA-Aus delivers significant value to the Government. Applying further charges penalises industry and discourages improvements to the system. The requirement to approve documentation places the burden of cost onto aviation users without recognition of the benefits that accrue to the wider community.

We are supportive of any move towards a hands-off regulatory approach that focuses on outcomes rather than inputs.

RA-Aus has an existing set of approved documents that would only require incremental changes and it is our position that these changes could be managed on a more fluid basis than the current regime that requires lengthy review by CASA.

### **CASA's response**

As required by regulation 149.075, CASA must be satisfied that the proposed exposition complies with regulation 149.340. Under Australian Government policy laid out in the Australian Government Charging Framework, CASA is required to adopt full cost recovery for providing regulatory services to the aviation industry. However, during the 18-month transition period, CASA will waive the fees for existing RAOs to include activities as approved functions in a Part 149 exposition, if the organisation (or an office-bearing individual of the organisation) has existing CASA approvals (instruments of delegation) to administer those activities. That is, existing RAOs will be able to transition delegated activities to approved functions on a like-for-like basis, without incurring a charge from CASA for reviewing and approving the activities transferred to their exposition.

If an existing RAO wishes to transition to Part 149 and simultaneously include additional activities as new approved functions in their exposition, when an existing approval is not held for those additional activities, then CASA will only recover costs in respect of the additional activities. An existing RAO that transitions after the 18-month transition period would be subject to full cost recovery. For an organisation that does not currently hold any CASA approvals, an application to become a Part 149 ASAO will also be subject to full cost recovery.

The majority, if not all, of the functions for which an ASAO may seek approval are functions that the ASAO is likely to deem necessary to administer for the benefit of its members and affiliates. Should any of these functions be administered by CASA, rather than an ASAO, they are or would be subject to cost recovery.

### **Appointment of ASAO management**

Respondent stated:

There must be direct elections for management positions of an ASAO by its members.

### **CASA's response**

An ASAO's arrangements for appointing officers are subject to CASA approval in that:

- the name of the person appointed to each of the ASAO's key personnel positions must form part of the ASAO's approved exposition
- the accountable manager and safety manager of an ASAO must meet the experience and qualification requirements set out in the ASAO's exposition.

It is also a regulatory requirement for the ASAO to ensure that its organisational structure effectively manages the ASAO's approved functions and that the ASAO has sufficient competent, qualified and trained personnel to perform the functions. Beyond this, the way in which an ASAO selects its officers is a matter for the organisation.

## Key proposal 4 – Applicants for an authorisation to provide specified safety-related information to the issuing ASAO and to CASA

### Responsibility for issue of authorisations

Matthew Bambling stated:

Would like to see the ASAO take more responsibility over time.

### CASA's response

CASA will issue ASAO certificates in accordance with regulation 149.075. The certificate will list the aviation administration functions that the ASAO is approved to conduct which may include the ability to issue authorisations. CASA expects that an ASAO will seek to obtain further approved functions, such as issuing authorisations, as they develop greater administrative capability and capacity. It is through this progressive model that ASAOs will be able to take more responsibility for applicant authorisations over time.

Subpart 149.G of CASR requires an applicant for an authorisation to disclose specific safety-related information, so that the ASAO (and/or CASA) has sufficient knowledge of the applicant's capabilities and/or safety record to assess their application.

### Information sharing

Arnold Geerlings stated:

Cross checking will give all sides comfort and opportunity to improve with time.

Air Sport Australia Confederation stated:

ASAC is of the view that the level of communication on safety related matters proposed in the Part are acceptable - provided actions are limited to safety outcomes and due process is observed.

Australian Parachute Federation stated:

An ASAO may need access to CASA records in relation to aircraft ownership, the registered operator and airworthiness status for its own purposes. The same applies to a pilot's qualifications, experience, medical and other history. For example, APF requires Tandem Masters to hold a Class II medical certificate, or APF equivalent, and that record – and any limitations and restrictions on it – could well reside with CASA. The regulation needs to clearly state this exchange of information is both ways and is binding on the ASAO and CASA alike.

In respect to applicants for an authorisation – where the applicant holds or has held membership of another ASAO or a regulatory authority of another country – APF agrees an ASAO should cooperate with CASA, and CASA with the ASAOs, to manage safety across the sport and recreational aviation sector in Australia.

CASA must share information it gathers with any other ASAO operating in the same sector, even if the person, or operation in question, objects on privacy grounds. The same should apply where CASA becomes aware of an individual operating outside the control of an ASAO and it must be incumbent on CASA to alert ASAO of the rogue operator.

## CASA's response

CASA agrees that information sharing will benefit both CASA and industry. CASA expects that an ASAO that seeks to demonstrate their ability to service an increased scope of aviation administration functions will have a strong culture of collecting, analysing and sharing safety-related information about its authorisation holders.

For the purposes of considering an application for an authorisation, or the continued exercise of privileges of an authorisation, Part 149 requires that certain relevant information be provided to the issuing ASAO and, in some cases, to CASA. These arrangements enable ASAOs to control the circumstances under which an authorisation is given to (or retained by) an individual, as well as facilitating the process by which CASA may be enlisted to assist an ASAO in pursuing any responsive actions the organisation may need to take. These arrangements also help to minimise the likelihood of an ASAO being unaware that an existing or prospective member or affiliate has had their privileges cancelled, suspended or varied by another ASAO, by CASA or by the regulatory authority of another country. For its part, CASA will also be more able to achieve its safety-related objectives if it has access to pertinent information about certain actions taken by an ASAO in respect of the holder of, or an applicant for, a CASA-issued authorisation.

CASA considers that Part 149 adequately addresses the risk of applicants failing to provide safety related information when applying for an authorisation. A person commits an offence under Part 149 if they apply to an ASAO for an authorisation but fail to disclose details of any cancellation, variation or suspension of an authorisation that was issued to them by another ASAO, by CASA or by the NAA of a foreign country.

APF parachute training operations may only be undertaken using aircraft that are operated by a jump pilot in accordance with the conditions presently set out in CASA legislative instrument<sup>4</sup> 06/16. Registration information of aircraft registered under Part 47 of CASR that may be used for parachuting operations is publicly available via the CASA website <https://www.casa.gov.au>. The availability of registration information on recreational aircraft that may be used in parachuting operations will be the subject of a future CASA discussion paper. Refer also to CASA's responses at *Key proposal 7 Aircraft registration information - public availability* and *Aircraft information - provision of data* of this SOC.

CASA intends to incorporate the requirements of all legislative instruments that apply to the APF and the Australian Skydiving Association into the proposed Part 105 of CASR. These instruments include prescriptive requirements regarding pilot qualifications and experience as well as aircraft airworthiness. Contravention of the pilot requirements and aircraft operations requirements will be an offence under proposed Part 105 of CASR.

In accordance with the provisions of the *Privacy Act 1988*<sup>5</sup> and subject to the limitations on the use of safety information set out in DAS Instruction 02/2017, CASA may not be able to release certain information it holds about an individual to a third party, including an ASAO, without the individual's consent. These constraints could be mitigated to some extent by an ASAO obtaining formal consent from an affiliate that permits the ASAO to contact CASA for the release of information relating to the authorisations held and/or aircraft operated by the affiliate. In the absence of the individual's informed authorisation, however, legislative changes may be

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<sup>4</sup> <https://www.legislation.gov.au/Details/F2016L00088>

<sup>5</sup> <https://www.legislation.gov.au/Details/C2017C00283>

necessary to overcome certain constraints imposed by the *Privacy Act 1988* on CASA's ability to disclose to an ASAO information about one of its members. In CASA's view, the question as to whether amendments to Part 149 that provide more specifically for the provision and disclosure of personal information are necessary or desirable is a matter for future consideration.

### **Provision of safety-related information**

Peter Cesco stated:

Safety related activities or rules that CASA feels are necessary should have risk management justifications at all levels.

Model Aeronautical Association of Australia stated:

In principle, MAAA supports this requirement. However, it queries CASA's expectations where an applicant does not provide complete or factual information in an application. Greater clarity should be provided to outline the obligations on an ASAO upon receipt of an application, to satisfy itself that it has a "complete picture" of the applicant and their information.

Recreational Aviation Australia stated:

RA-Aus has experienced difficulties in the past with the issue of authorisations to applicants that have not fully disclosed information. We are cognisant of the need for open and transparent communications between all self-administering organisations and government agencies.

In order to be functional CASA must be obliged to provide such information to organisations considering an application for an authorisation.

Sports Aircraft Association of Australia stated:

The SAAA supports this concept and endorses the need for full and open two way sharing of information between ASAOs and CASA in the interest of safety.

Honourable Company of Air Pilots, Australia Inc. stated:

Is there not a time limit after which a variation or suspension of an authorisation may be omitted from a report – similar to the “spent convictions” provisions.

Are there standardised grounds on which CASA might consent, which should be made known to both ASAOs and applicants?

### **CASA's response**

As noted in NPRM 1502SS, there have been instances where existing self-administering organisations have granted authorisations on the basis of incomplete, inaccurate, false or misleading information about an individual's capabilities or safety record, or matters associated with the history and airworthiness of an aircraft. In some cases this has resulted in the conferral of privileges on individuals who were not competent or otherwise eligible to exercise those privileges, or authorising the operation of aircraft that were ineligible for such authorisation. CASA has introduced provisions in Subpart 149.G to mitigate these risks by requiring an applicant to disclose all relevant information, with penalties for non-compliance.

CASA recognises the difficulties that may be encountered when an applicant discloses incomplete or misleading information to an ASAO when applying for an authorisation. It is for this reason that Part 149 places the onus on the applicant to disclose the details of each variation,

cancellation or suspension of an authorisation they have held. CASA's expectation in regard to regulation 149.405 is that the ASAO has the responsibility to ensure, through its aviation administration and enforcement rules, that the application process is fully documented i.e. that an applicant is made aware of the requirement to disclose such information and the fact that it is an offence to not disclose such information, and that the applicant positively confirms that they have disclosed all relevant information.

To ensure that the ASAO and CASA are fully aware of an applicant's previous history, the reporting requirement covers:

- for suspensions, only a current suspension
- for all instances where an authorisation has been varied or cancelled other than at the request of the applicant, in the 10 years prior to the application being made.

**Note:** Subregulation 149.500(3) of CASR provides that a person is ineligible to apply for an authorisation for a period of three years after cancellation by CASA.

Regulation 149.440 of CASR permits CASA to give approval to an ASAO to issue an authorisation to a person with a varied, suspended or cancelled authorisation. As an individual's history, specific circumstances and the type of authorisation being sought will vary, it is not practicable for CASA to outline standardised grounds for approving applicants with cancelled or varied authorisations.

## Enforcement co-operation and communication

Gliding Federation of Australia stated:

Key proposal 4 is acceptable to the GFA without change.

It is in the interests of flight safety that authorisation holders understand that there are consequences of actions in breach of the ASAOs exposition and other civil aviation legislation. Where an ASAO gives CASA a report given Part 149 recognises that an ASAO is a co-regulator with CASA, there should be no impediment to CASA informing the ASAO of the results of any action taken and penalties applied.

Australian Sports Rotorcraft Association stated:

Acceptable without change.

This offence provision is strongly supported. Over the years ASRA has unsuspectingly inherited a number of "problem children" from other recreational aviation organisations, who have quietly joined ASRA without ASRA becoming aware of the trail of destruction and discord they may have created elsewhere.

While CASA might revoke or suspend a person's CASA-issued commercial, private or recreational pilot licence, ASRA considers that there is no legal impediment to that person climbing into an ASAO administered recreational aircraft and exercising the rights of their ASAO pilot certificate.

The Illawarra Flyers Inc. stated:

The Illawarra Flyers agree that an ASAO and CASA must cooperate as a team to manage safety across the sport and recreational aviation sector in Australia. All parties in the one sector, including CASA, must be required to share any data necessary for the safe operation of the sector, and to eliminate any 'rogue' operators.

## **CASA's response**

To the degree permitted by law and subject to the limitations on the use of safety information set out in DAS Instruction 02/2017, CASA will, on request, inform an ASAO of the status of an investigation into an authorisation holder conduct report the ASAO has submitted to CASA.

The holder of a varied, suspended or cancelled CASA authorisation may exercise the rights of an ASAO authorisation unless CASA has also varied, suspended or cancelled the ASAO authorisation. The purpose of the disclosure and information provision regulations is to ensure that information, in respect of varied, suspended or cancelled authorisations issued by other entities, by the authorisation holder is available to the ASAO and/or CASA. As noted at *Industry best practice* under *Key proposal 2* of this SOC, CASA considers that a prerequisite for continuing aviation safety is ongoing cooperation and information sharing between ASAOs, particularly those operating in the same or closely related sectors. CASA would expect to see provisions for these arrangements in an ASAO's exposition, and supportive directions to that end could be given, if that became necessary. On this basis, CASA does not consider that an explicit data sharing requirement of this kind needs to be included in Part 149.

## **Key proposal 5 – CASA to have powers under Part 149 of CASR to request an ASAO vary, suspend or cancel an authorisation.**

### **CASA powers in respect of ASAO authorisations**

Matthew Bambling stated:

These formal powers are important for ASAO role and function in the industry.

Arnold Geerlings stated:

Agreed, but this should always be done in consultation with the members of that fraternity to ensure CASA is informed from grass roots level.

Peter Cesco stated:

ASAO's typically have more skills, knowledge and understanding of the risks and outcomes of interruptions to processes where cancelling or suspending activities are involved. CASA should negotiate for the ASAO to act if required.

Gliding Federation of Australia stated:

Key proposal 5 is acceptable to the GFA without change.

Australian Sports Rotorcraft Association stated:

Key proposal 5 is acceptable to the ASRA without change.

Sports Aircraft Association of Australia stated:

Acceptable without change.

The SAAA supports this concept and the need for transparent two ways sharing of the need for such actions should the circumstances arrive.

