

Australian Government
Civil Aviation Safety Authority

ADVISORY CIRCULAR
AC 1-01 v3.2

Understanding the legislative framework

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Acknowledgement of Country

The Civil Aviation Safety Authority (CASA) respectfully acknowledges the Traditional Custodians of the lands on which our offices are located and their continuing connection to land, water and community, and pays respect to Elders past, present and emerging.

Artwork: James Baban.

Advisory circulars are intended to provide advice and guidance to illustrate a means, but not necessarily the only means, of complying with the Regulations, or to explain certain regulatory requirements by providing informative, interpretative and explanatory material.

Advisory circulars should always be read in conjunction with the relevant regulations.

Audience

This Advisory Circular (AC) is for anyone involved in the aviation industry who has an interest in understanding the structure of the Australian aviation legislative framework.

Purpose

This AC discusses the relationship between Australia's aviation legislation and the rules of the International Civil Aviation Organization (ICAO), and how our legislation is overseen by parliament. It describes the important distinction between supporting material and the legislation and includes general descriptions of legal concepts used in the development of the legislation.

For further information

For further information or to provide feedback on this AC, visit CASA's contact us page.

Unless specified otherwise, all subregulations, regulations, Divisions, Subparts and Parts referenced in this AC are references to the *Civil Aviation Safety Regulations 1998 (CASR)*.

Status

This version of the AC is approved by the National Manager, Flight Standards Branch.

> **Note:** Changes made in the current version are annotated with change bars.

Table 1: Status

Version	Date	Details
v3.2	October 2026	The following changes have been made: • section 1.2 (Definitions) – added explanatory information into the definition of 83 bis agreement, included a definition of Australian Aircraft, included an advisory note in relation to Australian territory • section 1.3 (References) – removed the reference to the Part 135 MOS • section 2.2 (Australian aircraft versus foreign registered aircraft) – new section explaining the difference under Australian law between an 'Australian aircraft' and 'foreign registered aircraft' • paragraph 5.3.9 – removed the reference to a CASA published consolidated dictionary as there is no such document • paragraph 5.4.9.1 – removed the outdated reference to CAR 215 which was repealed on 2 December 2021 • paragraph 6.3.7 – the word 'operations' was removed from the title of Figure 3 as the figure is showing the regulatory structure for operations with a theme of aerial work and is not limited to the specific legal definition of 'aerial work operations' • paragraph 6.5.4 – the example has been reworded along with other small amendments • paragraph 8.2.4 – this is a new paragraph describing the Operations Protocol Framework suite • paragraph 8.4.3.3 – the list of PEGs has been removed as it was no longer accurate, with a hyperlink to the CASA website where all PEGs are listed being included instead • paragraph 9.3.6 – the existing content has been reworded.
v3.1	September 2023	Added information to section 5.4.10 about CASA's exemptions webpage and its Exemption Review Panel.
v3.0	May 2023	Inclusion of a new Chapter 10 providing information about Chicago Convention article 83 bis (international transfer of regulatory responsibilities) agreements.
v2.1	November 2022	Significant changes made to include and restate the classification of operations policy underpinning the development of the CASRs.
v2.0	May 2021	Significant changes through amendments of the existing text, order and addition of new topics.
v1.0	November 2020	Initial AC.

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1 Reference material

1.1 Acronyms

The acronyms and abbreviations used in this AC are listed in the table below.

Table 2: Acronyms

Acronym	Description
AC	advisory circular
AIP	Aeronautical Information Publication
AMC	acceptable means of compliance
AMSA	Australian Maritime Safety Authority
AOC	Air Operator's Certificate
ATSB	Australian Transport Safety Bureau
BOM	Bureau of Meteorology
CAA	*Civil Aviation Act 1988*
CAO	Civil Aviation Order
CAR	*Civil Aviation Regulations 1988*
CASA	Civil Aviation Safety Authority
CASR	*Civil Aviation Safety Regulations 1998*
DAS	Director of Aviation Safety
GM	guidance material
ICAO	International Civil Aviation Organization
MOS	manual of standards
OPC	Office of Parliamentary Council
SARPS	standards and recommended practices
UN	United Nations

1.2 Definitions

Terms that have specific meaning within this AC are defined in the table below. Where definitions from the civil aviation legislation have been reproduced for ease of reference, these are identified by 'grey shading'. Should there be a discrepancy between a definition given in this AC and the civil aviation legislation, the definition in the legislation prevails.

Table 3: Definitions

Term	Definition
83 bis agreement	An agreement entered into under Article 83 bis of the Chicago Convention **Note:** This note is not part of the legal definition. This is an agreement between two Contracting States whereby the oversight responsibilities of one Contracting State are transferred by arrangement to the other Contracting State. The transfer is made to maintain effective airworthiness and operational control of an aircraft registered in the first Contracting State but operating within the jurisdiction of the second Contracting State. For more information refer to OPS.27 protocol suite.
acceptable means of compliance	A description of how one or more requirements of the *Civil Aviation Safety Regulations 1998* (CASR), including for the issue of a certificate, licence, approval or other authorisation, can be complied with by an individual or organisation applying to Civil Aviation Safety Authority (CASA) for the authorisation.
advisory circular	A document intended to provide advice and guidance to illustrate a means, but not necessarily the only means, of complying with the Regulations, or to explain certain regulatory requirements by providing informative, interpretative and explanatory material.
airworthiness advisory circular	An advisory circular related to airworthiness and engineer licensing.
airworthiness bulletin	An advisory document that alerts, educates and makes recommendations about airworthiness matters.
airworthiness directive	A notification to owners and operators of certified aircraft that a known safety deficiency with a particular model of aircraft, engine, avionics or other system exists and must be corrected.
authorisation	See *civil aviation authorisation*.
Australian aircraft	means: a. aircraft registered in Australia; and b. aircraft in Australian territory, other than foreign registered aircraft and state aircraft. Note: Some references to Australian aircraft may be affected by the operation of section 4A. [sic - of the Civil Aviation Act 1988] **Note:** This note is not part of the legal definition. Under most circumstances, when an aircraft is operated outside Australian territory, then to be an Australian aircraft it needs to be VH registered. There are rare circumstances when an aircraft registered in a foreign country could be legally treated under the Civil Aviation Act and its subordinate legislation as an Australian aircraft whether operated inside or outside of Australian territory: see AC 1-01 section 10 about international aircraft transfer agreements.

Term	Definition
Australian territory	means: a. the territory of Australia and of every external Territory; b. the territorial sea of Australia and of every external Territory; and c. the air space over any such territory or sea. **Note:** This note is not part of the legal definition. The territory of Australia is often referred to as the '12nm limit', being the relevant edges of an Australian land mass plus the surrounding 12nm of water laterally outwards from the land mass. However, operators and pilots are reminded that international law has different territorial limit rules for countries whose territory consists of multiple relatively closely spaced islands. A reference to 'the high seas' generally refers to waters outside the territorial limits of any country.
civil aviation advisory publication	A document that provides guidance, interpretation and explanation on complying with the *Civil Aviation Regulations 1988* (CAR) or a Civil Aviation Order (CAO).
civil aviation authorisation	An authorisation under the *Civil Aviation Act 1988* or the regulations to undertake a particular activity (whether the authorisation is called an AOC, permission, authority, licence, certificate, rating or endorsement or is known by some other name).
Civil Aviation Order	A legislative instrument comprised of detailed technical requirements, including uniform specifications and standard applications that augment standards set out in CAR.
delegated legislation	Legislative instruments signed by the Governor-General, a Minister or an official empowered by an Act (e.g. CASA's DAS and CEO) to issue the instrument under the Act (e.g. CAR, CASR, any MOS or CAO). Also called 'secondary legislation'.
exemption	An instrument that excuses the subject from compliance with stipulated legal requirements, usually bound by stated conditions and valid (in force) for no more than three years.
instrument	A law on matters of detail made by a person or body authorised to do so by the relevant enabling legislation. Instruments can be legislative, notifiable or non-legislative, and broad classes of instrument include the Regulations themselves, the CAOs, Manuals of Standards, approvals, directions, delegations and exemptions.
legislative instrument	An instrument of general application, affecting a class of people (e.g. all users of a particular aircraft type) rather than an individual (e.g. a particular operator or pilot).
made	In the context of an instrument, the signing of the instrument.
Manual of Standards	A legislative instrument comprised of detailed technical requirements, including uniform specifications and standard applications that augment standards set out in CASR.
non-legislative instrument	An instrument of an administrative nature determining particular cases or particular circumstances in which the law, as set out in an Act or another legislative instrument or provision, is to apply, or is not to apply. For example, an instrument that exempts a particular operator from compliance with a specific provision of the Regulations would be a non-legislative instrument. Non-

Term	Definition
	legislative instruments are typically made by a delegate of CASA, and unlike legislative instruments, they are not subject to parliamentary scrutiny[1].
permission	An instrument that permits the subject to conduct a particular activity, usually bound by stated conditions.
primary legislation	An Act of Parliament i.e. a statute or law passed by both Houses of the Parliament that has been formally accepted by the Governor-General (e.g. *Civil Aviation Act 1988*, *Airspace Act 2007*).
secondary legislation	See *delegated legislation*.

1.3 References

Legislation

Legislation is available on the Federal Register of Legislation website https://www.legislation.gov.au/

Table 4: Legislation references

Document	Title
Airspace Act	*Airspace Act 2007*
Airspace Regulations	*Airspace Regulations 2007*
CAR	*Civil Aviation Regulations 1988*
CASR	*Civil Aviation Safety Regulations 1998*
Civil Aviation Act	*Civil Aviation Act 1988*

International Civil Aviation Organization documents

International Civil Aviation Organization (ICAO) documents are available for purchase from http://store1.icao.int/

Many ICAO documents are also available for reading, but not purchase or downloading, from the ICAO eLibrary (https://elibrary.icao.int/home).

