

## Annex B

### Draft Advisory Circular – AC 149-01(0) – Regulatory Enforcement for CASR Part 149 Organisations

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Australian Government  
Civil Aviation Safety Authority

# DRAFT Advisory Circular

AC 149-01(0)

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## REGULATORY ENFORCEMENT FOR CASR PART 149 ORGANISATIONS

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### 1. REFERENCES

- 1 • Civil Aviation Act 1988
- 1 • CASR Part 149
- 1 • CASA Enforcement Manual

### 2. PURPOSE

- 2 This Advisory Circular (AC) provides general information and advice on the regulatory enforcement responsibilities for Recreational Aviation Administration Organisations under CASR Part 149.

### 3. STATUS OF THIS AC

This is the first AC to be issued on this subject.

*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.*

*Where an AC is referred to in a 'Note' below the regulation, the AC remains as guidance material. ACs should always be read in conjunction with the referenced regulations.*

#### **4. CASA'S REGULATORY ENFORCEMENT RESPONSIBILITIES**

**4.1** CASA's primary function under the Civil Aviation Act is to conduct the safety regulation of civil air operations in accordance with the Act and the Regulations. Second only to developing appropriate, clear and concise safety standards, this is achieved by developing effective enforcement strategies to secure compliance with those standards.

**4.2** Enforcement is therefore a core CASA function under subsection 9(1) of the Civil Aviation Act. It is a function that CASA cannot, and will not, walk away from. Considerable time and effort has been given to the refinement and improvement of CASA's enforcement policies and practices since new enforcement provisions became effective in 2004, with the intention that any enforcement CASA *may* initiate is appropriate, fair and proportionate.

#### **5. SAFETY PROMOTION AND AWARENESS**

**5.1** Under subsection 9(2) of the Civil Aviation Act, CASA also has the function of encouraging the aviation industry to accept its obligation to maintain high standards of aviation safety, through comprehensive safety education and training programs, accurate and timely aviation safety advice, and fostering an awareness of the importance of safety and of compliance with relevant legislation.

**5.2** Whilst CASA's functions under subsection 9(1) may be formally delegated to Recreational Aviation Administration Organisations (RAAOs), it is expected and acknowledged that RAAOs will assume functions complementary to CASA's under subsection 9(2) of the Act, and in both respects, RAAOs will play a central role in ensuring voluntary compliance with the rules and regulations, and in fostering a strong safety culture in sport and recreational aviation, relying in large part on peer-group influence to encourage and achieve this result.

#### **6. BREACHES BY SPORTS AVIATION PARTICIPANTS**

**6.1** From time to time, however, a person may breach the rules and regulations with which the law requires compliance. The reasons for those breaches may range from a lack of skill or knowledge, to a misunderstanding of what the law requires, to inadvertent slips and lapses, through to a deliberate and intentional disregard for the law.

**6.2** Different situations and circumstances properly call for different kinds of responses to the breach of applicable safety requirements, and not all events invite or require an enforcement-orientated response. Where enforcement action of any kind is involved, however, the same legal principles and procedural safeguards apply across all sectors of the aviation industry, in order to ensure the rights and interests of the people subject to such action are respected and protected.

**6.3** Under the civil aviation legislation, there are a range of options for dealing with demonstrable or suspected breaches of the applicable rules. The tools available to CASA for such conduct include:

- (a) Education and advice;
- (b) Voluntary remedial training; and
- (c) Counselling

which may be characterised as safety-enhancing compliance-orientated interventions that do not involve enforcement action, as such; and:

- (a) Mandatory remedial training;
- (b) Enforceable voluntary undertakings;
- (c) Variation, suspension or cancellation of a civil aviation authorisation;
- (d) Issuing an infringement notice (which may involve the incurrance of demerit points); and
- (e) Referral of a matter to the Director of Public Prosecutions, with a view to criminal action.

**6.4** As CASA delegates, on whom important aspects of CASA's functions will be devolved, RAAOs will be required to develop appropriate procedures for managing and responding to instances of non-compliance by their participants in an appropriate, fair, proportionate and lawful fashion.

**6.5** It is not intended that all of CASA's enforcement-related functions under the Act and the Regulations will be conferred on RAAOs. It is expected, however, that RAAOs will develop appropriate and effective processes to ensure that:

- enforcement-related matters of a kind RAAOs *are* able and authorised to deal with on their own accord are managed and disposed of in an appropriate, fair and effective manner; and
- enforcement-related matters of a kind RAAOs are *not* equipped or authorised to deal with on their own accord are referred to CASA in a timely and appropriate way.

**6.5.1** Where they are not expressly provided for in the applicable Regulations, an RAAO's obligations in both respects will be integral elements of the delegation under which it operates

**6.6** CASA's enforcement policies and practices are described in the *Enforcement Manual* (<http://www.casa.gov.au/manuals/regulate/enf/index.htm>). To the extent it is appropriate to do so, it is expected that the enforcement-related policies and practices developed by approved RAAOs will be consistent with those policies and practices, taking into account, of course, the distinct and different administrative contexts in which RAAOs operate generally, and the differences between the administrative contexts in which individual RAAOs operate.

## **7. ENFORCEMENT RESPONSIBILITIES FOR RAAOs**

**7.1** Although the responsibility to develop these aspects of their respective procedures and practices will rest primarily with the RAAOs, CASA will provide guidance and assistance to RAAOs in the process.

**7.2** On this basis, it is expected that RAAOs will assume primary and essentially exclusive responsibility for dealing with the vast majority of matters involving non-compliance with applicable rules and requirements, in accordance with acceptable procedures and processes governing compliance- and enforcement-related actions taken by the RAAO. In some cases, however, it may be appropriate for such matters to be referred to CASA directly for enforcement-related action, either in the first instance, or after it has been determined that an RAAO cannot or should not deal with the matter on its own accord.

**7.3** Protocols and procedures for determining whether, and if so when and how, any particular matter may or must be referred to CASA will be developed. Here too, where these are not expressly provided for in the applicable Regulations, they will form an integral element of the delegation under which an RAAO operates.

**7.4** RAOs and their participants should clearly understand when and why certain matters will and will not be referred to CASA for investigation and such further enforcement-related action as may be appropriate in the circumstances.

## **8. INVESTIGATION OF SUSPECTED BREACHES**

**8.1** It is not expected that CASA will normally need to investigate or intervene in matters involving demonstrable or suspected breaches of the civil aviation legislation by a participant of an RAO. Indeed, as a practical matter, and having regard to CASA's regulatory priorities, CASA will not normally be able to do so. It is important to understand, however, that CASA retains all of its investigative and enforcement-related powers under the Civil Aviation Act and Regulations, and should the need arise CASA can and will use those powers in relation to matters involving the activities of an RAO and/or its participants.

**8.2** In those exceptional cases where a participant of an RAO is subject to enforcement-related action by CASA for the breach of a requirement set out in the Civil Aviation Act or the Regulations, that person should expect that CASA will deal with that matter in the same way it would in respect of any other person, in so far as the law allows. Thus, for example, if an infringement notice should be issued by CASA to a participant of an RAO, whilst there may not now be any civil aviation authorisation against which demerit points might be incurred, the matter may still be referred for prosecution if the recipient decides not to pay the administrative fine.

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Greg Vaughan  
Group General Manager  
General Aviation Operations Group

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