Honourable Company of Air Pilots, Australia Inc. stated:

In the event that an ASAO cancels an authorisation on its own initiative, this would seem to prevent the exercise by CASA of the powers in 149.500 (3) to prevent the

reissue of a similar authorisation within 3 years, unless CASA is empowered to superimpose its own cancellation on top of the ASAO's cancellation. This may lead an ASAO to not cancel an authorisation that merits such action, or to instead request CASA to cancel it under 149.495 (1)(b).

The Illawarra Flyers Inc. stated:

The Illawarra Flyers support CASA having the power to 'request (or, as the case may be, to require) an ASAO to vary, suspend or cancel an authorisation issued by the ASAO'. Such action must only be taken in the demonstrated interests of aviation safety, and where appropriate, after due consultation with the ASAO concerned.

### **CASA's response**

CASA expects that compliance by an ASAO with the conditions of its certificate will reduce the likelihood of ASAO authorisation holders posing an unacceptable risk to the safety of air navigation. CASA's powers play an important part in maintaining aviation safety as they provide, if necessary, a direct mechanism for CASA intervention.

CASA expects that ASAOs will initiate their own measures in instances where authorisations need to be varied, suspended or cancelled or authorisation holders directed to change their behaviour. However, consistent with CASA's overarching responsibility for aviation safety, Part 149 properly includes provisions for the use of these powers by CASA where necessary. It would be a rare occurrence for CASA to take action without either having discussed the issues thoroughly with the relevant ASAO, and without having exhausted or ruled out other, preferable options.

If an ASAO cancels an authorisation in accordance with the ASAOs aviation administration and enforcement rules as set out in the ASAO's exposition, there would be no cause for CASA to exercise its powers under regulation 149.500. If a person subsequently applies (within 10 years) to the ASAO for an authorisation that is the same in substance as the cancelled authorisation, the ASAO must notify CASA in accordance with regulation 149.430 of CASR and CASA may give approval for the authorisation to be issued in accordance with regulation 149.435 of CASA. If CASA exercises its cancellation powers under regulation 149.495 of CASR, a person is ineligible to apply for an authorisation that is the same in substance as the cancelled authorisation—irrespective of whether the cancellation was initiated by CASA or executed by CASA on request of an ASAO.

### **Civil aviation legislation**

Respondent stated:

Is CASA still the controlling body of the ASAO?

Air Sport Australia Confederation stated:

ASAC understands that CASA may have need to request or even require such action - but very definitely only after consultation and with the provision of a transparent risk justification.

ASAC and the ASAC Organisations remain very concerned that there is still no documented requirement for CASA to take effective action where it is established that a person or organisation is operating outside the appropriate Part 149 organisation - especially where notification is provided by one or more of the Organisations. Nothing

in this documentation indicates that such action would be required. This is unacceptable.

Australian Parachute Federation stated:

The APF accepts that 'CASA may request (or, as the case may be, to require) an ASAO to vary, suspend or cancel an authorisation issued by the ASAO' and then only after the matter has been fully explored with the relevant ASAO. Such action must only be taken in the interests of aviation safety....

What CASA has not undertaken to do is deal with persons and organisations operating outside of the present RAAO framework for that particular sport aviation discipline. RAAOs do not have any authority in this area and can do no more than notify CASA of such activities and rely on CASA to take appropriate action. While this seldom happens it undermines the authority of the RAAO to effectively manage activities for its sector. This is not acceptable under any circumstances..

What APF wants is...under 149 where an ASAO becomes aware of a person or organisation operating outside an ASAO framework – and notifies CASA – then CASA should be obliged, under law to take action to prevent the person or organisation from continuing to operate. CASA must keep the ASAO informed of action taken.

Recreational Aviation Australia stated:

RA-Aus respects the fact that CASA may directly intervene in matters relating to aviation safety. It does trouble RA-Aus that no provision for transparency in terms of exercising this power is required.

### **CASA's response**

An ASAO certificate is an authorisation issued by CASA (under Part 11 of CASR) that authorises an ASAO to perform its approved functions. ASAOs must comply with the conditions of an ASAO certificate (regulation 149.020 and regulation 149.085 of CASR). CASA may also impose a condition or vary a condition after the grant of an ASAO certificate and can give directions to the ASAO.

Legislation prohibiting unauthorised operations is set out in section 20AB of the Act. On this basis, specific inclusion of regulations regarding unauthorised operations in Part 149 are unnecessary.

Under subsection 98(5A) of the Act CASA may issue instruments in relation to matters affecting the safe navigation and operation, maintenance and airworthiness, and design standards for aircraft. Such instruments are not legislative instruments if they apply to a particular person, aircraft or aeronautical product. While in this instance the Act may not provide the level of transparency in the process sought by RA-Aus, in exercising its powers CASA is mindful of the principles contained within its [Regulatory Philosophy](#), and a host of complementary accountability obligations in which a very high degree of transparency is implicit. CASA is committed to maintaining the trust and respect of the aviation community through a risk-based, consultative approach to all of its regulatory functions and actions.

### **Review of ASAO decisions**

Model Aeronautical Association of Australia stated:

It is not clear whether the proposal to recognise organisations as ASAOs will result in providing an avenue for appeal through the Commonwealth Administrative Appeals Tribunal (AAT) on the basis that a decision by an ASAO could be considered a relevant decision made under the Civil Aviation Act 1988 (Civil Aviation Act) or the regulations (under section 31(1) of the Civil Aviation Act). In MAAA's view, decisions made by ASAOs would not be reviewable by the AAT....

However, it submits that any potential confusion or ambiguity should be avoided by expressly excluding decisions of ASAOs from AAT review (either by amending Part 149 or the Civil Aviation Act as appropriate). MAAA would be strongly opposed to any of its decisions made under its Rules being subject to any form of administrative review under the jurisdiction of the AAT. Such a process would immensely and unnecessarily increase costs and workload for ASAOs. It is MAAA's view that the disciplinary processes in its governing documents provide a fair process and external review by a Federal tribunal is not required or appropriate. MAAA urges CASA to ensure it is clear in Part 149 that decisions made by ASAOs are not subject to review by the AAT.

### **CASA's response**

It is a requirement under regulation 149.290 of CASR that an ASAO must develop aviation administration and enforcement rules and the circumstances and procedures for the exercise of its powers under those rules. It is expected that organisations will develop appropriate procedures to govern the exercise of these powers and that those procedures will give due regard to procedural fairness. There must be a clear understanding within an ASAO of the difference between enforcement actions (to vary, suspend or cancel an authorisation issued by the ASAO) for safety-related reasons, and actions carried out for punitive or disciplinary purposes. In developing their rules and procedures, CASA expects ASAOs to develop rules consistent with principles 8 and 9 of CASA's [Regulatory Philosophy](#).

Most, if not all, aviation sectors are likely to be served by one ASAO, and that organisation will probably be the sole issuers of authorisations for that sector. It is important, as an administrator of CASA-approved functions (functions that CASA would otherwise be performing in the absence of Part 149), that the ASAO satisfies the reasonable expectations of the aviation community that the organisation should demonstrate integrity in the development of its aviation administration and enforcement rules, and be held accountable for the fair and proportionate application of those rules.

In keeping with their obligation to demonstrate procedural fairness, it is expected that ASAOs will develop and implement procedures allowing members and affiliates (and prospective affiliates) to seek a review of the decisions an ASAO takes in exercising its powers. In the first instance, it is expected such a review will be an internal review, conducted by the ASAO in accordance with its own procedures. The outcome of that internal review would constitute the ASAO's final decision in relation to the matter.

Natural justice requires that, where a person is deprived of the opportunity to exercise privileges of a kind that only ASAOs will be in a position to confer, and in the absence of a 'parallel path', which will almost invariably be the case, such a person should be entitled to a further review of that decision to ensure full procedural fairness.

One option to provide for this essential requirement of natural justice would be to provide for the review of final decisions taken by an ASAO by the Administrative Appeals Tribunal (AAT). On this basis, an aggrieved member, affiliate or prospective affiliate would be entitled to lodge an

appeal of an ASAO's final decision in the AAT, where the ASAO would be expected to appear as the respondent.

The draft Part 149 as consulted incorporated amendments to the CASR to incorporate certain decisions as reviewable decisions for the purpose of section 31 of the Act. The draft regulation proposed an amendment to regulation 201.004 of CASR to provide for AAT review of *i)* CASA directions to an ASAO made under draft regulation 149.490 of CASR; and *ii)* ASAO decisions in respect of authorisations issued by the ASAO. The reference to draft regulation 149.490 was erroneous and should have referenced draft regulation 149.120 (2) of CASR.

For ASAO decisions in respect of ASAO-issued authorisations, an alternative to the AAT review option is to allow persons aggrieved of a final decision taken by an ASAO to have such a decision reviewed by CASA. Importantly, CASA's determination of the matter would itself be subject to the AAT review process that is accessible, fair, just, economical, informal and proportionate to the importance and complexity of the matter. If either the individual affected or the ASAO did not believe CASA's decision—affirming, setting aside or varying the ASAO's final decision—was the correct or preferable decision; either could lodge an appeal of CASA's decision in the AAT.

Straightforward and appropriate procedures will be developed to govern the CASA review process and a reasonable fee will be charged for lodging an application for review of an ASAO's decision.

Refer also to CASA's response at *Self-administration policy* under *Key proposal 1* of this SOC.

### **CASA's disposition**

To clarify the issue of reviewable decisions and to provide assurance to both the ASAO and ASAO authorisation holders, CASA has introduced a new subpart with provisions that deal with the review by CASA of the final decisions of an ASAO made in relation to its aviation administration and enforcement rules.

A new subregulation 149.495 (2) is introduced to make it clear that any decision by CASA to vary, suspend or cancel an authorisation issued by an ASAO must be preceded by a written notice issued to the holder. Such a decision by CASA would be reviewable in the AAT. As a party whose rights and interests would arguably be affected by such a decision on CASA's part, the ASAO, as well as the holder of the authorisation, would be entitled to appeal that decision to the AAT. Such an approach further ensures that CASA will confer with the relevant ASAO before taking action of this kind.

CASA has amended regulation 149.290 to apply the procedural fairness and natural justice provisions to all the aviation administration and enforcement rules (149.290) of ASAOs and a note appended to regulation 149.290 to make it clear that the administration and enforcement powers exercised by an ASAO include the powers to vary, suspend and cancel an authorisation of a kind issued by the ASAO, as well as a decision to refuse to issue such an authorisation.

These amendments will benefit ASAOs in that it ensures the development by ASAOs of rules that enable them to defend decisions that may be subject to review.

CASA has corrected the amendment to regulation 201.004 (2) to reference draft subregulation 149.120 (2) and to make the following CASA decisions reviewable in the AAT:

- a decision to make a direction to an ASAO to remove any of the key personnel; and

- a decision to vary, suspend or cancel an authorisation issued by an ASAO under subregulation 149.495 (2).

In light of the inclusion of amendments providing for CASA review of an ASAO's final decisions made under its aviation administration and enforcement rules, the proposed amendments in the consultation draft to subregulation 201.004 (4) and subregulation 201.004(5) of CASR, are omitted.

## **Key Proposal 6 – Surrender of documents by an ASAO ceasing operations and interim transfer of administrative control to another ASAO or CASA**

### **Surrender of documents - procedures**

John Alldis (Alldis Aviation Advisory Services) stated:

Surrender to CASA only.

Matthew Bambling stated:

Clear procedural accountability is important.

Arnold Geerlings stated:

Agree, if the process in the key proposal is followed.

Respondent stated:

Nothing to hide? This could streamline or enhance the new application.

Peter Cesco stated:

This activity should be part of the exposition. If a second ASAO is attempting to operate in the same 'space' it must have at least equivalent safety standards. Internal documents of most ASAO's will be copyrighted and difficult to transfer.

Australian Ballooning Federation stated:

It must be clear that in 149.550 that this clause does not permit CASA or any other person to use, reproduce, adapt, modify or communicate the ABF's Manual of Procedures or any other ABF rules, policies or procedures whilst in operation.

Australian Parachute Federation stated:

The APF agrees with the concept proposed in Key Proposal 6 to transfer administrative control to another ASAO – or temporarily to CASA – while another ASAO is created. There needs to be a protective mechanism to prevent CASA exercising its powers prematurely or without due cause.

While it is accepted an ASAO may become dysfunctional and the accountable manager may be a casualty of the dysfunctionality – making it an offence of strict liability for the accountable manager is hardly going to be helpful in resolving the matter. CASA must see this as the case – or endeavour to salvage the situation – not look to punish a person who might well be a casualty.

While a remote possibility, each ASAO should propose a plan-of-action for how such a situation will be addressed. This requirement should be relegated to the Part 149 MOS.

Sports Aircraft Association of Australia stated:

- The SAAA agrees that this is an approach to protect the interests of the activity participants should an ASAO become unable to continue to conduct its approved activities.

Illawarra Flyers Inc. stated:

- The Illawarra Flyers agree with the concept proposed in Key Proposal 6 to transfer administrative control to another ASAO – or temporarily to CASA – while another ASAO is created. There needs to be a protective mechanism to prevent CASA exercising its powers under 149.235, prematurely or without due cause.
- While a remote possibility, each ASAO should propose a plan-of-action for how such a situation will be addressed. This requirement should be relegated to the Part 149 MOS.

### **CASA's response**

Regulation 149.550 of CASR provides for surrender of documents in specific circumstances only. In all of these circumstances an ASAO will no longer be a functioning entity. Documents held by a defunct ASAO must be surrendered to CASA within 30 days as described in regulation 149.550. In circumstances where authorisation holders or aircraft owners are stranded due to the dissolution of an ASAO, and another ASAO can satisfy CASA that it is capable of assuming the aviation administration functions of the defunct ASAO, CASA may approve the new ASAO to assume these functions. As the defunct ASAO's documents will have been surrendered to CASA in the first instance, the efficacy of the establishment of a new ASAO would be improved by CASA being able to transfer information held by CASA to the new ASAO, rather than the new ASAO having to seek information individually from authorisation holders or aircraft owners for which it will have no pre-existing information about their identity, aircraft or authorisations. However, CASA would seek consent from authorisation holders and the owners of aircraft registered with the defunct ASAO before providing any information about their authorisations or aircraft to the new ASAO.