Table 5: ICAO references

Document	Title
ICAO Doc 7300	Convention on International Civil Aviation **Note:** This document is commonly known as the 'Chicago Convention'.
ICAO Doc 9318	Protocol - relating to an amendment to the Convention on International Civil Aviation [Article 83 *bis*]
ICAO Doc 10059	Manual on the implementation of Article 83 *bis* of the Convention on International Civil Aviation

[1] Non-legislative exemptions are, however, freely accessible to interested parties on the CASA website.

2 Introduction

2.1 General

2.1.1 This AC provides general information to the Australian aviation industry about how the aviation safety regulatory framework is constructed, including:

- the various agencies responsible for aviation safety in Australia (section 3)
- the different tiers of legislation in Australian civil aviation legislation (section 5)
- classification of operations and risk (section 6)
- the role of different kinds of supporting material produced by CASA (section 8), and
- clarification of legal concepts that impact the Australian aviation industry, such as strict liability and the difference between prescriptive and outcome-based legislation (section 9).

2.1.2 The *Civil Aviation Act 1988* (the Act), the Regulations, Manuals of Standards, Civil Aviation Orders and other instruments, provide the framework applied to ensure that common systems and consistent standards are maintained for aviation in Australia. These rules ensure that operations are conducted in similar, predictable ways and are a way of applying years of knowledge, obtained worldwide by organisations, such as the International Civil Aviation Organization (ICAO), to achieve safe operations.

2.1.3 In Australia, those common systems, consistent standards, and years of global knowledge are brought together in the aviation legal framework. It aims to achieve the best balance between prescriptive and outcome-based rules to make operating in the aviation industry safe, while keeping as much complexity out of the rules as possible.

2.1.4 To help you understand the rules and support industry in implementing them, CASA has produced supporting material, including acceptable means of compliance and guidance material (AMC/GM) documents, ACs, sample material and plain English guides. Publications from other Australian government agencies, like the Australian Transport Safety Bureau (ATSB) and Australian Maritime Safety Authority (AMSA), are also available.

2.2 Australian aircraft versus foreign registered aircraft

Note: Readers are reminded there is a difference between Australian territory and Australian-administered airspace. The Australian FIRs encompass large geographic areas that are not Australian territory under international law but are instead volumes of airspace Australia has agreed to administer to facilitate the orderly movement of air traffic.

2.2.1 Inside Australian territory

2.2.1.1 Inside Australian territory, Australia's rules, subject to the wording of each individual rule or a stated part of the rules (whether a Part of the CAR or CASR, or a Subpart, or a Division, or a Subdivision etc), apply to all aircraft.

2.2.1.2 Inside Australian territory, Australia's rules are sometimes different for *Australian aircraft* versus *foreign registered aircraft*.

2.2.1.3 The term *Australian aircraft* includes the following:

- aircraft with a registration mark beginning with a 'VH' (i.e. those aircraft registered under Part 47 of CASR)

- foreign registered aircraft where oversight responsibility has been transferred from the country of registration to Australia under an ICAO Article 83bis agreement (see Chapter 10 of this AC)
- other aircraft operated in Australian territory that are not foreign registered aircraft (other than those mentioned immediately above) or State aircraft. Some examples include sports aviation aircraft administered by an Approved Self-Administering Organisation (ASAO) that are not VH registered.

2.2.2 Outside Australian territory

2.2.2.1 Outside Australian territory, Australia's rules still apply to Australian aircraft other than aircraft which are not registered under Part 47 of CASR, or foreign registered aircraft subject to an Article 83bis agreement which requires Australia to have oversight responsibilities for the foreign registered aircraft.

Example (VH registered aircraft)

An operator is contracted to conduct aerial firefighting using a VH registered helicopter in a foreign country.

During flights for the aerial work firefighting operation, this operation is required to be conducted under the most limiting combination of Parts 91 as modified by Part 138 of CASR and the rules of the foreign country for such operations.

During other flights this aircraft must be operated to the most limiting combination of Part 91 of CASR and the rules of the foreign country.

This aircraft must still be maintained in accordance with the applicable CAR or CASR continuing airworthiness rules.

The design of the aircraft is still regulated under the relevant CASR.

The pilot's must still be licensed in accordance with Part 61 of CASR.

Note: The example above is not intended to be a complete list of applicable rules but rather an example of intent. It remains the operators and pilots in command responsibility to ensure compliance with applicable rules. If in doubt, contact CASA.

2.2.2.2 Under some circumstances, the use of foreign registered aircraft by an Australian operator would also be regulated by Australia's rules.

Example (foreign registered aircraft outside Australia)

An Australian air transport operator holding an Australian air transport AOC under Part 119 of CASR is using a foreign registered aircraft to conduct Australian air transport operations outside Australia.

The operator must comply with their regulated responsibilities for the use of these aircraft in their AOC operations.

3 Australian aviation safety framework

3.1 General

3.1.1 Australia's aviation safety framework interacts with other independent government agencies and the international safety framework under the International Civil Aviation Organisation (ICAO).

3.2 Department of Infrastructure, Transport, Regional Development and Communications

3.2.1 The Department of Infrastructure, Transport, Regional Development and Communications (the Department) is responsible for the design and implementation of the Australian Government's infrastructure, transport and regional development policies and programs.

3.2.2 The Administrative Arrangements Order sets out the matters dealt with by each Department, and the legislation administered by the relevant Minister. In a strict sense, the Department does not 'own' aviation legislation. It has policy responsibility for aviation and airports, but the Minister administers the legislation.

3.3 CASA

3.3.1 CASA's primary function is to conduct the safety regulation of civil air operations in Australian territory, and operations outside Australian territory in Australian aircraft. The *Civil Aviation Act 1988* (the Act), Section 9 states CASA's functions and some of the means to be used to achieve them, such as:

- developing and promulgating appropriate, clear and concise aviation safety standards
- issuing certificates, licences, registrations and permits
- conducting aviation industry surveillance activities, and
- developing enforcement strategies to secure compliance with aviation safety standards.

3.4 Airservices Australia

3.4.1 Airservices Australia is Australia's air navigation service provider and is a government-owned organisation. Under the *Air Services Act 1995*, it is required to provide:

- safe, secure, efficient, and environmentally responsible air navigation
- aeronautical information, aviation communications and radio navigation aids
- aviation rescue firefighting services to the aviation industry.

3.5 Australian Maritime Safety Authority

3.5.1 The Australian Maritime Safety Authority (AMSA) is Australia's national agency responsible for maritime safety, protection of the marine environment, and aviation search and rescue.

3.5.2 The *Australian Maritime Safety Authority Act 1990* prescribes the functions of AMSA, which include the following:

- to combat pollution in the marine environment
- to provide a search and rescue service
- to provide services to the maritime industry on a commercial basis

- to provide services of a maritime nature to the Commonwealth, States and Territories of Australia.

3.6 Australian Transport Safety Bureau

3.6.1 The Australian Transport Safety Bureau (ATSB) is governed by a commission and is entirely separate from transport regulators, policy makers and service providers. The functions and responsibilities of the ATBS are set out in the *Transport Safety Investigation Act 2003*.

3.6.2 Its function is to improve safety and public confidence in the aviation, marine and rail modes of transport through:

- independent investigation of transport accidents and other safety occurrences
- safety data recording, analysis, and research
- fostering safety awareness, knowledge, and action.

3.6.3 It is not a function of the ATSB to apportion blame or provide a means for determining liability. The ATSB does not investigate for the purpose of taking administrative, regulatory or criminal action.

3.7 Bureau of Meteorology

3.7.1 The Bureau of Meteorology (BOM) operates under the authority of the *Meteorology Act 1955.* The BOM is Australia's national weather, climate and water agency. Through regular forecasts, warnings, monitoring and advice spanning the Australian region and Antarctic territory, the Bureau provides one of the most fundamental and widely used services of government.

3.7.2 The BOM provides the weather services used by the aviation sector. It provides warnings (SIGMET etc.), forecasts (TAF, SIGWX etc.) and observations (METAR/SPECI etc.).

3.7.3 Detailed educational material on each of the aviation weather services is available on the BOM website.

4 The rule-making process

4.1 The Australian legal system

4.1.1 Primary legislation made by the Parliament is referred to as an Act, or Act of Parliament. Many Acts provide for the delegation of their authority to make regulations or other instruments, referred to as delegated (or secondary) legislation.

4.1.2 In the context of aviation, the central piece of legislation is the *Civil Aviation Act 1988* (the Act). In making the Act, Parliament delegated its authority to make aviation legislation to the Governor-General for the purpose of making regulations. The main object of the Act is to establish a regulatory framework for maintaining, enhancing, and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents as outlined in Section 3A of the Act. Section 9 of the Act establishes the tools provided for CASA to meet Section 3A of the Act.

4.1.3 In the context of legislation, "made" refers to the signing of legislation to make it law. For example, when CASA develops new Parts of CASR, these regulations are ultimately made by the Governor-General. On the other hand, legislative instruments, including but not limited to exemptions, directions and determinations, are made by CASA's CEO or by an officer of CASA with the appropriate delegation[2].

4.1.4 Although CASA's responsibilities include (among many other things) developing and promulgating appropriate, clear and concise aviation safety standards, CASA must still meet the standards placed on it by the Australian legal system. Section 16 of the Act requires CASA to consult with industry participants in the development of legislation, and Part 2 of Chapter 3 of the *Legislation Act 2003* requires that legislative instruments, such as CASR or a MOS, be scrutinised by Parliament (specifically the Senate Standing Committee for the Scrutiny of Delegated Legislation[3]).

4.2 Legislative vs non-legislative instruments

4.2.1 Instruments can be categorised as either legislative or non-legislative instruments. The category of an instrument is determined by criteria prescribed by the *Legislation Act 2003*. The category affects the type of parliamentary scrutiny an instrument is subject to, and the type of repeal it is subject to.

4.2.2 Generally, instruments that create or amend law, or apply to a group of people or entities, are legislative. This ensures they are subject to consultation, impact assessment (costs and any potential infringement of human rights), and parliamentary scrutiny. Legislative instruments relevant to the Australian aviation industry are either:

- drafted by the Office of Parliamentary Counsel and instructed on by representatives in CASA (e.g., new Parts of, or amendments to, CASR)

or

- drafted and instructed on entirely within CASA (e.g. the Part 101 MOS, CAO 48.1, the B737-MAX prohibition instrument).

[2] Delegations are attached to specific roles; e.g. any flying operations inspector may make a determination that certain existing or proposed objects, structures or emissions sources are a hazard to aircraft operations under r. 139.175 or 139.180 of CASR, but no ground operations inspector holds that delegation. For a first of type exemption, only the Director of Aviation Safety holds the necessary delegation.

[3] Prior to 4 December 2019 this committee was known as the Senate Standing Committee on Regulations and Ordinances (SSCRO).

4.2.3 A legislative instrument may be disallowed (repealed) by Parliament, for example, if scrutiny by the Senate Standing Committee for the Scrutiny of Delegated Legislation finds that it would trespass unduly on personal rights and freedoms.

4.2.4 Once made, legislation is available from the Federal Register of Legislation (FRL) website.

4.2.5 Non-legislative instruments typically apply to a single operator or individual and have a range of applications, such as issuing permissions and exemptions for hang gliding competitions, or approvals for activities involving rockets.

4.2.6 Non-legislative instruments are not subject to parliamentary scrutiny. Because these instruments are primarily used to manage circumstances in which an individual or particular entity has operating needs or limitations that impact their compliance with the overarching legislative framework, many of the instruments that CASA makes are non-legislative in nature.

4.2.7 CASA is required to publish any non-legislative instruments of exemption made under Part 11 on the CASA website[4].

4.3 International obligations and ICAO

4.3.1 The International Civil Aviation Organization (ICAO) is a specialised agency within the United Nations (UN) that was established to manage the administration and governance of the *Convention on International Civil Aviation* (the Chicago Convention). Australia is one of 193 current signatories to the Chicago Convention, and these signatories are known as the Member States of ICAO.

4.3.2 The Chicago Convention is made up of the Convention and its 19 technical Annexes. Each Annex prescribes standards and recommended practices (SARPs) for specific aspects of aviation, ranging from aircraft accident investigation to aeronautical charts and everything in-between. At the time this AC was prepared, the Annexes included more than 12,000 SARPs.

4.3.3 Section 11 of the Act provides that CASA must perform its functions in a manner that is consistent with Australia's obligations under the Chicago Convention. As a signatory to the Chicago Convention, Australia has agreed, where possible, to align its legislative framework with the SARPs set out in the Annexes to the Chicago Convention.

4.3.4 Article 38 of the Chicago Convention states that where States find it impractical to comply in all aspects with the international standard or procedure, the differences between the State's regulations or practices must be lodged with ICAO. States are required to publish these differences in the Aeronautical Information Publication (AIP). It is worth noting that a difference is not necessarily a deficiency; some of the differences that Australia has lodged with ICAO reflect the fact that the Australian standard exceeds that required by ICAO.

4.4 Changing the rules

4.4.1 The steps that CASA must follow to change the rules differ depending on what tier of legislation the rules sit in (refer to section 5). For example, any amendments to a Part of CASR require extensive consultation, and a representative within CASA will liaise with the Office of Parliamentary Council (OPC) which will draft the amendments according to CASA's instructions. On the other hand, while still requiring extensive consultation, any amendments to a Manual of Standards will be drafted in-house by CASA's Drafting Section.

4.4.2 The page titled 'Changing the rules' on the CASA website provides details on current consultations, the rule making process and obligations, and information on how anyone can suggest better rules or reference materials.

[4] Legislative exemptions made under Part 11 of CASR are published on the FRL.

4.5 Compliance with the rules

4.5.1 CASA conducts surveillance to monitor the ongoing safety of organisations or individuals who hold an authorisation.

4.5.2 CASA also has a range of enforcement tools and legislative powers to manage non-compliance with the rules. CASA uses the most appropriate enforcement options available when dealing with a breach. Enforcement options are exercised in accordance with CASA's enforcement manual and Regulatory Philosophy.

4.5.3 Under the CASA Regulatory Philosophy, CASA uses a ‘just culture’ approach when enforcing rules. CASA will not punish for actions, omissions or decisions that correspond with a person's experience, qualifications and training. However, to ensure aviation safety CASA will consider gross negligence, recklessness or wilful violations as requiring more detailed investigation.

4.5.4 The enforcement manual and the CASA Regulatory Philosophy are freely available from the 'Compliance with the rules' page on the CASA website.

5 Australian civil aviation legislation

5.1 Overview

5.1.1 Australian civil aviation legislation is based on a three-tier system:

- Tier 1: Primary legislation (the *Civil Aviation Act 1988* and *Airspace Act 2007*)
- Tier 2: Regulations (CASR, CAR, *Airspace Regulations 2007*)
- Tier 3: Manuals of Standards (MOSs), Civil Aviation Orders (CAOs), and other legislative instruments.

5.1.2 Tier 1 is referred to as primary legislation and includes the *Civil Aviation Act 1988*. It sets the framework and boundaries of the environment. Acts can authorise a person or body other than the Parliament to make laws on matters of detail, such as secondary legislation.

5.1.3 Tiers 2 and 3 are often referred to as secondary (or delegated) legislation and encompass legislation enabled or authorised by primary legislation. Tier 2 provides some of the detail around the framework and boundaries created by Tier 1 legislation. Tier 3 provides controls of a shorter term and/or of a more complex and technical nature. These tiers are made by the Governor-General, a Minister, or an official empowered by an Act (i.e., the Director of Aviation Safety (DAS) or a delegate of CASA).

5.1.4 Once made and registered, legislation is freely available from the Federal Register of Legislation (FRL) website.

Note: Non-legislative instruments (refer to subsection 4.2 of this AC) do not appear in this three-tier system as, by definition, they are not legislation. They are of an administrative nature and typically apply to individuals rather than broad classes of aviation industry participants.

5.1.5 CASA also publishes supporting material including guidance material, manuals and handbooks, information sheets, checklists and kits[5]. Documents of this type are for guidance or advice only and are not part of the rules.

5.1.6 Figure 1 depicts the relationship between the Australian civil aviation legislation, the AIP, and the supporting material produced by CASA.

[5] These documents are all available from the publications and resources page on the CASA website.

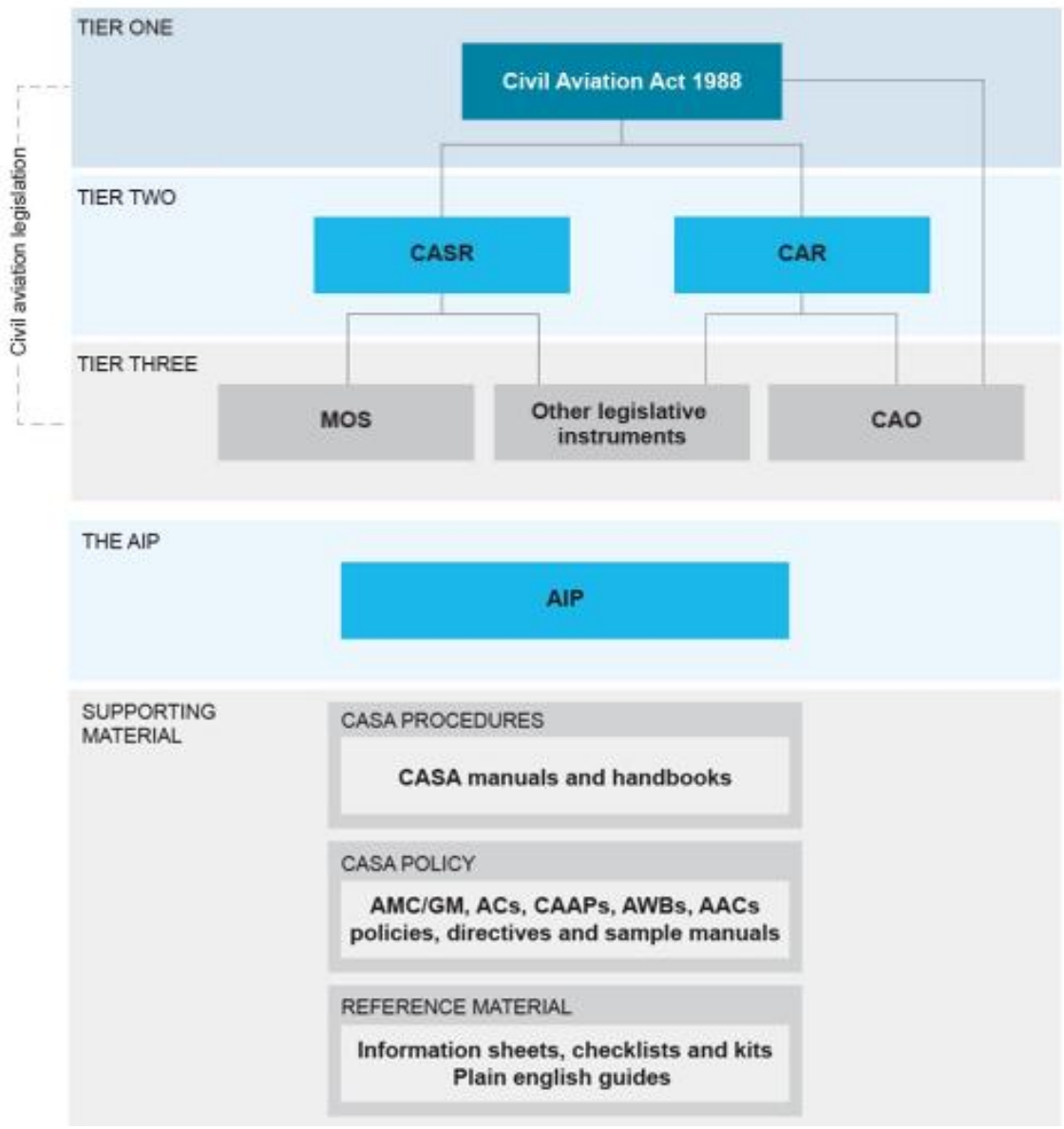


Figure 1: Civil aviation legislation, the AIP, and supporting material

5.2 Tier 1 − *Civil Aviation Act 1988* (the Act)

5.2.1 The Act is the highest level of aviation legislation and is broad in its scope. The main object of the Act is found in Section3 A to establish a framework for maintaining, enhancing, and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents. It sets out the following:

- the functions of CASA and certain things that CASA must do
- rules for flying unregistered aircraft, reckless operation of aircraft, and interference with aeronautical facilities
- rules for the application for, issue of, and conditions on, an Air Operator's Certificate (AOC)
- rules addressing serious and imminent risks, suspension, and the demerit points scheme

- rules for investigation powers, protection of cockpit voice recordings, and drug and alcohol management plans and testing
- the governance of CASA
- rules for making regulations.