CASA agrees that an ASAO should have processes in place to facilitate compliance with regulation 149.550. CASA will also seek to ensure the interests of ASAO-authorisation holders, by providing advice to ASAOs such that administrative control may be passed to another ASAO, or temporarily to CASA.

### **CASA's disposition**

CASA has amended regulation 149.340 to require an ASAO to provide, in its exposition:

- a description of the procedures by which the ASAO will ensure compliance with the surrender provisions of regulation 149.550
- a description of the documents to be surrendered under regulation 149.550.

### **Surrender of documents - circumstances**

Air Sport Australia Confederation stated:

## SUMMARY OF CONSULTATION ON APPROVED SELF-ADMINISTERING AVIATION ORGANISATIONS

It is essential that 149.550 is only capable of activation if the Organisation is defunct. ASAC is concerned that this regulation is not sufficiently proscribed. There must be no chance that CASA can provide "our" manuals, or other documents, to a third party whilst the Organisation is still operating. This is especially sensitive where an additional Organisation is considering an application to become an ASAO.

Whether the Accountable Manager is involved or not in the reason for the organisation becoming dysfunctional, it is not helpful to suggest an offence of strict liability....

In legitimate cases, it is in everybody's interest to facilitate the creation of a replacement Organisation, and the best (only acceptable) solution for all concerned, is to require the Organisation to propose a plan of action as to how this situation will be addressed in the Exposition.

Gliding Federation of Australia stated:

Key proposal 6 is acceptable to the GFA without change.

Australian Sports Rotorcraft Association stated:

Acceptable with change.

This strict liability offence is why the writer advises ASRA members who hold outside professional qualifications that require the ongoing maintenance of no criminal record, to stay completely away from becoming a member of the 'key personnel' of an ASAO, especially a voluntary one.

Model Aeronautical Association of Australia stated:

If MAAA does not wish to continue to be recognised as an ASAO but wishes to continue to operate as a member organisation, it does not consider it reasonable for CASA to have an automatic right to use (itself or through other organisations) regulatory documents created and used by MAAA (particularly where such documents are protected by copyright and MAAA owns those rights). The MAAA submits that this requirement to surrender documents to CASA should not be imposed where the former ASAO continues to operate.

Recreational Aviation Australia stated:

- RA-Aus takes no issue with this requirement except to the extent that it is unclear what is meant by "the ASAO becomes incapable of complying with the ASAOs obligations under the civil aviation legislation" and who would make such a judgment. It is concerning to think that a differing opinion with respect to interpreting the obligations may lead to a situation where CASA exercises power in a manner resulting in 149.550 being triggered. The use of strict liability against the accountable manager is not conducive to resolving the underlying matters.

Illawarra Flyers Inc. stated:

- While it is accepted an ASAO may become dysfunctional and the accountable manager may be a casualty of the dysfunctionality – making it an offence of strict liability for the accountable manager is unlikely to be helpful in resolving the matter.

### **CASA's response**

CASA recognises that it is in CASA's, ASAOs' and ASAO-authorisation holders' interests that an ASAO does not end up in a situation where surrender of documents is required.

The ongoing activities of members of an ASAO are dependent upon the continuance of the aviation administration functions of an ASAO. These functions are supported and maintained by the knowledge and experience reflected in an ASAO's documents (e.g. operational and technical manuals and procedures; airworthiness records; aircraft register and authorisation records). In the event of an ASAO becoming defunct, the members of an ASAO and CASA will have a strong interest in ensuring the continuity of the aviation administration functions of the defunct ASAO. In order to mitigate the risk to that continuity, CASA considers that ASAOs should have a specific provision in their exposition for surrendering all the documents used in the performance of the ASAO's approved functions (including the surrender of operational information, knowledge and experience recorded in the ASAO's documents), to CASA (in accordance with regulation 149.550) and for this information to be used by a successor ASAO.

Regulation 149.550 provides for the surrender of documents in four specific circumstances. In all of these circumstances the ASAO will no longer be a functioning ASAO. Three of these, which arise from the operations of an ASAO, are circumstances where an ASAO has become unable to comply with the conditions of its ASAO certificate that govern its operations.

The fourth circumstance, where an ASAO certificate is cancelled by CASA, is inadequately prescribed in Part 16 of CAR. There is a risk that an organisation will be unable or unwilling to surrender documents or act to mitigate the impacts, of their inability to continue on operating, on their authorisation holders and the possible aviation safety consequences arising therefrom.

While the accountable manager of an ASAO may themselves be a casualty of the ASAO's inability to comply with the conditions of its ASAO certificate, it is in the interests of aviation safety, the public, and of ASAO-authorisation holders whose continued privileges are dependent upon the documents of an ASAO being made available to CASA, that these documents are surrendered.

Without diminishing the importance of CASA being able to have access to these documents, in the event the ASAO ceases to be in a position to function—in the interest of safety and the interest of allowing the activities otherwise administered by the ASAO to continue for the benefit of members and affiliates—the imposition of criminal penalties in such cases is not seen to serve either of those objectives. Consistent with principle 10 of CASA's [Regulatory Philosophy](#), a more appropriate means to deal with such situations would involve the inclusion of a provision empowering CASA to issue a direction to the administrator, or a person performing the functions of an administrator, of the organisation to deliver those documents to CASA. More practically still, the obligation to do so would be something CASA (or indeed, other interested and affected individuals) might seek a court to compel.

Part 149 makes no provision for an ASAO to continue to operate if it chooses to surrender its ASAO certificate. This applies as much to an RAAO that has transitioned to Part 149 as to an ASAO certificate holder with no prior history as an RAAO.

ASAO obligations under civil aviation legislation comprise all those parts of the Civil Aviation Act, the Civil Aviation Regulations, the Civil Aviation Safety Regulations, Civil Aviation Orders, and any other applicable legislative instruments or CASA directions in force (including Manuals of Standards), that apply to an ASAO certificate holder under the legislation.

## **CASA's disposition**

CASA has omitted the offence provisions from proposed regulation 149.550 that apply to the accountable manager.

A note is appended to the regulation that CASA may issue a direction under Part 11 to the administrator, or a person performing the functions of an administrator, of an ASAO that is subject to paragraph 149.550 (1) (a) of CASR to surrender all of the documents used by the ASAO in the performance of its approved functions.

## **Key Proposal 7 – Information relating to registration of aircraft/authorisations issued by ASAOs to be made available to CASA, but not necessarily to the public**

### **Aircraft registration information - public availability**

John Alldis (Alldis Aviation Advisory Services) stated:

Information should be available to CASA and the general public.

Matthew Bambling stated:

CASA as peak body has a right to this information.

Respondent stated:

Privacy considerations of the owner?

Peter Cesco stated:

The principle of transparency of public documents must be considered here.  
'Commercial in-confidence' should be clearly identified as such.

Air Sport Australia Confederation stated:

The ASAC has no issue with providing details of authorisations or registration of aircraft to CASA provided CASA provides a safety related reason for this request....

CASA must not release this information to the public....

However the regulation which appears to implement this proposal (149.420) is not limited to this information only.

## **CASA's response**

In keeping with the [Government's response to the Aviation Safety Regulation Review](#) Recommendation 29, CASA policy in respect of the circumstances under which aircraft registration information maintained by ASAOs would be made publicly accessible will be subject to future development and consultation.

Pending the outcomes of this consultation, proposed Part 149 includes provisions that require an ASAO to provide CASA with information or documents that relate to aircraft registered or administered by the ASAO. Refer also to CASA's response at *Aircraft information - data provision* under key proposal 7 of this SOC.

## Kinds of information provided to CASA

### Air Sport Australia Confederation stated:

The ASAC has no issue with providing details of authorisations or registration of aircraft to CASA provided CASA provides a safety related reason for this request....

CASA must not release this information to the public.

However the regulation which appears to implement this proposal (149.420) is not limited to this information only.

### Australian Parachute Federation stated:

The APF has no issue with providing CASA details of authorisations issued to its members insofar as they relate to demonstrating the member's entitlement to be issued with or hold the authorisation.

However, this entitlement is qualified. Such information would be provided only when:

- 1) CASA is auditing the APF's management system
- 2) when disciplinary action is taken and both CASA and any other ASAO needs to be advised as proposed under draft Subpart 149.G.

The APF objects to CASA being entitled to information regarding a member that is not directly related to a formal audit or in respect to a disciplinary matter. In all other cases, the ASAO should not provide such information unless the member first consents to the information being passed to CASA and then only where CASA's reason is considered valid and in the interests of aviation safety.

### Gliding Federation of Australia stated:

Key proposal 7 is acceptable to the GFA without change.

Regulation 149.420(2) implies that the documents "CASA may, by notice given to an ASAO, require the ASAO to provide" will only relate to either or both of the following: "(a) holders of authorisations issued by the ASAO; and (b) aircraft registered or administered by the ASAO". If it is the intention that CASA may require other documents, then this should be specified but such documents should be limited only to information which is agreed in the Exposition that the organisation will hold.

### Australian Sports Rotorcraft Association stated:

Acceptable without change.

This strict liability offence is aimed at ASAO's that have received a written notice from CASA to give CASA information or to produce documents to CASA and who, in the eyes of CASA, have contravened the terms of the notice. The provision specifies that the time for compliance can be as little as 8 or more days. The most likely target for this provision would be the accountable manager of an ASAO whom would most likely be (a) voluntary member of an incorporated association.

This offence is yet again another reason why the writer advises ASRA members who hold outside professional qualifications that require the ongoing maintenance of no criminal record, to stay completely away from becoming a member of the 'key personnel' of an ASAO, especially a voluntary one.

Recreational Aviation Australia stated:

RA-Aus is, in principle supportive of this proposal. CASA must qualify the reasons for which it requests such access. It is incomprehensible that it may request this information without cause or recourse available to the ASAO or individual.

Sports Aircraft Association of Australia stated:

The SAAA accepts that this is logical to CASA's oversight obligations and preserves the confidentiality of its member's information.

Illawarra Flyers Inc. stated:

The Illawarra Flyers support ASAOs providing CASA details of authorisations issued to its members insofar as they relate to demonstrating the member's entitlement to be issued with or hold the authorisation.

However, this entitlement is qualified. Such information would be provided only when:

- 1) CASA is auditing the ASAO's management system; or
- 2) when disciplinary action is taken and both CASA and any other ASAO needs to be advised as proposed under draft Subpart 149.G.

The Illawarra Flyers see no legitimate safety benefit to CASA being routinely entitled to information regarding a member that is not directly related to a formal audit or in respect to a disciplinary matter. In all other cases, the ASAO should not provide such information unless the member first consents to the information being passed to CASA and then only where CASA's reason is considered valid and in the interests of aviation safety.

### **CASA's response**

Proposed regulation 149.420 of CASR does not specifically identify or limit the type or kinds of documents that CASA may request because CASA may request any relevant document pursuant to its functions and as permitted by the civil aviation legislation. In requiring information under proposed regulation 149.420, the notice by CASA can only request information from an ASAO that the ASAO is required to hold under the civil aviation legislation in respect of an ASAO administered aircraft or an ASAO authorisation holder. An ASAO cannot qualify the circumstances in which it will provide the information to CASA if it receives a valid notice under this regulation.

### **Aircraft information - provision of data to service providers**

Airservices Australia stated:

Acceptable with change.

Airservices has identified issues with Key Proposal 7 as outlined in the NPRM preamble. Airservices relies on aircraft register information to bill operators using our services in Australian airspace. Airservices is concerned that the proposed confidential nature of aircraft register information will hinder our ability to charge aircraft operators.

The implementation of confidential aircraft register information may create an uneven playing field where, for example a VH-registered aircraft is charged for the air traffic service in Class D control zone, but a (non-VH) aircraft is not charged for the same service, as the release of register information is not available to Airservices. As this Regulation broadens the scope of the number of organisations that will be able to

administer aircraft operations (and register aircraft), Airservices is concerned that the breadth of this issue may potentially widen.

Airservices understands the expressed desire to maintain privacy of the information, however suggests that a mechanism is established to ensure all aircraft receiving the same service are charged equitably. To achieve this, the register should be disclosed to parties, such as Airservices and aerodrome operators, who provide a service to aircraft operators.

In addition, Airservices relies on the disclosure of operational documentation from these associations that impact the provision of ATS. CASA should consider a way in which Airservices is given visibility of these operational documents going forward.

**Australian Airports Association stated:**

The Charter of the AAA is to facilitate co-operation among member airports and their partners whilst maintaining an air transport system that is safe, secure, environmentally responsible and efficient for the benefit of all Australians.

On several occasions the AAA has raised concerns with CASA in relation to the operation of sport and recreation aircraft at airports. These concerns have been focused principally on three issues: safety, security and cost-recovery (as it relates to safety). These concerns fundamentally stem from the core issue of airports not being able to readily access contact information for these aircraft in a similar way that information for VH registered aircraft can be accessed.

**CASA's response**

CASA recognises that key proposal 7 has the potential to increase the frequency of occurrences Airservices Australia has experienced in respect of providing air traffic and associated services to non-VH registered aircraft. It is not the intent of key proposal 7 to increase the difficulties experienced by aviation service providers who, in the provision of their services, have a legitimate reason to identify aircraft. CASA also recognises that, in some cases, constraining the ability of service providers to identify aircraft operators in the delivery of their services may adversely impact aviation safety.

Recommendation 29 of the [Aviation Safety Regulation Review](#) (2014) stated that Recreational Aviation Administration Organisations, in coordination with CASA, develop mechanisms to ensure all aircraft to be regulated under Part 149 are registered. The Government response, while agreeing in principle with this recommendation, concluded that the matter of whether all aircraft covered by Part 149 can or should be on the Australian register is a matter requiring further consideration, including the basis for issuing certificates of registration.