5.3 Tier 2 − CAR and CASR

5.3.1 The *Civil Aviation Regulations 1988* (CAR) and the *Civil Aviation Safety Regulations 1998* (CASR) provide regulatory controls in a more detailed manner than the Act. They set out the safety standards that are required in relation to airworthiness of aircraft, licences and ratings of flight crew and maintenance personnel, air traffic control, rules of the air, dangerous goods, and many other safety issues.

5.3.2 The making of CAR coincided with the creation of CASA in 1988. In 1998, a regulatory development and reform program saw the introduction of CASR and a progressive reduction in the subject matter covered by CAR.

5.3.3 Benefits of the move from CAR to CASR include:

- assurance that regulatory actions achieve safety outcomes without impeding industry
- improvement in the regulatory and licensing services to the aviation community
- greater harmonisation with ICAO standards.

5.3.4 The Parts of CASR are typically grouped around a foundation. The groups and foundations are illustrated in the CASR regulatory structure (refer to the figure in Annex A). Parts that are closely related to a technical area are often linked in content. Those closely related Parts might add to, or remove, requirements of the foundation.

5.3.5 For example, the foundation for the flight operations regulations is Part 91 of CASR. Part 91 prescribes the general operating and flight rules i.e., the rules that, by default, any user of Australian airspace must follow. These include rules for take-off and landing, minimum heights, and airspeed limitations, as well as other operational matters.

5.3.6 Further to that, an operator might also be required to operate in accordance with other operational Parts. From 2 December 2021, an air transport operator conducting their operations in rotorcraft must conduct such operations in accordance with the relevant rules of Part 91 (which are typically operational) *and* in accordance with the rules of Part 133 (which are also typically operational). Because of the additional safety standards that must be adhered to when carrying fare-paying passengers, Part 133 prescribes additional operating rules; however, it might also disapply Part 91 rules where a Part 91 rule is not suitable. These operations are called Part 133 operations.

5.3.7 In addition to that, the same air transport operator is expected to have certain administrative and management systems in place. Part 119 of CASR prescribes the administrative and management requirements that all air transport operators must meet. While Part 119 rules apply to all air transport operators, whether using large aeroplanes, small aeroplanes or rotorcraft, the requirements are proportionate to the size and complexity of an organisation's operations.

5.3.8 Another example is the foundation for flight crew licensing − Part 61. Associated with Part 61 of CASR are Parts 141 and 142 of CASR, which both prescribe requirements for operators that conduct training for flight crew licensing. Persons other than flight crew often have to transmit on a radio frequency used for aviation or have to taxi an aeroplane. Those people must be authorised to do so. Therefore, Part 64 of CASR (Authorisations for non-licensed personnel) is also associated with Part 61 of CASR.

5.3.9 Where necessary to provide clarification and avoid ambiguity, words and phrases in CASR are defined in the CASR Dictionary.

5.3.10 Alternatively, where a term is specific to a Part, Subpart, MOS or other instrument, the term might be defined in that particular part of the scheme.

5.4 Tier 3 − MOS, CAOs and other instruments

5.4.1 Tier 3 legislation provides the ability to respond quickly to, amongst other things, advancing technology, safety issues and matters of national importance. Tier 1 and 2 legislation often involve lengthy legislative processes, while amendments to tier 3 legislation are internal CASA processes (external parties are still involved for consultation purposes etc).

5.4.2 Tier 3 consists of:

- Manuals of Standards
- Civil Aviation Orders
- other instruments, including exemptions, directions, and other kinds of legislative instruments, that provide CASA with the ability to react quickly to short-term matters such as the operation of foreign fire-fighting aircraft in Australia.

5.4.3 Manual of Standards (MOS)

5.4.3.1 The CASR requirements are further elaborated in Tier 3, which gathers together the more detailed and technical requirements associated with a particular regulation into a dedicated Manual of Standards (MOS).

5.4.3.2 A MOS provides a tool for CASA to respond promptly to address safety issues relating to permanent changes within the aviation environment, especially for technical matters.

5.4.3.3 A MOS comprises detailed technical requirements, including common standards for particular circumstances that that augment the standards set out in CASR. A MOS contains only those standards that are specifically authorised by the CASR.

5.4.4 Civil Aviation Orders (CAOs)

5.4.4.1 A CAO contains technical detail and requirements that complement those set out in CAR. CAOs are generally made under the authority of CAR rather than the Act, although some are made directly under the Act.

5.4.4.2 As the CASRs are progressively introduced the subject matter covered by CAR is progressively reduced. The CAOs will also be repealed, and the content incorporated (where considered necessary) into the relevant Part of CASR and the associated MOS.

5.4.5 Other instruments

5.4.5.1 CASA has the ability to make legislative changes quickly in response to acute safety imperatives. This is achieved using one of several types of legislative instruments, for example:

- airworthiness directives (ADs)
- authorisations, such as an approval or permission
- determinations and designations
- directions and instructions
- exemptions (on which CASA may impose conditions).

5.4.5.2 Instruments that are generally relevant to industry and are of public interest are available from the legislative and non-legislative instruments page on the CASA website.

5.4.6 Airworthiness directives

5.4.6.1 Airworthiness directives are issued by CASA under regulation 39.001 of CASR to ensure that aircraft are inspected and/or modified as and when manufacturers direct. They are issued for a kind of aircraft, or a kind of aeronautical product, if:

- an unsafe condition exists in an aircraft or aeronautical product
- the condition exists, or is likely to exist, or could develop, in other aircraft or aeronautical products.

5.4.7 Authorisations

5.4.7.1 A civil aviation authorisation means an authorisation made under the Act or the Regulations to undertake an activity. The authorisation might be called an approval, permission, authority, licence, certificate, rating or endorsement, or might be known by some other name.

5.4.7.2 Approvals are typically issued in the context of the following:

- manuals
- systems
- documents
- significant changes to an organisation
- activities.

5.4.7.3 Examples of approvals include:

- approval of an exposition or operations manual submitted as part of an application for a certificate (such as an AOC or Part 149 certificate)
- approval to operate an aircraft under the VFR in Class A airspace, or approval to conduct a fireworks display.

5.4.8 Determinations and designations

5.4.8.1 Determinations and designations are made by CASA in accordance with Part 3 of the *Airspace Act 2007*.

5.4.8.2 Designations are made for volumes of Australian-administered airspace and for routes and airways in those volumes of airspace.

5.4.8.3 Determinations are made as to:

- services and facilities to be provided in relation to particular volumes of Australian-administered airspace
- which aerodromes are deemed to be controlled aerodromes
- what volumes of airspace constitute flight information areas or flight information regions, and
- what volumes of airspace are deemed to be control areas or control zones.

5.4.9 Directions and instructions

5.4.9.1 Directions and instructions may be issued to persons holding licences, permits or certificates. They are issued with respect to matters affecting the safe navigation and operation, or the maintenance, of aircraft. For example, several regulations permit CASA to give directions

relating to the exposition, operations manual or key personnel of an organisation[7]. An example of an instruction is the carriage of a specific number of cabin crew on an aircraft.

5.4.10 Exemptions

5.4.10.1 An exemption from compliance with specific provisions of the civil aviation legislation, such as a regulation within CASR or a paragraph in a particular CAO, are issued in accordance with Part 11 of CASR.

5.4.10.2 Exemptions are classified as standard exemptions (see Division 11.F.1 of CASR) or exceptional circumstances exemptions (see Division 11.F.2 of CASR). Common rules for exemptions are contained in Division 11.F.3 of CASR.

5.4.10.3 Standard exemptions have a maximum validity period of 3 years. Exceptional circumstances exemptions have a maximum validity of 12 months. All exemptions are published on CASA's website.

5.4.10.4 An exemption may be granted to a person, or to a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic. CASA may grant an exemption either on application, or on its own initiative.

5.4.10.5 CASA publishes information on exemptions and the application process on its website, including the form to be used and the dedicated guidance material for exemptions.

5.4.10.6 CASA has a standardised process for processing and assessing exemption applications involving an initial review by the Exemption Review Panel before assigning an exemption for assessment, if appropriate, to an exemption assessor. The exemption assessor will engage with the applicant as necessary (refer to AC 11-02 - Exemptions Against the CASR, CAR, CAO and MOS).

[7] Refer to regulations 119.105, 142.155 and 149.120 of CASR.

6 Classification of civil aviation activities

6.1 Reason for the policy

6.1.1 For the purposes of providing a risk-based framework for establishing outcome-based safety rules under the Act, CASA's policy on classifying aviation activities that are conducted by civil aircraft in Australian airspace is based on aircraft use and who or what is carried in the aircraft.

6.1.2 This policy recognises that, in 1998, references in the Civil Aviation Act to "commercial" were removed to avoid giving a misleading impression of the nature of operations being regulated by CASA. The Act's change acknowledges that CASA's safety regulation of aviation activities is not based fundamentally on the commercial nature of an activity.

6.1.3 This policy enables CASA to explain to the Australian public that there are varying levels of safety oversight which apply to occupants of aircraft who are not crew.

6.1.4 It is important to note that within each of Australia's classifications, there is no single common aviation safety standard that applies. Regulatory requirements within each class vary, depending on aircraft size, complexity, number of aircraft occupants, area of operation and a number of other factors that collectively determine the risks to safety posed by a particular aircraft activity. These risks are managed jointly by CASA and the aviation community. CASA establishes appropriate rules and standards in respect of aircraft certification, continuing airworthiness, operational restrictions, and personnel licensing requirements and it is for the aviation community to ensure that the risks of their activities are identified and adequately mitigated.