Consistent with CASA's commitment to work cooperatively with the aviation industry to maintain and enhance aviation safety CASA has, in developing Part 149, recognised the record of sport and recreational aviation organisations' continuing management of their safety-related affairs. Part 149 introduces a direct regulatory relationship between CASA and approved organisations that are administratively empowered to oversee the safety-related activities of their members and affiliates. The operational requirements for aircraft that will be administered by ASAOs are currently prescribed in the exemptions and conditions contained within the CAO Part 95. These requirements will be incorporated into proposed Part 103 (Sport and Recreational Aviation Operations) of CASR, which will provide the operational regulations for Part 103 aircraft,

including requirements for registration and certification. An organisation wishing to administer Part 103 activities will be required to be a Part 149 ASAO.

### **CASA's disposition**

The key proposal is unchanged. Prior to the development of Part 103, and consistent with recommendation 29 of the [Aviation Safety Regulation Review](#), CASA will develop, for public consultation, a discussion paper with options for recreational aircraft registration and certification. This consultation will inform the development of the Part 103 regulations governing the registration and certification of Part 103 aircraft that are not registered under Part 47.

## **General comments about the NPRM preamble**

### **The Part 149 of CASR Regulatory Framework**

Air Sport Australia Confederation stated:

Part 149 is focused on providing CASA with regulations enabling direct intervention by CASA, in the worst case taking its own advice only, the regulations and NPRM remain silent on day to day operation of this interaction, essential to the achievement of best safety outcomes. Input by CASA must be at arms-length by audit processes. Direct intervention should normally arise out of these audits and by agreed due process and subject to a transparent risk management justification.

Direct intervention by CASA, even when justified, will risk significant damage to the safety outcomes achieved by the organisations. ASAC understands this interaction must deliver CASA appropriate assurance and the ability to intervene when necessary, but the proposed documentation is so dominated by these secondary needs as to put at risk the purpose of self-administration.

Addressing these issues in documentation would require words which trigger this approach - "if CASA is satisfied that" be replaced with "if, after consultation, CASA is still satisfied that".

Aa specific regulation requiring that CASA provide assurance of effective operation of each ASAO by regular audit to ensure the organisation is using best processes all the time.

ASAC understands that these are not normal inclusions in regulations, but would insist that because of the shared responsibility intended by co-regulation, self-administration is not a normal relationship for CASA.

Unless these issues are adequately addressed ASAC will advise organisations not that they should not sign on as self-administering organisations.

Australian Parachute Federation stated:

Sport and recreational aviation continues to evolve as participants invent new disciplines and technologies. CASA safety is to mitigate the consequential more creative ways they find of having accidents. It is important that, other than the essential governance and administrative framework of a Part 149 organisation being specified by regulation, everything else should be relegated to the Part 149 MOS.

It will be even more important that CASR Part 105 is not prescriptive, but outcome based as sport and recreational parachuting constantly evolves.

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Direct intervention by CASA: Part 149 introduces co-regulation. While CASA has ultimate responsibility for aviation safety and direct intervention may be necessary, it must be via due process. CASA should not act unilaterally without prior consultation with the respective ASAO.

Experimental Aircraft Association Chapter 1308 (Australia) stated:

CASA was set up to administer all aspects of civil aviation in Australia. It should do so and take responsibility instead of pushing this on to private organisations which causes tremendous workload for private individuals, many of them unpaid, when all that is happening is private people wanting to carry out a legitimate activity. There is a perfectly good delegation system which delegates certain powers and functions to individuals which removes the need for CASA to directly provide certain services. Introduction of Part 149 duplicates the functions and will require a parallel CASA group to oversee Part 149 organisations while pushing a considerable workload on to these private organisations, much of which is a pointless duplication of existing CASA processes. No motoring organisation membership is required in order to drive a private car, an activity likely to be far more hazardous to innocent third parties and other road users than is sport aviation activity. Why should people who wish to fly recreationally be forced to join private bodies by government?

CASA has a pilot licencing system in place for Recreational and Private pilots. Licence holders are presumably judged to be competent enough not to pose an undue risk to innocent third parties and other airspace users while flying general aviation powered aircraft, so it seems absurd to suggest they may do so while flying gliders, ultralight aircraft or rotorcraft, provided they have had appropriate type/design feature conversion training. Presumably the standard for a Recreational or Private pilot is a reasonable minimum which allows the individual to operate in Australian airspace without causing undue hazard. CASA really should ensure that this standard applies to all.

CASA is effectively delegating its law making powers to these bodies with apparently little review. In many cases the "laws" these bodies make are more onerous than the ones CASA applies to RPL and PPL licence holders. If CASA feels it is unable to properly write rules it can consult with interested parties (including members of the public and other airspace users, not just the organisations themselves) to come up with rules which can be turned into regulations after the proper public process has been followed.

The Part 149 proposal has not yet been seen by the public but copies of the proposal have already been circulated for some time to the proposed Part 149 bodies which will supposedly "benefit" from the introduction of Part 149. There should have been a proper public discussion via discussion papers on even the need or desirability of Part 149 before things got this far. Members of the proposed Part 149 organisations are not the only people with an interest on how these Part 149 organisations are set up and run. Members of the public and other airspace users along with anyone who may want to participate in these activities have a legitimate interest. The proper public consultation process appears to have been short-circuited in this case. The NPRM should be withdrawn until a proper public inquiry on the need for or desirability of Part 149 organisations has been established and reported to the public.

Separating sport aviation into "silos" results in needless expense for those who wish to undertake more than one such activity. More importantly, it acts to hinder sharing of safety information between these organisations and introduces the possibility of "grey areas" where it is uncertain which organisation should administer which activity.

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The proposed organisations are private bodies...their future viability and existence is not a given. If they cease operating because of incompetence in management or this is perceived by CASA, whether true or not, or internal political turmoil, the innocent members will suffer collective punishment by being deprived of their recreation and beneficial use of their assets through no fault of their own.

In any case those bodies operating as Associations are, in law, supposed to act for the benefit of their members. Acting as a branch of CASA may and probably should, not be permissible it also leads to these organisations being required or feel they need to act as policemen. Along with holding "kangaroo courts" where members may be threatened with expulsion or otherwise disadvantaged and unable to take part in their recreation or have beneficial use of their assets as a result without due process, natural justice and other features of Australian law. This has happened and in some cases has nothing to do with flight safety and everything to do with internal political and interpersonal conflict.

CASA requires that pilot and maintenance requirements be issued by the same organisation in order to fly legally. This appears to be an artefact of CASA's insistence on separating sport aviation into different groups. There appears to be no logic to this. A pilot is either competently qualified for the type or not and an aircraft is either airworthy or not.

The Part 149 proposal seems unnecessarily complicated. There appears to be no evidence that the proposed Part 149 will have any beneficial safety outcomes or economic benefits.

Gliding Federation of Australia stated:

The GFA is of the view that there needs to be clear statements within the preamble that that the relationship between CASA and ASAOs will be based upon due process and risk management as described in CASA's regulatory philosophy.

The GFA contends that a co-regulator it ought not be the subject of the Competition and Consumer Act 2010 and that it is the gliding clubs that provide services regulated under that Act. Multiple regulators in the same space is unnecessary and could lead to non-standardisation and poorer safety outcomes.

There is no recognition of the history of co-operation between the sport aviation bodies and CASA in improving safety outcomes for the sector. This gives the impression that Part 149 ASAOs are starting from the beginning rather than continuing and improving from a strong position. The GFA asserts that it can deliver better safety outcomes in partnership with CASA than CASA can achieve in isolation but this success will require CASA to support GFA's competence, standing and authority within our sectors. This needs to be clearly stated in the preamble.

Honourable Company of Air Pilots Australia stated:

We strongly support the concept of devolving these activities to a formal co-regulation model, where the rules of an approved organisation that are consistent with civil aviation law become a proxy for those rules. In this regard we agree that there should be a process in law whereby the aviation regulator is able to back up the rules of an approved organisation to sanction those who wilfully contravene them and cause unsafe outcomes. We also agree that the privilege to administer these operating rules also invokes a responsibility to make them available to any participant who undertakes to operate within those rules, so that the principles of natural justice and procedural

## SUMMARY OF CONSULTATION ON APPROVED SELF-ADMINISTERING AVIATION ORGANISATIONS

fairness must be built in to the self-administering organisations' rule set and be subject to the regulatory oversight of the regulator.

We support the regulatory principles espoused by the recently-retired Director of Aviation Safety and would like to see the CASR ensure that they are applied, particularly to the aviation activities covered by a devolved administration. CASA must use its powers to direct the self-administering organisations in line with these principles, in particular to consult fully with affected approved organisations prior to taking any action to exercise these powers.

We are mindful of CASR Part 11, but also of the potential for repeated requests under CASR 11.040, .045, .047 and .050 to unduly delay the issue of either an ASAO certificate or an approval to amend an ASAO's exposition. It is imperative that CASA, or an individual CASA officer responsible for such approvals, must not use these provisions to delay or avoid granting such a request that is otherwise reasonable.

We are of the view that the NPRM fails to adequately address the issues of funding that were discussed in Appendix C – namely how CASA or an alternative arm of Government (e.g. the Department of Infrastructure etc.) will provide and assess the level of financial support to perform the functions they undertake to relieve CASA of the responsibility of directly administering the functions it approves for an ASAO to undertake.

### Recreational Aviation Australia stated:

In terms of the "level playing field" for some 30 years RA-Aus has been issuing an authorisation allowing pilots to fly a certain type of aircraft under certain conditions. CASA is using public funds to compete with private sector organisations...they have engaged in competitive behaviour by issuing licences which directly compete with certificates issued by current RAAOs.

Moves to charge organisations review of documentation relating to their authorisations when they make application to extend the privileges of the authorisation...put undue pressure on the private sector to compete with the publicly funded government backed enterprise.

### Sports Aircraft Association of Australia stated:

The SAAA is firmly of the opinion that within the Sport and Recreational Aviation sector all regulatory process needs to be as minimalistic as possible congruent with achieving the necessary safety outcomes. The participants are "willing participants", hence the regulatory process needs to be contained to the minimum level required to protect "other persons on the ground and water and other airspace users". Every obligation over and above this brings with it an unnecessary cost burden to the activity participants, since there are no means of cost recovery within this sector.

CASA has not yet confirmed to industry under what conditions CAAP ADMIN 1 Insurance provisions may continue to be relied upon.

### **CASA's response**

CASA's functions are prescribed under section 9 of the Act. These functions include:

- Conducting the safety regulation of civil air operations in Australian territory.
- Encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety.

CASA cannot transfer its legislative responsibility for conducting the safety regulation of civil air operations to other organisations and does not propose to do so in Part 149. Rather, Part 149 sets out a regulatory framework for the formal certification of an organisation as an approved self-administering aviation organisation with approved aviation administration functions. This provides a direct regulatory relationship between the ASAO and CASA and provides a regulatory basis to the safety-related actions of members and affiliates (including associated bodies to which an ASAO delegates aspects of its approved aviation administration functions), and the aircraft they operate, that are administered by an approved organisation.

Where regulations within Part 149 include the phrase 'CASA is satisfied', this wording implicitly includes a requirement for CASA to consult. Section 16 of the Act states 'In the performance of its functions and exercise of its powers, CASA must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations'; inserting the phrase 'after consultation' in regulation is therefore superfluous. This is reiterated and expanded in CASA's [Regulatory Philosophy](#) that sets out CASA's collaborative and consultative approach to its regulatory functions.

CASA disagrees that direct intervention by CASA, even when justified, will risk significant damage to the safety outcomes achieved by the organisations. Direct intervention should only be necessary where the ASAO has already failed to achieve an acceptable safety outcome or where there is serious and imminent risk to the safety of air navigation (Division 3A of Part III of the Act). It is difficult to see how CASA's corrective actions could be construed as damaging the safety outcomes of an organisation, as in such circumstances these outcomes would have already been compromised and CASA's intervention will have been prompted by the need to mitigate the safety risks that have been left unaddressed or inadequately addressed.

Rules to ensure effective operation of an ASAO are already embodied within Subparts 149.A through 149.G. In accordance with the requirements of these subparts, the processes and procedures by which an ASAO operates are developed by the ASAO and set out in the ASAO's exposition. The exposition, along with an application for an ASAO certificate, must be submitted to CASA for approval. Where an ASAO subsequently seeks to amend its exposition (e.g. modify its processes and procedures or amend or include new aviation administration functions), Part 149 makes provision for change processes to be included in the exposition or approved by CASA (where not included in the exposition). Renewal of an ASAO certificate will follow the same process as for applying for an ASAO certificate. Where an ASAO applies for a renewal, seeking approval for the same aviation administration functions approved in its previous certificate, and its exposition is the same version as the last approved exposition referenced by the expired ASAO certificate, CASA will only charge a processing fee for the issue of the new certificate.

Under section 9 of the Act, CASA has the function of conducting the safety regulation of civil air operations by means that include developing aviation safety standards and enforcement strategies, conducting industry surveillance (including assessment of safety-related decisions taken by management at all levels) and regular reviews to monitor safety performance of the aviation industry. A regulation requiring that CASA provide assurance of effective operation of each ASAO is unnecessary as this is inherent and implicit in the requirements imposed on CASA under the Act.

CASA is well-acquainted with maintaining relationships with recreational aviation organisations. CASA (including its predecessors) has been providing oversight (through various legislative

instruments and agreements) of recreational aviation bodies (with their various forms of self-administration) and their administrators for more than 60 years. Part 149 sets out a regulatory framework for the formal certification of an organisation which empowers the organisation without impeding CASA's ability to fulfil its safety-related oversight obligations to the wider Australian community. The proposed model does not introduce 'additional' regulation. Rather, it supplants a complicated, unwieldy, 'negatively framed' regime based on a multitude of exemptions extended to a great many individuals and their aircraft, and subject to the condition of adherence to the safety rules of organisations with which CASA has no direct regulatory relationship. Part 149 creates a 'positively framed' arrangement in which CASA has a clear, transparent and direct regulatory relationship with a relatively small number of approved organisations that are affirmatively empowered to oversee the aviation safety-related activities of their members and affiliates (including associated bodies to which an ASAO delegates aspects of its approved aviation administration functions).

Consistent with [DAS Directive 01/15](#), proposed Part 105 of CASR will be an operationally focused regulation to achieve safety outcomes with regard to requirements for parachuting activities, including parachute descents, pilot requirements, aircraft operations and parachute defects.

In respect of the competencies for pilot licences, Part 61 of CASR prescribes the privileges, limitations and requirements of these licences. Part 61 approvals must meet the relevant standards, competencies or requirements in accordance with regulation 61.040 and subject to subregulation 11.055 (1A) of CASR that, amongst others, requires CASA to ensure that granting the authorisation would not have an adverse effect on the safety of air navigation.

Pilots in certain sport and recreational aviation activities operate under exemptions, and subject to applicable conditions, granted in Civil Aviation Orders 95.4, 95.4.1, 95.8, 95.10, 95.14, 95.32 and 95.55. They are not required to hold a flight crew licence but operate with pilot authorisations issued by recreational aviation organisations.

Under Part 149, there is an explicit regulatory requirement for safety management. ASAOs are required, under regulation 149.270 of CASR, to have a Safety Management System. The issue of a Part 149 certificate to an ASAO will be subject to subregulation 11.055 (1A), whereby an ASAO must satisfy CASA that the performance of its functions (which includes the activities of its authorisation holders) would not be likely to have an adverse effect on the safety of air navigation. However, CASA recognises the fact that informed participants in sport aviation willingly assume the inherent risk to themselves associated with their activities.

Given the level of industry participation (with a range of perspectives) in the regulation development process and the public consultation period which elicited a majority of favourable individual responses, CASA does not agree with the contention that the proposal has not been seen by the public nor the process short-circuited. Prior to the public consultation process, extensive industry consultation over proposed Part 149 was conducted through the SCC Sport and Recreational Aviation Standards Sub-committee (now disbanded). This approach reflected the history of the Part 149 project and its application to self-administration of sport and recreational aviation activities. The consultative engagements on the 'approved organisation' model reflected in NPRM 1502SS have been ongoing since 2011. Prior to this, two earlier NPRMs—NPRM 0704OS (July 2007) and NPRM 9805RP (June 1998)—proposing a new Part 149 specifically for the sport and recreational aviation sector were disseminated for public review and comment. In June 2011, CASA proposed the change to an 'approved organisation'

model at the Sport Aviation Forum. The initial draft of the Part 149 suite was sufficiently advanced by mid-2014 to allow a limited exposure draft to be circulated for consultation prior to the 2014 SCC S&R Sub-committee meeting. Further development of Part 149 occurred up to June 2015 to refine the regulation to address issues raised at that meeting. A revised Part 149 limited exposure draft was developed for consultation at the 2015 SCC S&R Sub-committee meeting. At this meeting the SCC members resolved that Part 149 should also have a MOS consistent with the [Government's response](#) to recommendations 30 and 31 of the [Aviation Safety Regulation Review](#) report. The draft regulation was then revised to accommodate the Part 149 MOS and a draft Part 149 MOS was developed. A limited exposure draft of the MOS and the regulation were released in November 2015 to the SCC for consultation, closing 29 January 2016. The regulation and MOS were further revised following the SCC consultation and a draft NPRM was developed and released to the SCC S&R Sub-committee for a one week limited consultation on 9 August 2016.

NPRM 1502SS, including an exposure draft of the proposed Part 149 and the proposed Part 149 MOS, was released for an eight week public consultation period commencing 22 August 2016. This was extended by one week upon request of industry stakeholders.

CASA disagrees that proposed Part 149 is introducing industry silos. Rather, Part 149 reflects the reality of the development of the sports aviation sector, whereby fraternally organised and less-formally administered sport and recreational aviation associations have grown over time and CASA, recognising the beneficial contribution these activities have brought to Australian aviation, has granted exemptions allowing these associations to oversee the safety-related aspects of the activities of their members. In keeping with CASA's commitment to work cooperatively with the aviation industry to maintain and enhance aviation safety, and in recognition of sport and recreational aviation organisations' continuing management of their safety-related affairs, Part 149 introduces a framework that replaces the exemption-based model with a clear, transparent and direct regulatory relationship between CASA and approved organisations that oversee the safety-related activities of their members and affiliates.

ASAO enforcement rules are required to be set out in an ASAO's exposition which must be approved by CASA prior to an ASAO certificate being issued. Where the ASAO's exposition includes enforcement powers, CASA has made efforts to ensure natural justice is applied by requiring, under regulation 149.290, that these powers are exercised in accordance with the principles of natural justice and procedural fairness.

CASA agrees that if an ASAO becomes defunct this may leave persons dependent on that ASAO stranded. If necessary to maintain aviation safety, and until another Part 149 organisation assumes these functions, CASA will assume direct regulatory oversight of the administration functions of the defunct ASAO.

In respect of organisational pilot and maintainer qualifications, CASA considers that is in the interests of good governance that ASAOs maintain separate administration of these as part of their approved functions. This does not mean that the skills required for a particular authorisation are not transferable to another ASAO's operating environment. An ASAO issuing an authorisation based upon qualifications issued by another ASAO will, to ensure compliance with its exposition, have a process to assess and recognise those qualifications.

CASA disagrees that Part 149 is unnecessarily complicated. As noted above, Part 149 will replace a multitude of exemptions and bespoke deeds of agreement with a single regulatory framework for ASAOs.

CASA, as the aviation safety regulator, has no view on the applicability of the *Competition and Consumer Act 2010* to proposed ASAO activities. Aspiring ASAOs should seek their own advice on this matter.

CASA acknowledged in NPRM 1502SS the historical willingness and ability of sport and recreational aviation associations to oversee the safety related aspects of their members, the beneficial contributions of those activities and the continuing responsible management of their safety-related affairs by those organisations. CASA's understanding of self-administration is consistent with the concept of 'co-regulation', as that term is described in the [Australian Government Guide to Regulation](#).

CASA's [Regulatory Philosophy](#) sets out the principles underpinning the way CASA performs its functions, exercises its powers and engages with the aviation community. These principles apply to the development and implementation of Part 149. Part 149 provides a clear generic framework within which organisationally appropriate self-administration models can operate effectively and in the interests of aviation safety. Under this regime, CASA will maintain a direct regulatory relationship with these organisations that have practical, day-to-day oversight of their members' and affiliates' activities and the aircraft they operate. As long as the required level of safety (including the safety afforded by ensuring persons are able to freely affiliate with an ASAO and its associated organisations) and the essential generally applicable regulatory requirements are maintained by ASAOs, CASA considers ASAOs should be free to develop their own approaches to self-administration.

[DAS Directive 01/15](#), Issue 2, January, 2016 reaffirms CASA's commitment to ensure that regulatory changes are justified on the basis of safety risk and do not impose unnecessary costs or unnecessarily hinder participation in aviation and its capacity for growth. It also extends the principles underlying this commitment to the application and administration of the regulations by CASA, to the fullest practicable extent consistent with the interests of aviation safety.

While CASA retains the ability to ask an applicant, under Part 11, for 'other things' in relation to an application, it will do so in a manner consistent with its [Regulatory Philosophy](#) and the rules of administrative law governing the way in which any government authority exercises its powers.

The view that CASA flight crew licences compete with some RAAO authorisations is not supported by the facts. The authorisations alluded to in this submission (the CASA Recreational Pilot Licence and the RA-Aus Recreational Pilot Certificate) serve different purposes and authorise different activities.

In line with Australian Government policy, CASA is required to recover costs for providing regulatory services to the aviation industry. During the Part 149 of CASR transition period, CASA will not charge existing RAAOs that are applying for an ASAO certificate that transitions existing approvals on a like-for-like basis. Where an organisation seeks to extend the scope of its approvals during the transition period, CASA may recover costs for providing regulatory services in relation to the additional work to authorise additional aviation administration functions to be included on an ASAO certificate. Where an organisation seeks to transition its existing approvals after the end of the 18-month transition period, CASA will recover costs for providing regulatory services in relation to all work carried out to assess the ASAOs application for an ASAO

certificate. In carrying out these regulatory functions for the issue of a Part 149 ASAO certificate, CASA is not competing with any private organisation.

In keeping with the [Government's response](#) to Recommendation 15 of the [Aviation Safety Regulation Review](#), CASA is in discussion with the Department of Infrastructure and Regional Development and the Department of Finance, with a view to determining whether, and if so the extent to which, the indemnity arrangements for CASA industry delegates and authorised persons reflected in Civil Aviation Advisory Publication (CAAP) Admin (1) should continue.

With these discussions in mind, it is expected that the indemnity arrangements reflected CAAP Admin (1) will continue to apply to delegates and authorised persons until such time as an ASAO transitions to Part 149. Delegations to individuals employed by, or working under an arrangement (as volunteers or otherwise) with, recreational aviation administration organisations, whose functions are assumed by an ASAO as an aviation administrative function, will be withdrawn concurrently with the issue of the ASAO certificate. With the cessation of those delegations, the indemnity arrangements reflected in CAAP ADMIN (1) will no longer apply to those persons. Accordingly, it will be prudent for ASAOs to make their own insurance arrangements.

### **CASA's disposition**

CASA acknowledges the consultative requirements imposed on it under section 9 of the Act. CASA's approach to its regulatory functions is guided by CASA's [Regulatory Philosophy](#), including that, mindful of the primacy of air safety, CASA is committed to maintaining the trust and respect of the aviation community through a risk-based, consultative approach to its regulatory functions and actions. CASA recognises that improved safety outcomes that can be achieved through co-regulation.

### **Affiliation arrangements**

Australian Parachute Federation stated:

The APF objects strenuously to the suggestion that that it would be incumbent on an ASAO to provide affiliation arrangements to persons without requiring that they become fully participating members. As with any member-based organisation, applicants must agree to observe the rules of the organisation as a condition of membership. ASAOs will not be able to sanction inappropriate behaviour and achieve expected safety outcomes. APF does not have a public or community service obligation to provide an authorisation to someone who is unwilling to accept the terms and conditions of membership of what is a private organisation. This will not change when the APF transitions to an ASAO.

Gliding Federation of Australia stated:

It is the view of the GFA that the preamble comment that "it would be incumbent an ASAO providing affiliation arrangements to persons who wish to engage in the activities overseen by the ASAO without necessarily requiring they become fully participating members" is an attempt by CASA to require ASAOs to provide a parallel path. GFA operates as a member-based organisation and the GFA's Safety assurance is based around a membership structure that provides oversight of member's activities. GFA contends that an ASAO has to provide assurance of reasonable, reliable and non-discriminatory access for members of the public to membership in, or an appropriate form of affiliation with, their organisation.

Model Aeronautical Association of Australia stated:

The difference between "affiliating and "becoming a member" does not appear to be clear in the NPRM or Part 149. MAAA submits that the concept of agreeing to be a member (on the terms and conditions of membership and in accordance with MAAA's rules) is the same as agreeing to affiliate with MAAA (on the terms and conditions of affiliation and in accordance with MAAA's rules). To allow affiliation without requiring the relevant individual being required to agree to be subject to, and abide by, the rules of MAAA would (in MAAA's view) pose an unacceptable risk to safety. Any attempt to distinguish between the two is likely to confuse ASAOs and members of the public. The terminology used in the MAAA governing documents (including the Statement of Rules) (and that of other bodies responsible for the administration of sport and recreation aviation) recognises different categories of "membership" - if ASAOs were required to refer to "affiliates", substantial changes to its Statement of Rules would have to be made (which can only be passed by a special resolution of members at a general meeting). The rationale for the need for ASAOs to provide both membership and affiliation is unclear, and creates unnecessary confusion and administration for ASAOs. MAAA is an organisation funded predominantly by membership fees (as is the case for many potential ASAOs). Without membership fees, it will be greatly restricted in its ability to ensure the activities of people who choose to fly model aeroplanes do not pose an unacceptable risk to safety.

While it is accepted and agreed that members of the public should be provided with reasonable, reliable and non-discriminatory access to membership, it is nevertheless submitted that an ASAO should be entitled to accept or reject its members (or affiliates) on the grounds of its (non-discriminatory) eligibility rules and regulations in order to fulfil its obligations in relation to safety.

Sports Aircraft Association of Australia stated:

The SAAA objects to a concept which mandates the availability of any form of affiliation (with the suggestion of lesser fee structure) other than the organisation's set membership fee as a condition of obtaining an ASAO certificate. An ASAO needs to be able to make such determinations based on its cost of the provision of services to its members. Members are required to submit to the Organisation's Rules (Constitution) and bylaws as a condition for membership and this enables enforcement activity.

**CASA's response**

Inherent in the privilege of exclusively administering aviation-related activities of a kind in which a person would otherwise engage under CASA's direct authority and oversight comes the obligation to allow all eligible persons to affiliate with the organisation to the extent necessary to enable them to engage in those activities safely, responsibly and lawfully. Under the self-administration model reflected in Part 149, the safe, responsible and lawful engagement in administered aviation-related activities requires compliance with the applicable organisational safety rules and requirements. Whether a person demonstrates their ability and willingness to abide by those requirements as a fully-fledged member of an ASAO, or as a person affiliated with the organisation to the extent the ASAO reasonably considers to be necessary for those purposes, is irrelevant. CASA's concern is to ensure that no eligible person is denied the opportunity to engage in administered activities in which they are able and willing to engage safely, responsibly and lawfully, without assuming membership obligations in an organisation that have no bearing on the aviation safety-related aspects of their involvement.