6.2 Classification of aviation activities framework

6.2.1 Certain fundamental principles were adopted by CASA in developing a policy for classifying civil aviation activities.

6.2.2 The first principle recognises that CASA's responsibility under the Act is for the safety regulation of Australian civil air activities within Australian Territory and the operation of Australian aircraft outside Australian Territory. Ancillary to this is the principle that the safety of persons must have a higher priority than the safety of property.

6.2.3 Because CASA does not have unlimited resources, it must discharge its responsibilities under the Act in such a manner to minimise the risks of harm, injury or damage to the greatest practicable extent. This is achieved by implementing a risk management approach to safety regulation which takes into account the:

- inherent riskiness of an aviation activity
- consequences of an accident in respect of the activity.

6.2.4 Another principle is that the level of safety provided should reflect the degree to which persons who are intending to participate in an aviation activity are able to inform themselves of the extent of the risks involved and CASA's safety oversight and risk mitigators for that activity.

6.2.5 The standards and requirements for persons who are adequately informed of the risks inherent in an aviation activity and who voluntarily accept those risks are less than the standards and requirements for persons who have limited knowledge or control of the risks to which they are exposed.

6.2.6 The classification policy also considers CASA's responsibilities to those who are only indirectly involved in, or affected by, aviation. Persons on the ground expect to be protected from objects 'falling from the sky' regardless of the type of object and the reason for it falling. Furthermore, the public does not generally consider that it is acceptable for large numbers of persons to be

exposed to risk of serious injury or death, even when those persons have voluntarily accepted the risks.

6.2.7 CASA's regulatory activities are focussed on ensuring risks of specific aviation activities are recognised and addressed. Activities that fall into any particular class or grouping are typically very diverse and warrant different risk mitigations. CASA's application of regulatory oversight and risk mitigators includes:

- Air Operator's Certificates (AOCs)
- Other kinds of certificates such as aerial work certificates or Part 141 certificates plus others
- certificates of airworthiness and flight permits including restricted category type certificates and many other kinds
- competency-based licences, endorsements and ratings
- other permissions and approvals and related Acceptable Means of Compliance (AMCs) and Guidance Material (GM)
- operational limitations (airspace, populous areas, etc).

6.2.8 CASA will take an active role in contributing to the safety of passenger-carrying activities. However, it will take a less active role in relation to non-passenger-carrying activities and generally only intervene to:

- control the entry of new participants
- ensure crew members have an understanding of baseline rules and the competencies necessary to carry out ground and in-flight tasks relating to the safety of flight
- ensure that participants are aware of the risks they face — i.e., through compulsory warnings and waivers — and how they may be mitigated, e.g., through education and training
- prosecute or remove from the aviation community those who endanger the lives or property of people on the ground or the occupants of other aircraft or are a reckless endangerment to themselves.

6.3 Classification system

6.3.1 As a whole, the Operational Regulations suite sets out the specifications for the three classes of aircraft operations and specific operations within the respective class, including definitions, attributes and inclusions/exclusions.

6.3.2 The three broad classes of aviation activities established under this policy are:

6.3.3 The first class **(Air Transport)** comprises passenger-carrying, cargo-carrying and medical transport activities conducted for hire or reward, whether scheduled or non-scheduled, that:

- are conducted in large and small aircraft which are certified in the transport, commuter or normal category
- involve the carriage of passengers who have limited or no knowledge of the risks they are exposed to and little or no control over the risks (other than choosing not to fly).

6.3.4 Activities in Air Transport require an Air Operator's Certificate (AOC).

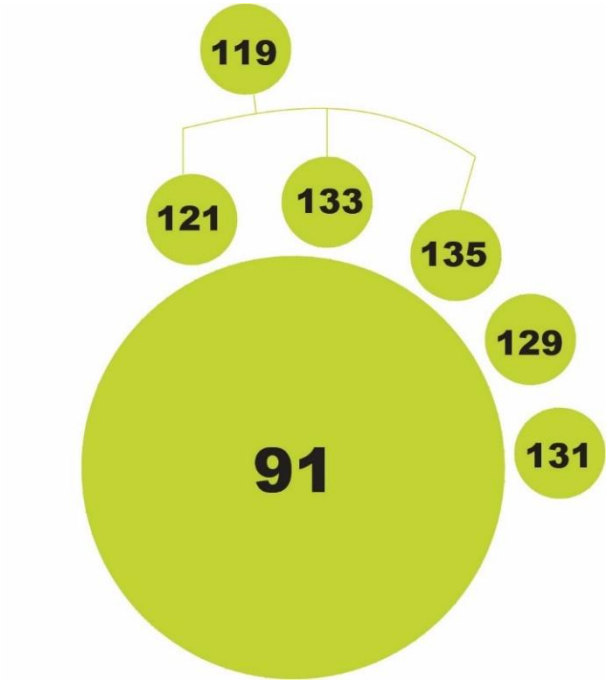


Figure 2: Parts of CASR regulating air transport operations

6.3.5 Further detail on the CASR Parts (Figure 2 above) regulating Air Transport is available on the CASA website:

- Part 119 – Australian air transport operators - certification and management
- Part 121 – Australian air transport operations - large aeroplanes
- Part 129 – Foreign air transport operators - certification and operating requirements
- Part 131 – Manned free balloons
- Part 133 – Australian air transport operations - rotorcraft
- Part 135 – Australian air transport operations - small aeroplanes
- Part 91 – General operating and flight rules.

6.3.6 The second class **(Aerial Work)** comprises activities where:

- the aircraft is being used for specialised in-flight purposes
- the activity presents elevated operational and/or organisational risks, or the potential for significant consequences if there is an accident (by virtue of the number of persons carried on board and/or the area of operation).

6.3.7 The activities in the Aerial Work class are diverse and the risks are managed by a scalable operator's certificate, depending on the nature, size and complexity of the operation.

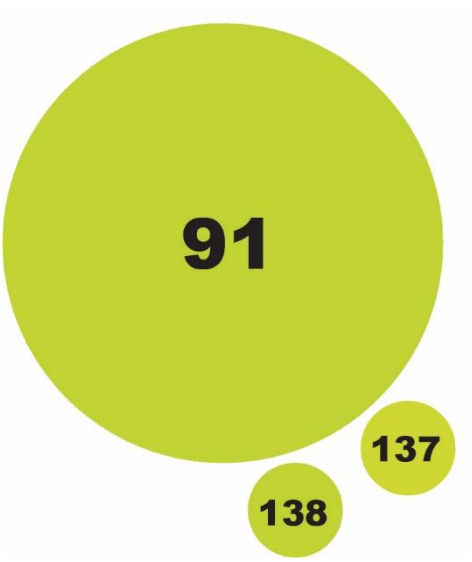


Figure 3: Parts of CASR regulating Aerial Work

6.3.8 Further detail on the CASR Parts regulating aerial work (Figure 3 above) are available from the CASA website:

- Part 137 – Aerial application operations
- Part 138 – Aerial work operations
- Part 91 – General operating and flight rules.

6.3.9 The third class **(General Aviation)** comprises all other activities and includes certain activities involving the carriage of individuals who are adequately informed and accept the risks to which they are exposed (participants).

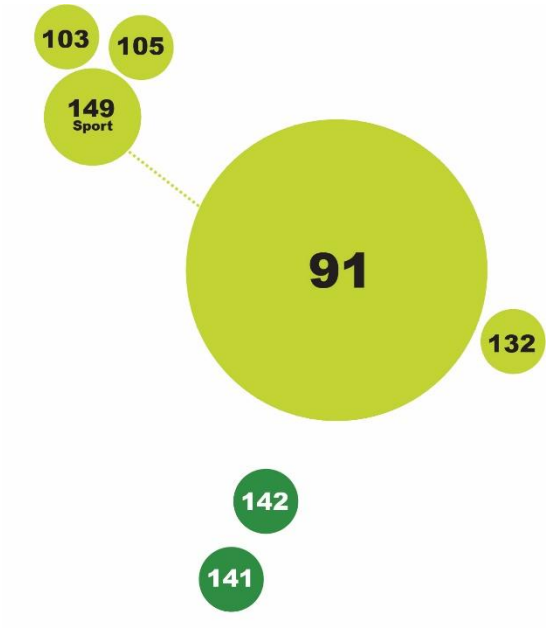


Figure 4: Parts of CASR regulating general aviation operations

6.3.10 Further detail on the CASR Parts regulating general aviation operations (Figure 4 above) are available from the CASA website:

- Part 91 – General operating and flight rules

- Part 103 – Sport and recreational aviation operations
- Part 105 – Sport and recreational parachuting from an aircraft - certification and operations
- Part 132 – Limited category aircraft operations (including local joy and scenic flights)
- Part 149 – Approved self-administering aviation organisations
- Part 141 – Recreational, private and commercial pilot flight training other than integrated training
- Part 142 – Integrated and multi-crew pilot flight training and contracted recurrent training and checking.

6.4 Hierarchy of priorities

6.4.1 CASA has adopted a regulatory approach based on assessment of the level of risk associated with defined aviation operations. In doing so, the highest safety priority is afforded to passenger transport operations, and operations in which passengers and others exposed to higher levels of risk are not able to make informed judgements and effective decisions about the risks to which they are exposed.

6.4.2 Regulations can limit the maximum number of passengers that may be carried on board an aircraft engaged in general aviation or aerial work operations. The carriage of a greater number of passengers could trigger the application of a higher classification of operations or increased regulatory attention. For example, an operation that is not commercial may be regulated to the same (or many of the same) safety standards applicable to air transport operations when a large number of passengers are carried or other risk factors exist to warrant this level of regulation.

6.4.3 Depending on the risks involved, some general aviation operations may require a permission, authorisation or approval from CASA, or be subject to, general or particular operational conditions or limitations.

6.4.4 In establishing a risk-based hierarchy of priorities, CASA in the first instance, based this on the estimated degree of public risk considering factors such as:

- control of risk
- safety expectations (public perception/concern) and acceptance of risk
- potential for multiple fatalities
- aircraft occupant characteristics
- the potential effect on other airspace users and people and property on the ground.

6.5 Classification of operations

6.5.1 The purpose of an operation is determined at the start of the first flight forming part of that operation.

6.5.2 CASA may treat a series of individual flights as a single operation if the objectively ascertained purposes of the flights are the same. Whether CASA will treat a series of flights as an operation will depend on the circumstances of the flights—no statement of general application can apply in all situations.

6.5.3 An operation that could be classified for multiple purposes must comply with the requirements applicable to both classifications, and the operator must be authorised to conduct all types of operations. A flight that complies with the higher-level classification (air transport) must also comply with the lower-level classification (aerial work). There may be cases where all sets of requirements cannot be complied with at the same time. This will likely result in one of the operations not being able to be conducted. Guidance should be sought from CASA if there is

any inconsistency or incompatibility between two (or more) sets of applicable regulatory requirements.

6.5.4 In some circumstances it is possible that the objectively ascertained purposes of an operation will be the carriage of one or more passengers for an aerial work purpose, (refer to AC 138-01 - Part 138 core concepts for information on aerial work operations) and the transportation of one or more passengers for hire or reward. Specifically, this may occur where the carriage of the hire or reward passengers requiring a stop for the passenger to engage in an activity that did not contribute to an operational aspect of the aerial work purpose.

Example

An aircraft operated by a government air wing requires a police forensic investigator to be winched into the crime scene i.e. as a Class D external load, for the purpose of conducting a crime scene forensic investigation.

The winching activity is an aerial work purpose, therefore the investigator would be an aerial work passenger.

On the same flight a second police officer who is a detective is also being carried to interview witnesses to the same alleged criminal activity associated with the crime scene. Although the interviews may relate to the same investigation as the crime scene being forensically investigated, the interview is not an operational aspect of the aerial work purpose, i.e. a class D external load.

Therefore, the carriage of the detective to conduct an interview would require the flight to comply with the air transport regulatory requirements. The air transport passenger (the detective) would then need to be disembarked prior to the aircraft conducting the specialised aerial work task.

6.5.5 A flight will be classified as ‘aerial work’ where a passenger is carried for the sole purpose of enabling the passenger to perform an aerial work activity on a subsequent flight in the same aircraft (see the explanation of positioning flights in AC 138-01). CASA will consider the initial flight to be part of a single operation the purpose of which is the performance of the aerial work activity during the subsequent flight.

6.5.6 Examples of activities that would generally form part of the operational aspects of an aerial work operation include:

- en-route refuelling necessary to continue the aerial work operation
- the collection of equipment or provisions (including food etc) required during the conduct of the aerial work activity
- overnight stops (including accommodation etc) necessary in the course of the aerial work operation
- stops to permit ground reconnaissance or similar activities that have the sole purpose of assisting the performance of the operational aspects of the aerial work activity.

7 Aeronautical Information Publication (AIP)

7.1 The AIP book is part of the Aeronautical Information Service (AIS) provided by Airservices Australia. The AIS includes the following:

- AIP book
- AIP Supplements (SUP) and Aeronautical Information Circulars (AIC)
- Departure and Approach Procedures (DAP)
- Designated Airspace Handbook (DAH)
- En Route Supplement Australia (ERSA)
- aeronautical charts.

7.2 The format of the AIP book is defined by ICAO requirements and consists of three parts:

- General (GEN), which contains information of an administrative and explanatory nature and which is not of such significance or importance that a NOTAM need be issued.
- En Route (ENR), which contains information concerning airspace and its use.
- Aerodromes (AD), which contains information concerning aerodromes, heliports and their use.

7.3 While some of the rules of the three tiers of legislation have corresponding material in the AIP book, it is not generally considered part of the legislative framework. Some regulations specifically refer to procedures detailed in the AIP book, and, therefore, those procedures must be followed. In other cases, where a discrepancy exists between the legislation and the AIP book, the legislation takes precedence.

7.4 The AIS, and in particular the AIP book, is available from the Airservices Australia website.

8 Supporting material

8.1 General

8.1.1 Supporting material does not prescribe rules; it clarifies policy intent and provides guidance, education or tools to assist in compliance with the rules. Supporting material can be in the form of manuals, handbooks, guidance documents, information sheets, checklists, kits (such as the SMS kit), or plain English guides (PEGs).

8.1.2 Supporting material is available from the CASA website. **Error! Reference source not found.** shows the structure of the supporting material.

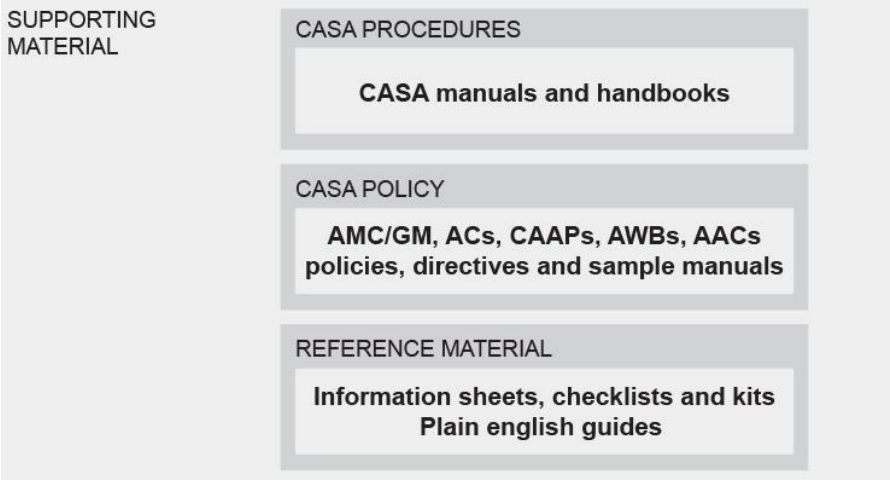


Figure 5: CASA supporting material

8.2 CASA procedures

CASA manuals and handbooks

8.2.1 CASA manuals and handbooks explain underlying policy to CASA staff and industry participants and detail the procedures to be followed by CASA staff when assessing applications. Additionally, they provide material aimed at answering queries related to applications.

8.2.2 Procedures described in manuals help guide and inform the decisions made at CASA, with a view to better ensuring the achievement of optimal outcomes in the interest of safety and fairness alike.

8.2.3 Some of the CASA manuals and handbooks are available for industry use to assist in their preparation of applications. Manuals and handbooks are available from the CASA website.

8.2.4 The CASA operations protocol framework guides consistent regulatory decisions on aircraft operations. It supports assessments of new applications and significant changes, specific approvals, key personnel suitability, and expositions or operations manuals. Each protocol suite aligns with relevant legislation and CASA's Regulatory Philosophy and administrative law principles.

8.3 CASA policy

8.3.1 CASA policy documents are not law but have undergone a comprehensive review process. CASA policy should always be read in conjunction with the applicable regulations and MOSs. If

there is an inconsistency between policy material and the regulations, the regulations always take precedence.

8.3.2 Policy documents come in a variety of forms, including guidance material (GM) and acceptable means of compliance (AMC).

8.3.3 GM provides explanations and amplification of the policy intention behind a requirement of CASR, rather than a means of complying with it. GM should be read in conjunction with the applicable provision(s) of CASR and associated AMC.

8.3.4 AMC explains how one or more requirements of CASR for the issue of a certificate, licence, approval, or other authorisation can be met by an individual or organisation applying to CASA for the authorisation.

8.3.5 Operators are not required to comply with an AMC; however, if they do, CASA will issue the authorisation to which the AMC relates provided the AMC is within the scope of the operation.

8.3.6 Individuals and operators may, on their own initiative, propose other ways of meeting the requirements of CASR; nonetheless, any such proposal will be subject to separate assessment by CASA to determine whether the authorisation can be issued.

8.3.7 AMC/GM documents

8.3.7.1 An acceptable means of compliance and guidance material document (AMC/GM) is a single document with indexing that relates to specific regulatory provisions. It should be treated as the primary source of supporting information on a particular regulation.

8.3.7.2 Entries in an AMC/GM are generally short and succinct. Where additional detail is warranted, specific topics will be addressed in an AC and signposted accordingly.

8.3.8 Advisory circulars

8.3.8.1 Advisory circulars (ACs) provide more detailed and comprehensive guidance than AMC/GMs. ACs are intended to provide advice and guidance to illustrate a means, but not necessarily the *only* means of complying with the regulations, or to explain or given guidance on certain regulatory requirements by providing informative, interpretative and explanatory material.

8.3.9 CAAPs

8.3.9.1 Civil Aviation Advisory Publications (CAAPs) are associated with the CAR and are progressively being replaced by ACs. CAAPs are for advice only and provide guidance to help industry comply with the regulations or to explain regulatory requirements. They should always be read in conjunction with any referenced regulations.

8.3.10 Sample manuals and expositions

8.3.10.1 Where there is a legislative requirement for an organisation to develop and maintain a manual or exposition, CASA might provide an AMC in the form of sample documents to assist in complying with those regulatory requirements. Sample documents are typically associated with a referencing advisory document (i.e. AC), which explains the compliance requirement and provides more detail on the information that industry must provide.

8.3.10.2 CASA has produced sample documents for topics such as:

- Fatigue − CAO 48.1 (manual supplements)
- Design assurance manual − Subpart 21.J of CASR
- Continuing airworthiness − Part 42 of CASR
- Drug and alcohol management plans - Part 99 of CASR

- Australian air transport operations - Parts 119, 133 and 135 of CASR
- Aerial work operations - Part 138 of CASR
- Aerodromes − Part 139 of CASR
- Pilot flight training − Parts 141 and 142 of CASR
- Approved maintenance organisations − Part 145 of CASR
- Maintenance engineer licensing − Part 147 of CASR.

8.3.10.3 These documents, and others as they are developed, are available from the CASA website.

8.3.10.4 To assist operators in developing their operations manual, CASA provides the manual authoring and assessment tool (MAAT). This is a free online tool available on the CASA website and contains some, but not all manuals.