The costs imposed on affiliates by an ASAO may be the same as, greater or less than, the costs imposed by the ASAO on members. The non-aviation-related privileges and entitlement available to affiliates may be the same as, or different to, those available to members. The only 'public service' obligation ASAOs do acquire by virtue of their status as exclusive providers of what would otherwise be a government function is that they do not unreasonably or unfairly discriminate against prospective affiliates, by requiring them to do (or pay to do) things that are unrelated to the aviation-related functions performed by the ASAO, as a condition to exercising their aviation-related privileges.

There is nothing in these arrangements that would permit an affiliate of an ASAO to obtain or maintain their aviation-related privileges without complying fully with all of the ASAO's aviation-safety related rules and requirements.

Due to the size of the sport aviation organisations and their scale of operations, it is quite likely that only one ASAO certificate holder will be active in most, if not all, sport and recreational sectors. It is therefore reasonable to expect that a Part 149-approved ASAO would provide reasonable, reliable and non-discriminatory access for persons who wish to engage in the aviation-related activities overseen by the ASAO. This will be through some form of affiliation with an ASAO, whether on a 'membership' basis or through some other appropriate form that allows an authorisation holder to exercise the privileges of their authorisation(s) while complying with the aviation safety rules of the ASAO. As a practical matter, the distinction between a 'full member' and an 'affiliate' (or even 'affiliate member', if you will) may amount to a distinction without a difference.

As part of their aviation administration and enforcement rules, ASAOs are responsible for developing affiliation rules that govern the contractual basis of the relationship between various categories of persons or organisations that wish to affiliate with the ASAO (as clubs, members, authorisation holders or associated organisations). Where an ASAO provides the only practical avenue for an authorisation holder to exercise the privileges of their authorisation(s), CASA expects the ASAO to provide affiliation arrangements with terms and conditions sufficient to allow such persons to exercise those privileges in accordance with the ASAOs approved operational and technical rules, manuals and procedures. The purpose of these rules, manuals and procedures is to ensure that the activities of ASAO affiliates would not be likely to have an adverse effect the safety of air navigation.

Clubs and other organisations that act for and on behalf of an ASAO, and through which an ASAO administers activities covered by its approval, are, for the purposes of Part 149, extensions of the ASAO, however independent those organisations may otherwise be. Therefore, it will be incumbent on an ASAO to ensure that the clubs and other organisations by and through which the ASAO performs its functions, does so in a manner consistent with these expectations and obligations.

CASA will not approve an exposition with aviation administration rules that impose requirements that render affiliation by a person impracticable, or that omit from their aviation administration and enforcement rules requirements that ensure that organisations by and through which the ASAO performs its functions (and to which aspects of the ASAO's aviation-related functions and powers are effectively delegated) conduct themselves accordingly.

## Multiple ASAO arrangements

Australian Parachute Federation stated:

The APF takes issue with the issue that CASA could approve more than one ASAO to be responsible for administering the same or similar kind of aviation related activities. More than one ASAO serving a sector will likely lower the standards each can maintain. Members will migrate from an ASAO with higher standards to the ASAO with lower standards. There may well be a race to the bottom as each ASAO lowers standards to minimise migration. Where a second applicant applies in the same sector it must be incumbent on CASA to notify the existing ASAO so that the parties may determine if the two can work together. Unless agreement can be reached between the parties the second applicant must not be approved by CASA.

Model Aeronautical Association of Australia stated:

MAAA submits that CASA will experience difficulties when assessing whether another ASAO-applicant body which purports to govern a particular area of sport and recreation aviation (e.g. model aircraft) is able to operate to the same standards as the incumbent ASAO (e.g. MAAA). An assessment would need to be undertaken by a sufficiently experienced expert in the relevant area of aviation and those experts are likely to be already associated with an ASAO and, therefore, not independent.

It is MAAA's view that the approval of multiple ASAOs in relation to model aircraft would pose an unacceptable risk to safety, as it would be possible for multiple safety standards to be approved, causing inconsistency. For example, a second ASAO may opt for its safety standard to align with Regulation 101, which CASA has acknowledged (to MAAA) is a lower standard of safety than MAAA's Manual of Procedures. If other ASAOs applied less stringent safety standards, some members (or prospective members) may be dissuaded from joining MAAA. This may have the unintended consequence of ASAOs lowering safety standards in order to continue to attract the number of members required for it to survive.

MAAA anticipates that if two ASAOs are approved in relation to similar activities, it will reduce the revenue available for both organisations. For example, the two organisations will have the same pool of potential members and associated revenue available to them instead of one organisation. Splitting of resources will make it difficult for organisations to continue to provide activities at the appropriate standard, in terms of safety, facilities and oversight. If the ability of MAAA to maintain its high standards of safety is undermined, this may result in a reduction in the production of safety promotion activities, affect the investigation of incidents and reduce the extent of overseeing display applications, giant model permits, instruction etc.

A further difficulty is likely to arise in relation to the management of members/affiliates who have breached the rules and regulations of an ASAO. For example, where an individual is disciplined by one ASAO, CASA should consider what processes will be in place to prevent that individual from applying to another similar ASAO which provides the same or similar activities. This issue of disclosure is further addressed in relation to Part 149 (Regulation 149.405).

The term and concept of "authorisation" is essentially the same as "membership" as currently applied by MAAA and other potential ASAOs. It is noted that Regulation 149.400 does not...prevent an ASAO from refusing to accept an application on a reasonable, non-discriminatory basis providing that it acts in accordance with its Rules. MAAA seeks clarification of CASA's position in this respect.

Sports Aircraft Association of Australia stated:

Whilst encouraging open competition, because of the present size of the market in Australia, the SAAA holds concerns about allowing multiple ASAO participants to administer a particular field of activity. A balance needs to be achieved. Whilst a monopoly may not provide a competitive cost for the provision of services, multiple ASAO's will erode the financial ability of an ASAO to achieve the necessary safety outcomes. Multiple ASAOs administering the same approvals will in fact lead to reduced safety outcomes as the public will naturally gravitate to the lowest cost provider. SAAA is of the view that it is illogical for such a small sector to be duplicating efforts where the regulator itself has embarked on the reduced cost regulation model contained in Part 149. Participation in the Sport Aviation sector is currently falling, placing further cost pressure on ASAOs.

### **CASA's response**

CASA believes that approving more than one ASAO to be responsible for administering the same or similar kind of aviation related activities will not necessarily operate to lower safety standards. Before CASA issues an ASAO certificate, however, it must be satisfied (under regulation 149.075, and subject to regulation 11.055) that:

- the organisation can perform its aviation administration functions in a manner that would not be likely to have an adverse effect on the safety of air navigation
- the accountable manager and safety manager have the required qualifications and experience
- key personnel are qualified and that the exposition is compliant with regulation 149.340.

If insufficient information is provided, or the requirements of regulation 11.055 of CASR are not met, the certificate cannot be granted. The assertion that CASA would be unduly constrained in its ability to assess ASAO applications due limited availability of subject matter experts has not been experienced by CASA in practice for RAAOs.

It is also a condition of issue of a certificate that ASAOs and their key personnel comply with the civil aviation legislation. An ASAO certificate will only be issued to an applicant that has the resources (capability, capacity, operational, technical and administrative procedures and processes) to undertake its aviation administration functions. To mitigate the risk associated with issuing a certificate to a new entrant in a sector, CASA may issue the certificate for a shorter period than a certificate that is issued to an organisation with a demonstrated record of self-administration.

Where a second organisation applies for an ASAO certificate in the same sector, the application would be assessed on the same basis the first organisation. Where CASA is satisfied that the application of a second or subsequent organisation in the same sector meets the regulatory requirements, an ASAO certificate must be issued under Part 11.

Should a second or subsequent applicant satisfy the requirements of regulation 149.075, but granting the authorisation will fail to meet the requirements of regulation 11.055, CASA cannot issue a certificate. It is quite conceivable that, in some sectors, circumstances exist that would effectively preclude the issue of a second or subsequent ASAO certificate, because the risks of having multiple ASAOs cannot be mitigated.

CASA considers that a prerequisite for continuing aviation safety is ongoing cooperation and information sharing between ASAOs, particularly those operating in the same, or closely related, sectors. CASA may require (under regulation 149.120 of CASR) prospective and/or current ASAOs to reach information sharing agreements, which will form part of an ASAO's exposition.

Each ASAO has to satisfy CASA that they meet the level of aviation safety prescribed by regulation 11.055. If an organisation is granted an ASAO certificate, say, to administer model aircraft to be operated under Part 101.G, they would have met the standard required. If an organisation voluntarily sets a higher benchmark, then that organisation may use that to its advantage by seeking further approvals for additional activities that provide a point of differentiation from the activities of other organisations.

CASA recognises that two ASAOs with similar or overlapping activities may well compete for members. In many respects, just such competition exists today, between different sport and recreational aviation organisations, and to some extent, between the sport and recreational and general aviation sectors. CASA does not accept the assertion that Part 149 will be the driver for such competition. ASAOs will have to serve the needs and expectations of their members and affiliates. The approach an ASAO adopts in order to address those needs that distinguish one organisation from another is a matter for individual ASAOs to determine--so long as such an approach does not compromise the interests of safety, as these are governed by the civil aviation legislation.

CASA recognises that people may deliberately fail to satisfy the disclosure provisions set out in regulation 149.405 of CASR when applying for membership in or affiliation with an ASAO. To do so, however, is an offence attracting a potentially significant penalty, which should provide a significant disincentive for such conduct. Should ASAOs wish to further mitigate the risks arising from persons that wilfully fail to disclose information about previously suspended, varied or cancelled authorisations issued by other organisations, they can reach agreements with other ASAOs to share such information and make the consent to the release of such information to another ASAO a condition of membership and affiliation.

### **CASA's disposition**

To address the potential situation where having multiple ASAOs poses risks to aviation safety that cannot be mitigated, CASA has amended Part 149 to include a regulation that allows CASA to limit the number of ASAO certificates that may be granted. This limitation need not be expressed in terms of raw numbers, but rather may be expressed in terms of any number (beyond 1) CASA considers, in all the circumstances, presents an unacceptable risk to air safety.

CASA has also amended regulation 149.075 to include a requirement for CASA to determine a specified period for which the certificate is valid, up to a maximum of five years.

Regulation 149.090 of CASR is also amended to include the date of expiry of the certificate and the approved exposition version number.

Refer also to CASA's dispositions at *Arrangements for existing RAOs* under key proposal 1 and *Industry best practice* under key proposal 2 of this SOC.

### **Offence provisions**

Australian Sport Rotorcraft Association stated:

## SUMMARY OF CONSULTATION ON APPROVED SELF-ADMINISTERING AVIATION ORGANISATIONS

Part 149 remains mostly objected to by ASRA because it still retains 19 offence provisions, many of which impose strict liability and many of which penalize not only actions but also omissions or failures to comply within extraordinarily tight timelines.

Some of the offence provisions are extraordinarily broad and general in their scope, potentially able to be invoked by capricious executive action for even minor alleged infractions. It is no answer for the Regulator to assert that the penalty provisions would only be invoked in the most extreme of circumstances, so the ASAO's have little to fear. If that truly be the case, then the offence and penalty provisions shouldn't be there at all. ASRA's view is that Part 149 remains a veritable minefield of triggers for prosecution for a wide variety of transgressions, many which relate to the failure to undertake specific administrative action.

While ASRA recognizes that CASA needs to have available a "big stick" to use where negotiations have not produced a specific desired result, ASRA nevertheless regards many of the offence provisions – mostly aimed at ASAOs and their key personnel – as completely unnecessary and misconceived. The strict liability applying to many of the remaining provisions leads ASRA to conclude that the only persons who will be able to safely assume key personnel roles within ASAO's are those who are retired or who, if still in the workforce, are in occupations that would not be jeopardized by the imposition of a strict liability Commonwealth penalty which are almost always associated with the recording of a conviction for all but the most trifling offences.

Criminal Sanctions within the Part 149 Exposure Draft are largely ill-conceived. The drafters of Part 149 should have gone down the alternative drafting pathway of including administrative sanctions rather than offence provisions. In other words, it would be just as easy for Part 149 to declare that persons or organisations that transgress expectations or fail to meet deadlines be suspended for defined periods from being able to exercise functions or even disqualified or disbarred from being able to exercise functions. Offence and penalty provisions should only be brought into play when administrative action are repeatedly ignored or deliberately transgressed.

ASRA is an incorporated association, constituted on a non-profit basis and staffed principally by volunteers, with only 2 part-time paid administrative and accounting personnel. The Board members and officers of ASRA are all unpaid volunteers. Some of the Board members or appointed officers are in professions or occupations where the imposition of criminal penalties and automatic convictions would dramatically imperil their outside professional lives and ability to earn a living.

Honourable Company of Air Pilots, Australia stated:

In the drafting of offence provisions the words "a person" are used to refer to either an ASAO itself, or a person who carries out a function on behalf of an ASAO, or a person who holds an authorisation that was issued by an ASAO. It would be better to more precisely identify which of these the provision applies to.

### **CASA's response**

Criminal offence provisions exist to deter improper or irresponsible conduct and to punish such conduct should it occur. Offence provisions are not aimed at deterring individuals from occupying roles that carry responsibility, rather they ensure that, as a matter of public interest, those roles are competently occupied, and powers are properly and responsibly exercised. In assuming regulatory responsibilities, an ASAO is required to be accountable for its actions and decisions, just as CASA is accountable, under the law and otherwise, for its actions and CASA's decisions.

Strict liability offence provisions do not reverse the burden of proof and every element of a strict liability offence must be proven by the prosecutor beyond reasonable doubt. Making provisions in Part 149 subject to strict liability, on safety grounds and to ensure the integrity of a regulatory regime, is consistent with the [Commonwealth Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers \(September 2011\)](#) and the regulatory approach reflected in the *Civil Aviation Regulations 1988* and the *Civil Aviation Safety Regulations 1998*. The rationale here is the same as that on which the vast majority of road traffic infringements are offences of strict liability. Such an approach is, and has long been, common in legislation governing matters of public health, safety and welfare.