8.3.11 Airworthiness bulletins

8.3.11.1 An airworthiness bulletin (AWB) is an advisory document that alerts, educates and makes recommendations about airworthiness matters. Recommendations in these bulletins are not mandatory. AWBs are published on the CASA website.

8.3.12 Policies and directives

8.3.12.1 Policy documents provide information on CASA policies that are of interest to both internal and external audiences. Examples include the CASA privacy policy, the CASA conflict of interest policy, and the policy on suitability of an individual or organisation to act as a CASA delegate.

8.3.12.2 Directives provide confirmation of technical standards or requirements where considered necessary. The content of most directives is being incorporated into CASR, and these instruments will be repealed (cancelled) in due course.

8.3.13 AACs

8.3.13.1 Airworthiness advisory circulars (AACs) are typically related to airworthiness and engineer licensing. AACs are being progressively replaced by ACs. AACs are published on the CASA website.

8.4 Reference material

8.4.1 Unlike CASA policy documents, reference material is subject to a review process that is different to a CASA controlled document. For example, reference material may not be subject to legal review. It usually does not provide any new information. It tailors or packages existing material to a specific audience or elaborates by providing examples of a certain rule.

8.4.2 Information sheets, checklists and kits

8.4.2.1 Compact, succinct information on select topics is published in the form of Information sheets, industry checklists and kits. Topics covered by these kinds of documents include:

- aviation medicine
- continuing airworthiness
- drug and alcohol management plans
- flight crew licensing
- fuel requirements

- ramp checks
- communications, navigation and surveillance air traffic management (CNS-ATM)
- safety management systems (SMS).

8.4.3 Plain English guides

8.4.3.1 Plain English Guides (PEGs) are developed to convey complex legislative information into simple, easy-to-read, and understandable language. They present a document structure that aligns more closely with operational needs, including digital interactive elements to enhance the overall user experience. PEGs combine regulations and associated MOS into one publication for ease of reference.

8.4.3.2 The ongoing development of PEGs will give both industry and CASA enhanced visibility and a common understanding of the regulatory requirements relevant to each sector.

8.4.3.3 As further PEGs are developed they will become available on the CASA website.

9 Legal concepts

9.1 Prescriptive vs outcome-based legislation

9.1.1 While prescriptive legislation is often acutely focused on a topic, safety outcome-based legislation involves:

- standards expressed by reference to a particular operational outcome, rather than the prescription of specific conduct that would achieve that outcome, which provides flexibility as to how compliance can be achieved according to the circumstances of each individual – many provisions are a blend of outcome based and prescriptive elements'
- acceptable means of compliance (AMC) material that set out acceptable methods of demonstrating compliance with specific regulations. If an applicant follows an AMC that is suitable for the applicant, the applicant should expect that CASA will issue the requested authorisation
- guidance material (GM) that provides suggestions, explanations and amplification of a regulation's policy intention, rather than strict means of compliance with a regulation.

9.1.2 A significant advantage of this outcome-based approach is that it provides flexibility to an organisation or individual to use the systems and procedures most appropriate to them to achieve the required safety outcomes. AMCs provide straightforward and positive methods for satisfying CASA but are not binding on those industry participants who wish to put forward alternative methods of compliance, thus allowing for innovation and improvement to occur naturally.

9.1.3 For the Australian aviation industry, this means:

- more safety responsibility will be devolved to industry
- industry organisations can use systems, methods and procedures most appropriate to them to meet safety outcomes.

9.2 Differences between must/should/may/shall

9.2.1 Legislation and supporting material make use of the terms *must*, *should*, *may* and *shall*. It is worth noting some of these terms are used in other contexts such as ICAO documents and have different meanings. The following apply to the Australian context.

9.2.2 Must

9.2.2.1 'Must' indicates that the topic has a legal requirement and that compliance with that requirement is mandatory. Supporting material will only use this term if the associated legislation states requirements in this way.

9.2.3 Should

9.2.3.1 'Should' indicates that while the topic does not have a legal requirement, adherence to CASA policy or guidance material is strongly recommended. As these requirements are not specified in legislation, alternate methods that can be shown to meet the same intent can be accepted where deemed appropriate.

9.2.4 May

9.2.4.1 'May' indicates something that is permitted but not required through legislation. The term is used to provide options, alternate methods or examples.

9.2.5 Shall

9.2.5.1 The characteristics of foreign legal systems often result in the term 'shall' being used by foreign aviation authorities. The term has the same meaning as 'must', and is in limited use in Australian aviation legislation. It is generally used in older legislation.

9.3 Terminology used by CASA relating to submission of documentation

9.3.1 There are a variety of circumstances in which documentation, expositions, operations manuals, or changed sections thereof (significant and non-significant) are required to be submitted to CASA. This requirement applies to applicants for an AOC or certificate, existing operators, and other aviation organisations.

9.3.2 Multiple terms have been used by CASA to define the legal implications and responsibilities when industry submits any documentation:

- receive
- accept
- review
- assess
- approve.

9.3.3 Historically, the words 'accept' and 'approve' have been used interchangeably when an organisation's manual, system, document or change has been submitted for assessment.

9.3.4 Many Parts of CASR require an organisation to submit an exposition or operations manual as part of its application for a certificate (such as an AOC, a Part 141 certificate, etc.). Having completed its assessment of an application and when issuing the requested certificate, the regulations provide that CASA is taken to have approved the applicant’s proposed exposition or operations manual, that is, CASA does not issue a separate approval. This also applies to the organisation’s key personnel, which is different to earlier rules which have required CASA to issue a separate approval such as for a chief pilot.

9.3.5 Additionally, CASA will receive notices of non-significant changes to an operations manual or exposition from authorisation holders. CASA issues neither an acceptance nor an approval for such notices.

9.3.6 Except for the initial issue of a certificate subject to an automatic (deemed) approval, legal requirements for approval of a manual, system, document or change are not met until CASA issues the approval. The form of approval varies depending on the applicable CASR Part, subject matter and application.

9.4 Strict liability

9.4.1 In general, an *offence* is characterised by a combination of physical elements[10]:

- conduct

or

- results of conduct

or

[10] Refer to section 4.1 of the *Criminal Code Act 1995*

- associated circumstances and fault elements[11] related to the person's state of mind at the time:
  - intention
  - knowledge
  - recklessness
  - negligence.

9.4.2 To be found guilty of an offence, the prosecution must prove beyond reasonable doubt that all of the applicable physical and fault elements have occurred.

9.4.3 A *strict liability offence* differs in that it has no fault elements, only physical. This means that a person has committed an offence if the physical element occurs, regardless of whether the person was negligent, reckless, had knowledge, or had intent. In other words, it does not matter whether the person intended to break the rules, or whether they knew they were doing so.

9.4.4 Strict liability is imposed where the benefit to the community overrides any potential disadvantage to the person charged. It applies to most road rules, as well as a wide range of other laws involving public health, safety, the environment, as well as financial or corporate regulation. It is common in the aviation safety regulatory scheme. CASA applies its Regulatory Philosophy when considering its response to potential breaches of the scheme.

9.4.5 A person is innocent until proven guilty

9.4.5.1 If charged with a strict liability offence, a person is not automatically guilty. It is not up to the person to prove their innocence, but rather up to the prosecution to prove, beyond a reasonable doubt, that the person has contravened the rules.

9.4.6 Defence

9.4.6.1 In some circumstances, the regulation itself may provide a defence, such as where the activity is authorised. Newer aviation regulations are typically not drafted in this style.

9.4.6.2 Generally-applicable defences may be available within the Act or the Regulations e.g. subsection 30(1) of the Act provides that:

"In any proceedings for an offence against this Act or the regulations, it is a defence if the act or omission charged is established to have been due to extreme weather conditions or other unavoidable cause."

9.4.6.3 The *Criminal Code* provides other generally-applicable defences, such as ‘sudden or extraordinary emergency’. For strict liability offences, additional defences of ‘honest and reasonable mistake of fact’ and ‘intervening conduct or event’ are available.

9.4.6.4 For the defence of honest and reasonable mistake of fact, the person must have turned their mind to the existence of facts and been under a mistaken, but reasonable, belief about those facts. An example is where a pilot has obtained terrain height data from an official chart, flown at more than 500 ft above that height, but the published data was inaccurate and the pilot inadvertently flew at only 450 ft above the terrain.

9.4.6.5 An 'intervening conduct or event' defence is available when the physical element is brought about by another individual over whom the person has no control, or by a non-human act or event over which the person has no control, and the person could not reasonably be expected to guard against the actions or circumstances.

9.4.6.6 Finally, in an emergency a pilot’s overriding responsibility is for the safety of the flight. As such, there are many instances in the regulations where an offence provision is disapplied in case of

[11] Refer to section 5.1 of the *Criminal Code Act 1995*

emergency, such as paragraph 100(2A)(b) and regulation 145 of CAR. To rely on this as a defence, the pilot would have to demonstrate that:

- circumstances of sudden or extraordinary emergency existed
- committing the offence was the only reasonable way to deal with the emergency
- the conduct was a reasonable response to the emergency (the conduct of the pilot cannot create a bigger danger than the emergency posed).

9.5 The difference between an AOC and an operator certificate

9.5.1 Understanding the differences between an AOC (held by a Part 121, 133, 135, 137 or 142 operator) and an operator certificate (held by a Part 138, 141 or 142 simulator operator) has become more important with the commencement of the flight operations regulations (commencing 2 December 2021).

9.5.2 An AOC is subject to section 28 of the Act; an operator certificate is not. The requirements of section 28 ensure compliance with ICAO requirements. This ensures a higher level of oversight and safety, and it is generally a requirement for operations that carry passengers. An AOC is not subject to Part 11 of CASR, whereas a certificate is.

9.5.3 An operator with an AOC is required to have a HOFO, while an operator with an operator certificate is required to have a HOO.

9.5.4 When an operator with an AOC elects to conduct operations with one or more foreign aircraft in regulated domestic flights, CASA is required to enter into an section 28A agreement with the relevant foreign regulator. The same position does not apply with respect to a operations in such aircraft under an operator certificate.

10 International Aircraft Transfer Arrangements

10.1 Chicago Convention Article 83bis – implementation by Australia

10.1.1 The Chicago Convention allocates certain safety oversight functions to the State of Registry which that State is entitled and obligated to discharge. After the Convention was signed, ICAO recognised that the State of Registry may be unable to fulfil its responsibilities adequately in instances where aircraft are leased, chartered or interchanged by an operator of another State, and that the Chicago Convention did not originally adequately specify the rights and obligations of the State of the Operator in such instances.

10.1.2 Accordingly, Article 83 *bis* of the Convention on International Civil Aviation (Article 83 bis) entered into force on 20 June 1997. The purpose of Article 83 bis is to provide better regulation and oversight over air safety in cases of international lease, charter, transfer or interchange of aircraft.

10.1.3 Article 83 bis establishes that agreements for the transfer of certain oversight responsibilities from the State of Registry to the State of the Operator shall be recognised by all Contracting States which have ratified this Article. Australia ratified Article 83 bis on 2 December 1994 – see section 4A of the Civil Aviation Act 1988. The transfer of responsibility may involve functions and duties under ICAO Articles: 12 – Rules of the Air; 30 – Radio Equipment Installed on Aircraft; 31 – Recognition of Certificates of Airworthiness; 32a – Recognition of Flight Crew Licences; and 33 – Recognition of all other Relevant Certificates and Licences.

10.1.4 The regulatory authority of the State of Registry can, if the regulatory authority of the State of the Operator agrees, transfer some of its regulatory oversight responsibilities to the regulatory authority of the State of the Operator if the aircraft is transferred to a location where normal regulatory oversight by the regulatory authority of the State of Registry is difficult or impracticable (an 83 bis agreement). Strict conditions, limitations and reporting requirements apply to such agreements.

10.1.5 Article 83 bis does not cover other bilateral or multi-lateral arrangements or agreements between regulatory authorities that may relate to leased or transferred aircraft.

10.2 International Aircraft Leasing and Transfer under Article 83 bis

10.2.1 Article 83 bis does not entail automatic transfer rights or responsibilities between States. Agreements for transfer must be negotiated between the two States concerned with an aircraft lease. Only Contracting States which are signatories to Article 83 bis can undertake regulatory oversight responsibility transfers under this provision.

10.2.2 83 bis agreements can only apply to specific individual aircraft for set periods. This provision does not apply to agreements made between regulatory authorities relating to ‘blanket’ arrangements for the regulatory oversight of each other’s aircraft. Such agreements can be made under Article 83 and must be registered with the ICAO Council once that have been made. Details for implementing an 83 agreement are not covered here.

10.2.3 Australia could be either the State of Registry or the State of the Operator depending upon whether an Australian registered aircraft is being operated overseas or if a foreign aircraft is operated within Australia. In the former case, Australia is the State of Registry and in the latter, the State of the Operator. The State of Registry will always initiate the process for an 83 bis agreement between itself and the State of the Operator.

10.3 Components of an 83 bis agreement

10.3.1 When an aircraft leasing or operational arrangement is being considered possibly utilising Article 83 bis provisions, the viability and practicality of such an agreement must be considered and negotiated between:

- an aircraft's Certificate of Registration holder/ Registered Operator
- the foreign operator intending to operate the aircraft overseas
- the regulatory authority on whose Register the aircraft is recorded (State of Registry)
- the foreign regulatory authority under whose jurisdiction the aircraft will be operated (State of the Operator).

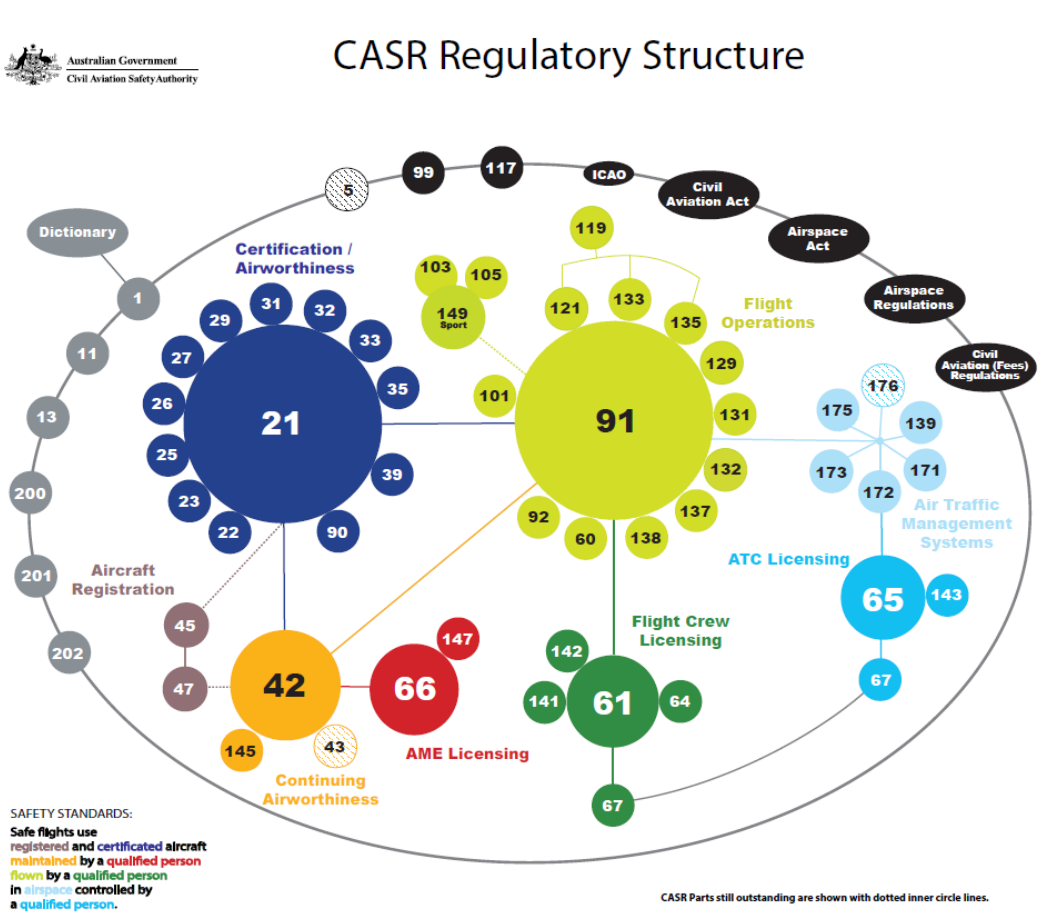
10.3.2 Once it has been established that an 83 bis Agreement is the best solution for maintaining effective airworthiness and operational control and regulatory oversight of a particular aircraft, there are six mandatory components that must be addressed before an 83 bis agreement can come into force. These are:

- **A Formal Agreement** between the two Contracting States, specifying who will be responsible for what. This agreement will be signed by the Director of Civil Aviation [however described] for the foreign regulatory authority; and, for Australia, the CASA Director of Aviation Safety.
- **An exchange of letters** of undertakings between the two Contracting States:
  - One letter from the State of Registry for the aircraft being transferred, requesting that the State in which the aircraft will be operated will undertake some specified regulatory oversight responsibilities. This will be signed by the equivalent of the CASA Executive Manager Regulatory Oversight Division.
  - One letter from the State in which the aircraft will be operated (State of the Operator) confirming to the State of Registry that it will indeed undertake the regulatory oversight responsibilities requested and agreed upon. This will be signed by the Head of the Maintenance Department or, in the case of CASA, the CASA Executive Manager Regulatory Oversight Division.
- **A Delegations Agreement** between the two Contracting States specifying in detail the transfer and on-going arrangements including the delegation of functions and responsibilities from one party to the other. This agreement will be signed by the Director of Civil Aviation [however described] for the foreign authority and, for Australia, the CASA Director of Aviation Safety.
- **An Agreement regarding the airworthiness responsibilities** of each Contracting State, concerning the particular transferred aircraft. This Agreement should be signed by the Head of Airworthiness for the foreign authority and, for CASA, the CASA Executive Manager Regulatory Oversight Division.
- Once all parts of the agreement have been signed by the various parties, CASA, if it is the **State of Registry**, must **register the 83 bis Agreement with the Council of ICAO**. If the foreign Contracting State is the State of Registry and CASA the State of the Operator, the foreign CAA must register the agreement with ICAO.
- When Australia enters into an 83 bis agreement, **CASA must publish a notice in the Commonwealth of Australia Gazette**, setting out the particulars of the 83 bis agreement or amendment. Generally, Australia will only enter into an 83 bis agreement for an Australian Registered aircraft to be operated by a foreign operator on a foreign AOC if:
  - it is practical to do so:
    - » if there are no differences registered with ICAO by Australia as the State of Registry against the Standards and Recommended Practices published in the Annexes which

would directly affect the regulatory oversight of the aircraft by the foreign State of the Operator

- the Australian registered aircraft will be based overseas where it is impractical or not cost-effective for CASA inspectors to conduct appropriate regulatory oversight
- CASA has sufficient confidence in the foreign operator's competence to safely operate and maintain the aircraft
- CASA has sufficient confidence that the foreign regulatory authority under whose jurisdiction the aircraft will be operated is technically capable of undertaking the regulatory oversight work required and also has adequate resources to meet the obligations imposed by the 83 bis agreement
- Similarly, CASA will only enter into an 83 bis agreement for a foreign registered aircraft to be operated within Australia under an Australian AOC or private operation if:
  - it is practical to do so:
    - if there are no differences registered with ICAO by the foreign State of Registry against the Standards and Recommended Practices published in the Annexes which would directly affect the regulatory oversight of the aircraft
    - CASA has confidence in the foreign regulatory authority, on whose register the aircraft is recorded, to meet all of the obligations and requirements to be undertaken as specified in the 83 bis agreement
    - CASA has sufficient confidence in the Australian operator's competence to safely operate and maintain the foreign registered aircraft
    - CASA has sufficient technical personnel available to undertake the regulatory oversight and reporting commitments specified in the 83 bis agreement.

Appendix A
CASR regulatory structure



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