Where offence provisions refer to 'a person', the offence may apply to an individual or to a body corporate. The offence provisions of Part 149 which apply to an ASAO, apply to the ASAO certificate holder, irrespective of whether the certificate holder is an individual or a body corporate.

In keeping with CASA's commitments relating to the [Government's response](#) to recommendation 32 of the [Aviation Safety Regulation Review](#), CASA has undertaken to review virtually all of the penalties and offences in the civil aviation legislation as soon as the major remaining elements of CASA's regulatory reform program are completed. In addition to considering the nature and severity of the penalties set out in the legislation, the propriety of retaining the strict liability standard in relation to many of those provisions will be reassessed as part of that process.

In the meantime, the approach CASA takes to any enforcement action is coming increasingly to be governed by the application of the [Regulatory Philosophy](#), and the complementary provisions of recently promulgated DAS Instruction 02/2017. The constraints reflected in these measures should go some considerable way toward assuaging the concerns of those who see the retention of strict liability offences in the civil aviation regulations as unnecessary or inappropriate.

Attention is also drawn to the differential application of the offence provisions in the proposed legislation. As said, offence provisions that refer to 'a person' who does or fails to do a certain thing, may apply to an individual, as well as a body corporate. Offence provisions that refer to an ASAO apply to the ASAO certificate holder. CASA has come to the view that some offence provisions proposed in the Part 149 consultation draft are unnecessary, as compliance with the aviation safety objectives those provisions are meant to address can be achieved more effectively through alternative mechanisms available under the civil aviation legislation.

All of these developments are in keeping with the essential objectives and key features of the ASAO model outlined in NPRM 1502SS. None involves any compromise of the principles underpinning the proposed regulations, for which the vast majority of stakeholders have long expressed their support. Rather, these improvements are designed to enhance the efficacy of the ASAO approach proposed in 2011, by better ensuring delivery of the optimal safety outcomes and the rational regulatory arrangements the model envisages.

### **CASA's disposition**

CASA recognises that a number of the offence provisions of the proposed Part 149 as consulted may act as a disincentive for individuals to volunteer for key personnel positions, including those of accountable manager and safety manager. CASA has reviewed the Part 149 offence provisions and incorporated the amendments outlined in the table below.

SUMMARY OF CONSULTATION ON  
APPROVED SELF-ADMINISTERING AVIATION ORGANISATIONS

Part 149 Regulation	Disposition
149.015(3); 149.405(2); 149.410(2); 149.415(7)	<p><i>Retention of individual offences</i></p> <p>In each of these provisions, the offence specified may be committed by an individual as well as corporate entity.</p>
149.020(2); 149.120(5); 149.195(4); 149.200(2); 149.345(2); 149.420(5); 149.425(3); 149.430(3)	<p><i>Omission of individual offences</i></p> <p>In each of these provisions as they appeared in the consultation draft, the offence specified may be committed by 'a person', which necessarily includes individuals as well as a corporate entity (<i>i.e.</i> the relevant ASAO). The legislation has been amended to provide that the specified offence is committed by 'an ASAO', not by individuals employed or engaged by an ASAO, or individual volunteers carrying out responsibilities for and on behalf of an ASAO.</p>
149.215(3)	<p><i>Omission of offence provision</i></p> <p>This provision currently makes it an offence if the accountable manager or the safety manager of an ASAO becomes aware that person has overridden an aviation safety-related decision of a member of the key personnel of the ASAO and fails to report the matter to CASA within seven days of becoming aware of the matter. The change omits the offence provision.</p> <p>While the intentional or knowing failure to report such an event is very much a matter of concern to CASA (as it presumably would be to the ASAO), the introduction of a criminal penalty as a remedy for such conduct is unlikely to achieve the safety outcome the reporting requirement reflects. More effective responsive options for dealing with such conduct, by the ASAO and, where necessary, by CASA are available. The omission of this offence provision is in keeping with CASA's <a href="#">Regulatory Philosophy</a>, having particular regard to principles 5, 6, 8, 9 and 10. Refer also to CASA's disposition at <i>Organisation and personnel</i> under the Part 149 Regulations and MOS section of this SOC.</p>
149.400(3)	<p><i>Omission of offence provision</i></p> <p>The provision making it an offence for a person (<i>i.e.</i> an ASAO) to reject an application by a person for an authorisation to undertake an activity administered by the ASAO on grounds other than the failure of the person to satisfy the eligibility criteria set out in the ASAO's aviation administration and enforcement rules is omitted.</p> <p>In keeping with principle 10 of CASA's <a href="#">Regulatory Philosophy</a>, the imposition of a punitive sanction for such action is not reasonably calculated to achieve an optimal outcome, either in the interests of safety or fairness. The inclusion of a decision to refuse to issue an authorisation as a decision of a kind that is subject to review (both in accordance with an ASAO's internal review procedures as well as by CASA, on review of the ASAO's decision), provides a more appropriate remedy to address any shortcomings in the initial and/or final ASAO decision. Other means by which demonstrable shortcomings in an ASAO's decision-making processes can be addressed (in this connection and otherwise) already exist.</p> <p>Refer also to CASA's disposition at <i>Review of ASAO decisions</i> under key proposal 5 of this SOC.</p>
149.550(2)	<p><i>Omission of offence provision</i></p>

SUMMARY OF CONSULTATION ON  
APPROVED SELF-ADMINISTERING AVIATION ORGANISATIONS

Part 149 Regulation	Disposition
	<p>The provisions making it an offence for the accountable manager to fail to surrender to CASA all documents used by the ASAO in the performance of its approved functions within 30 days of the organisation becoming subject to paragraph 149.550 (1) (a) of CASR are omitted. A note is appended to the regulation making it clear that CASA may issue a direction under Part 11 to the administrator, or a person performing the functions of an administrator, of an ASAO to surrender all of the documents used by the ASAO in the performance of its approved functions.</p> <p>Refer also to CASA's disposition <i>at Surrender of documents - circumstances</i> under key proposal 6 of this SOC.</p>

## **Appendix B**

### **Comments on specific Part 149 of CASR exposure draft regulations and Part 149 MOS exposure draft provisions**

## Subpart 149.A – The standard of assessment for ASAO approval

### Regulation 149.005

Australian Parachute Federation and The Illawarra Flyers Inc. stated:

The 149.005 references 11.055(1B) whereas it should reference 11.055(1A) and require that issuing of a further 149 certificate must not result in a reduction in aviation safety. Reference to 11.055(1B) raises the possibility of a certificate issued to a second organisation – and could result in a lower level of safety because of competition between organisations reduces the level of regulation applying to individual participants. Assessment of applicants for a second ASAO must be based on a data-driven transparent risk assessment of the organisations – and the implications for aviation safety – of a second ASAO serving the same sector.

Gliding Federation of Australia stated:

The GFA accepts that CASA may approve other organisations to operate in the same field of activity. GFA notes that Subregulation 11.055(1B) applies to the issue of an ASAO certificate under this regulation, and that this specifies that “granting the authorisation will preserve a level of aviation safety that is at least acceptable”. GFA believes that approving a level of safety that is “acceptable” implies that CASA could accept a lower level of safety than GFA and CASA are achieving in cooperation, and GFA suggests that Subregulation 11.055(1A), which requires that “granting the authorisation would not be likely to have an adverse effect on the safety of air navigation”, is more appropriate. In the alternative, GFA requests CASA provide the justification for proposing a path that would issue a certificate to an organisation that results in a reduction in safety.

Honourable Company of Air Pilots, Australia stated:

We seek advice as to whether, in relation to the differences between the stipulations in regulations 11.055 (1A), (1B) and (1C), there is any guidance as to statistical measures of either frequency or consequence that may attach to the phrases “not likely to have an adverse effect on the safety of air navigation” and “a level of safety that is at least acceptable”, and to distinguish between the safety of participants, other airspace users, and people (and perhaps property of people) on the ground or water.

If the issue of an experimental certificate is an approved function of an ASAO, we are of the view that its procedures for such issue should address compliance with 11.055 (1C).

### CASA's response

Regulation 11.055 specifies the administrative procedures for granting authorisations. Subregulations 11.055 (1A), (1B) and (1C) of CASR each require a level of safety to be met for the grant of an authorisation.

The GFA assertion that requiring two organisations to meet the level of safety required by subregulation 11.055 (1B) will result in a reduction in safety is unsubstantiated. Although CASA does not agree with this conclusion and, for the reasons discussed below, that the distinction between the two standards is negligible for present purposes, we have decided to adopt the standard reflected in subregulation 11.005(1A), where applicable.

CASA agrees that if the issue of an experimental certificate is an approved function of an ASAO, the granting of such a certificate should be compliant with subregulation 11.055 (1C) of CASR.

### **CASA's disposition**

CASA has amended the reference in subregulation 149.005 (3) of CASR to refer to subregulation 11.055 (1A). The determinative standard against which the approval of an application for an approval as an ASAO is assessed will be the generally applicable standard that requires CASA to grant the approval if doing so 'would not be likely to have an adverse effect on the safety of air navigation'. See paragraph 11.055 (1A) (e). Under the draft regulation as consulted, the standard called up (subregulation 11.055 (1B) of CASR) required the approval to be granted if doing so 'will preserve a level of aviation safety that is at least acceptable.'

While this change may, in some respects, amount to a distinction without a significant difference in practice, it does serve to emphasise the importance of ensuring that this safety critical entry-level standard is met by all new applicants for an ASAO approval, as well one that must be maintained by all incumbent transitioning organisations. The benchmark against which the effect of the admission of a new entrant will be assessed will be the recognised current state of the safety of operations in the sector involved, on which the admission of the new entrant must not be seen to have an adverse effect.

The standard applicable in considering applications for approval to change an exposition of an existing ASAO will remain one requiring that approving the change 'will preserve a level of aviation safety that is at least acceptable'. See paragraph 149.115 (4) (b) of CASR.

### **Regulation 149.015**

Honourable Company of Air Pilots, Australia stated:

We see no justification for the reverse onus of proof in draft regulations 149.015

### **CASA's response**

The evidentiary burden requirement at regulation 149.015 of CASR provides an incentive for a person to ensure they are in possession of a civil aviation authorisation, issued under the regulations, that permits the performance of an aviation administration function.

### **CASA's disposition**

Regulation 149.015 unchanged. Refer also to CASA's disposition at *Offence provisions* under the NPRM preamble section of this SOC.

## **Subpart 149.B – ASAO Certificates**

### **Regulation 149.070**

Air Sport Australia Confederation stated:

149.070 (c) What does this actually mean? Many of the functions covered by the application will be carried out at many addresses?

Honourable Company of Air Pilots, Australia stated:

149.070 (3)(c) only needs to refer to the principal place from which the ASAO performs its functions

### **CASA's response**

Paragraph 149.070 (3) (c) of CASR is intended to refer to the principal operational address of the ASAO where the approved functions of the ASAO are carried out. For practical purposes this is the principal address at which the accountable manager carries out their duties and responsibilities; and at which notices may be served on the accountable manager.

### **CASA's disposition**

Paragraph 149.070 (3) (c) is amended to include reference to the principal operational address as the address where the accountable manager carries out their duties and responsibilities in fulfilment of the approved functions of the ASAO on its ASAO certificate.

### **Regulation 149.075**

Australian Parachute Federation and The Illawarra Flyers Inc. stated:

The draft regulation defines two key personnel. It may not suit the ASAO applicant to have two such key personnel with their roles defined so prescriptively. The regulation should allow applicant ASAOs to define their own structure, provided the various responsibilities of its present key personnel – satisfy the essential requirements for the key responsibilities CASA proscribes.

### **CASA's response**

Part 149 does not prescribe the organisational structure of an ASAO. Rather, it requires that the individuals nominated to fill the two key personnel roles of accountable manager and safety manager, who may have different titles within the organisation, have the requisite qualifications and experience for those roles. It also prescribes that the role of safety manager and other key personnel roles may not be held simultaneously by the same person for a period of time longer than that specified by the ASAO in its exposition. This separation of roles is important because it acts as a safeguard against the inherent tensions and potential conflicts of interest between the corporate goals of the ASAO and the ASAO's aviation safety compliance obligations.

### **CASA's disposition**

Regulation 149.075 unchanged.

### **Regulation 149.085**

Air Sport Australia Confederation stated:

149.085 (b) This is only acceptable if carried out via an agreed due process and risk justification.

### **CASA's response**

This subregulation 149.085 (b) of CASR imposes a discrete obligation on ASAOs to comply with such directions as CASA may give under the regulations. CASA's authority to issue such directions is limited to the maintenance or achievement of safety-related outcomes; and in

exercising such authority, CASA is always required to act fairly and proportionately Act. Where the interests of safety dictate that such directions be given, CASA may be obliged to do so, and an ASAO, as the object of such a direction, will be required to comply.

### **CASA's disposition**

Regulation 149.085 unchanged.

## **Subpart 149.C – Changes to exposition or personnel**

### **Regulation 149.115**

Air Sport Australia Confederation stated:

149.115 (5) (6) and (7) exposes us to ongoing revision of changes as CASA thinks of different issues each time we submit changes for approval. CASA officers should be capable of defining any concerns with the proposed processes before requiring or requesting 'additional information'.

Australian Parachute Federation and The Illawarra Flyers Inc. stated:

There must be an automated approval in the event the ASAO meets all its requirements in respect of 149.115, but CASA does not meet its own obligations.

### **CASA's response**

The purpose of subregulations 149.115 (5), (6) and (7) of CASR is to ensure CASA has sufficient information to make a decision about an application for changes to the exposition. This requirement is in the interests of the applicant as, in the absence of sufficient information, the application may be refused. It is also in CASA's interests and, moreover, in the overarching interests of safety, to reach a decision without delay, which can best be achieved if the application provides clear and complete information in respect of the proposed exposition change.

Except where CASA has approved a process by which certain changes to an exposition can be made, in accordance with that process, without CASA's specific approval, an automated approval process for a change to an exposition that does require CASA approval under regulation 149.115 of CASR would be both unlawful and unacceptable as a matter of safety. To include such a provision in Part 149 would be inconsistent with CASA's obligations under the *Civil Aviation Act 1988*.

### **CASA's disposition**

Regulation 149.115 unchanged.

### **Regulation 149.120**

Air Sport Australia Confederation stated:

149.120 (3) (4). These sub-regulations must be qualified with a statement that the time line must be 'reasonable' given the size and circumstances of the Organisation involved - especially if the Organisation is run by key personnel who are part time and/or volunteers.

Gliding Federation of Australia stated:

CASR 149.120. Under co-regulation, GFA would expect that CASA would not unilaterally give direction without prior consultation. GFA suggests that these be amended to: "If, after consultation, CASA is satisfied that it is necessary in the interests of aviation safety, CASA may..."

Honourable Company of Air Pilots, Australia stated:

149.120 needs to include an appeal or consultation provision that gives effect to a means of negotiating an acceptable resolution in relation to CASA directions.

Recreational Aviation Australia stated:

149.120 (2) appears to give CASA the right to dictate the removal of key personnel with no specific guidance as to just culture or evidentiary requirements.

### **CASA's response**

In issuing a written notice under subregulations 149.120 (3) and (4) of CASR, CASA will state the time considered reasonable for the ASAO to comply.

Consistent with CASA's [Regulatory Philosophy](#) CASA adopts a risk-based, consultative approach to its regulatory functions and actions. Expressly amending the regulation in this instance would be unnecessary.

A direction made under regulation 149.120 to remove any of the key personnel from the person's position within the ASAO will be a reviewable decision, in which case CASA would be obliged to demonstrate that it acted reasonably and fairly in taking such action. Refer also to CASA's response at section A5.3 of this SOR.

### **CASA's disposition**

Refer to CASA's disposition at *Review of ASAO decisions* under key proposal 5 of this SOC.

## **Subpart 149.D – Organisation and personnel**

### **Regulation 149.195**

Honourable Company of Air Pilots, Australia stated:

149.195 (3) appears to make the ASAO liable for a failure committed by its key personnel.

### **CASA's response**

This interpretation is the intended meaning. The purpose of subregulation 149.195 (3) of CASR is to make the ASAO accountable for ensuring its key personnel carry out the responsibilities of their position in accordance with the ASAO's exposition.

### **CASA's disposition**

Regulation 149.195 is amended to omit the offence by an individual.

## Regulation 149.215

Honourable Company of Air Pilots, Australia stated:

149.215 should also make it an offence for a person to override, or attempt to override a safety-related decision of a member of the key personnel.

Whilst it is clear that an organisation cannot do anything outside its ASAO certificate, it is not immediately clear what rule applies to constrain a person appointed to perform an authorised function to act in accordance with their appointment.

### CASA's response

Regulations 149.345 and 149.410 of CASR provide offence provisions for failure of an ASAO, or an authorisation holder, to comply with an ASAO's exposition.

CASA considers that the circumstance whereby a person (other than a person acting contrary to the civil aviation legislation) who is not one of the ASAO's key personnel, overrides or attempts to override a safety-related decision of one of the ASAO's key personnel is best addressed by the ASAO through its aviation administration and enforcement rules.

With regard to the offence provision at draft subregulation 149.215 (3) of CASR, CASA is of the view that the purpose of the regulation would be better served by removing the offence provision and encouraging ASAO compliance by noting that subregulation 149.120 (2) may be invoked, if required.

### CASA's disposition

To ensure consistency in ASAO rules regarding the circumstance of ASAO personnel failing to perform a function in accordance with their appointment, the Part 149 MOS is amended to specify that rules governing how the ASAO manages the performance of ASAO personnel be included in an ASAO's aviation administration and enforcement rules.

The offence provision of regulation 149.215 of CASR is omitted. A note is appended to regulation 149.215 that CASA may give a direction under subregulation 149.120 (2) of CASR if an ASAO fails to comply with regulation 149.215. Refer also to CASA's dispositions at *Review of ASAO decisions* under key proposal 5 and *Offence provisions* under the NPRM preamble section of this SOC.

## Subpart 149.E – Systems, facilities, reference materials and rules

### Regulations 149.270, 149.275 149.280 & 149.285

Honourable Company of Air Pilots, Australia stated:

Are each of the elements of Subpart E not a part of the exposition that are required for all ASAOs, and therefore more correctly located in either 149.340 or the MOS?

149.285 appears to require an ASAO to hold a physical copy of the pilot operating handbook/flight manual, type certificate data sheet and instructions for continued airworthiness for each type and model of certified aircraft it administers, as well as individual experimental certificates of each non-type-certificated aircraft.

### **CASA's response**

For the purposes of Subpart 149.E of CASR, regulations 149.270 and 149.275 are required to provide the head of power for requirements to be prescribed in the Part 149 MOS.

Regulation 149.280 of CASR is required to ensure that an ASAO can be held accountable for maintaining the facilities necessary to perform its approved functions.

With respect to regulation 149.285 of CASR, where an ASAO's aviation administration functions include administering airworthiness activities, the ASAO must maintain manuals for the aircraft administered. This includes the handbook/flight manual, type certificate data sheet and instructions for continued airworthiness for each type and model of type certificated aircraft it administers, as well as the operating and technical instructions and copies of individual experimental certificates of each non-type certificated aircraft. CASA considers that this provision is better placed in the Part 149 MOS.

### **CASA's disposition**

For regulation 149.285, the requirement for an ASAO to maintain manuals for aircraft administered is incorporated within the Part 149 MOS.

## **Subpart 149.F – Expositions**

### **Regulation 149.340**

Honourable Company of Air Pilots, Australia stated:

149.340 (j) appears to be a loophole that allows CASA to “find” another regulation...or to declare a minor amendment to the MOS. It would appear that this entire regulation was drafted before the concept of a MOS for the Part was agreed, and the regulation only needs to authorise the MOS to list the matters that must be included and those that (if applicable) must be included in the ASAO's exposition. Paragraph 10 of the draft MOS seems to duplicate much of the content of some draft regulations.

Given the current state of discussions about what rules will be required in CASR Parts 103 or 105 (or their respective MOS) and what aircraft operating and maintenance rules are to be contained in the organisation's exposition, should these not be identified as items to be included in the exposition and not varied without approval by CASA.

### **CASA's response**

The purpose of subregulation 149.340 (j) of CASR is to introduce a degree of flexibility as to what may be required by CASA to be included in an exposition. This provides the means by which previously undefined aviation administration functions may be incorporated in an exposition. For example, it is plausible that an ASAO may wish to administer authorisations for aeronautical component fabrication. In such a circumstance, it is probable that such an exposition would include provision for a description of the ASAOs Quality Management System. This would be achieved through amendment of Part E of the Part 149 MOS. Amendments to the MOS are subject to the full CASA consultation process. While it may appear to be duplication, the requirements for matters to be included an exposition presently listed in Part E of the consultation draft MOS are those required by the CASR for all ASAOs. The listed requirements in the MOS will be developed or refined over time to address any specific administrative requirements of each ASAO as they transition to Part 149.

The proposed Part 105 regulations are at an advanced stage of development and have been informally consulted with industry bodies. The operational requirements for what will become Part 103 aircraft are presently incorporated within the relevant Civil Aviation Orders (CAO) Part 95 and will be incorporated within Part 103 of CASR. Applicable parts of other rules, for example the visual flight rules in proposed Part 91 of CASR, will be duplicated within Part 103.

## Subpart 149.G – Authorisations

### Regulation 149.400

Honourable Company of Air Pilots, Australia stated:

We see no justification for the reverse onus of proof in draft regulations 140.400...

#### CASA's response

Refer to CASA's disposition at *Offence provisions* under the NPRM preamble section of this SOC.

### Regulation 149.420

Air Sport Australia Confederation stated:

149.420 This regulation appears to allow CASA to ask for any information within 7 days whether the Organisation holds that information or not. 149.420 (2) says that 'the information may relate to ...'

ASAC assumes that this is meant to enable Key Proposal 7 but this wording does not limit the information as suggested in this Key Proposal. ASAC understood that Andrew Ward had agreed that this was unintended and would be changed to be limited in some manner to information agreed to be held by the Organisation.

#### CASA's response

CASA can only request information from an ASAO, under regulation 149.420 of CASR, that the ASAO is required to hold under the civil aviation legislation. Refer also to CASA's response at *Kinds of information provided to CASA* under key proposal 7 of this SOC.

### Regulation 149.425

Honourable Company of Air Pilots, Australia stated:

149.425 (2) indicates another matter that must be included in an exposition – given the seriousness of this may justify its being a separate regulation, but the nature and penalty are identical with those in 149.325.

#### CASA's response

CASA agrees that providing a report about the conduct of authorisation holders to CASA, in accordance with subregulation 149.425 (2) of CASR, should be included in an ASAO's exposition.

## **CASA's disposition**

CASA has incorporated in Part D of Part 149 MOS (*Aviation administration and enforcement rules*) a provision that an ASAO must include in its aviation administration and enforcement rules a process that ensures that the ASAO will provide CASA a report about the conduct of authorisation holders in accordance with subregulation 149.425 (2), within the time period specified in the ASAO's exposition.

## **Subpart 149.H – Authorisations and enforcement**

### **Regulation 149.495**

Gliding Federation of Australia stated:

CASR 149.495(1). Under co-regulation, GFA would expect that CASA would not unilaterally give direction without prior consultation. GFA suggests that these be amended to: "If, after consultation, CASA is satisfied that it is necessary in the interests of aviation safety, CASA may..."

### **CASA's response**

Refer to CASA's response at *The Part 149 Regulatory Framework* under the NPRM preamble section of this SOC.

### **Regulation 149.500**

Honourable Company of Air Pilots, Australia stated:

149.500 is clumsily drafted.

### **CASA's response**

The wording for draft regulation 149.500 of CASR is provided by the Attorney General's Department (AGD) and will be retained unless AGD decides otherwise.

### **CASA's disposition**

Regulation 149.500 unchanged.

## **CASR Dictionary Part 1**

Honourable Company of Air Pilots, Australia stated:

The definition of officer proposed for the Dictionary seems to make irrelevant reference to Part 142, when compared to the Note in the draft MOS 10.1 (d) that references the Corporations Act.

### **CASA's response**

The reference to the meaning of an 'officer of a corporation' intentionally references the meaning contained in regulation 142.035 of CASR, which uses a limited version of the meaning defined in regulation 11.015 for the purposes of Part 11. CASA agrees that the note in subparagraph 10.1 (d) of the draft Part 149 MOS is inconsistent with the definition in the CASR Dictionary.

### **CASA's disposition**

To remove the inconsistency with the definition of officer of a corporation proposed in the CASR Dictionary, the note at Subparagraph 10.1 (d) of the draft Part 149 MOS is omitted.

## **Part 149 Manual of Standards**

Gliding Federation of Australia stated:

Part 149 MOS Content of exposition. Subparagraph 10.1 (p) states that an Exposition must contain: "a copy of each document that contains operational instructions for personnel of the ASAO". This should only be documents of a regulatory or rule based nature and not documents provided as guidance.

Honourable Company of Air Pilots, Australia stated:

In relation to the draft MOS there may be a case for including amateur rocketry and balloon airworthiness matters.

### **CASA's response**

The exposition documents required by subparagraph 10.1 (p) of the Part 149 MOS are those documents that set out the operational rules and instructions for the personnel of the ASAO to ensure that they are fully aware of their duties and responsibilities, as well as the organisational processes and procedures to be followed in the performance of the aviation administration functions of the ASAO. Performance of these functions must comply with civil aviation legislation, the conditions of the ASAO's ASAO certificate and the ASAO's exposition. Guidance material produced by the ASAO to assist personnel is not required, but may be included at the ASAO's discretion.

Amateur rocketry may be included within the scope of the MOS should a person seek approval for an ASAO certificate to administer amateur rocketry functions. As balloon maintenance requirements will be incorporated in proposed in Part 131 of CASR, Part 149 does not make provision for a Part 149 ASAO to administer balloon airworthiness activities.

### **CASA's disposition - Part 149 MOS**

Refer to CASA's dispositions at *Industry best practice* under ley proposal 2 and at the *Organisation and personnel; Systems, facilities, reference materials and rules; Authorisations and Authorisations and enforcement* subsections of the NPRM preamble section of this SOC.

## **Consequential Amendments and Transitional Savings for Part 149 of CASR**

### **Transitional Savings**

Honourable Company of Air Pilots, Australia stated:

There does not seem to be any transitional provision that might save the powers of existing organisations through a phased introduction of approvals or stagger the introduction of the Part for different existing organisations, nor to accept existing manual sets as being a satisfactory exposition for a period following the commencement date of the draft regulations.

**CASA's response**

As noted in NPRM1502SS, CASA proposes a transition period of 18 months to ensure that industry has sufficient time to transition to these changes. CASA is engaged in planning for the transition of existing self-administering RAAO's on the assumption these organisations will apply to become ASAOs during this period. Existing organisations will continue to operate in accordance with their Deeds of Agreement until they become ASAOs and in accordance with exemptions provided by the relevant CAO's Part 95. Consequential amendments to the CAO Part 95 arising from Part 149 will replace references to a specific RAAO with references to a Part 149 ASAO whose approved aviation administration functions include the scope of aircraft to which the CAO applies. Transitional savings will apply to the CAOs to enable non-transitioned RAAOs to continue to operate under the relevant CAO.

**CASA's disposition**

Transitional savings regulations are made to the CAO Part 95 to enable the continued operation of non-transitioned RAAOs under the relevant CAO.