# Proposed policy on restricted and danger areas outside Australian territory - (PP 2108AS)

# Overview

Australia has a long-standing practice of declaring predominantly military restricted areas outside Australian territory in Australian-administered airspace. This practice does not comply with International Civil Aviation Organization (ICAO) standards and international law, contravening the United Nations Convention on the Law of the Sea.

The Office of Airspace Regulation (OAR) has received legal advice, undertaken preliminary stakeholder consultation and conducted research into how other countries have sought to address this.

To resolve this issue, we are intending to amend the Airspace Regulations 2007 (the Regulations).

**Current legislation**

Regulation 6 sets out requirements for declaring prohibited, restricted and danger areas. Regulation 7 relates to the requirement to publish declarations made under regulation 6. The pertinent part of regulation 9 allows variation to air traffic services in restricted and danger areas declared under regulation 6. Regulation 13 relates to delegations of powers under the Regulations.

Airspace regulation 6 allows us to declare prohibited, restricted or danger area in Australian territory only and that is an appropriate limitation for prohibited and restricted areas. However, limiting the declaration of danger areas to Australian territory prevents us from using danger areas to warn airspace users of risks in airspace outside Australian territory. This also means that existing danger area declarations outside Australian territory do not have a legal head of power. The proposed amendments will enable us to resolve these issues.

The main reason restricted areas have been declared outside Australian territory due to military exercise and training activity conducted by the Department of Defence (Defence). These restricted areas must be disestablished and replaced with areas that can warn of airspace risk but do not restrict access, such as danger areas. We consider the international practice of using the terms Military Exercise Areas (MEAs) and Military Training Areas (MTAs) instead of danger areas will provide an enhanced awareness of risk to other airspace users.

Regulation 9 allows variation to air traffic services within restricted and danger areas but like regulation 6, it limits this ability to Australian territory. CASA requires the ability to vary air traffic services within danger areas outside Australian territory.

**Proposed Policy**

To address the issues outlined above, the following amendments are proposed for regulation 6, 7 and 9. Further amendments to regulations 6 and 13 are proposed which are not related to the main issues:

1. Introduce MEAs and MTAs as a subset of danger areas within regulation 6. An amendment to regulation 7 would allow these types of danger areas to be subject to further conditions in the six-monthly Designation of Prohibited, Restricted and Danger Areas Declaration and Determination Instrument.
2. Amend regulation 6 to allow the declaration of any type of danger area within Australian-administered airspace.
3. Proposed amendment to regulation 6 (not related to the main issues). The declaration of restricted areas can be made for purposes of public safety, the protection of the environment, or security. Given the broad definition of security, CASA seeks to replace the term security with national security as that is the term used in the Airspace Act 2007.
4. Amend regulation 9 to allow variations to air traffic services in danger areas outside Australian territory.
5. Proposed amendment to regulation 13.This amendment will make it clearer that powers under regulations 5, 8 and 14 can be delegated.

Resolution of these issues will:

* align Australia with ICAO standards and international law
* allow Defence to maintain capability in naval and joint operations
* enable OAR to address airspace risk outside Australian territory in Australian-administered airspace
* make regulation 6 clearer to understand
* enable variations to air traffic services within danger areas outside Australian territory
* make it clearer that delegates can exercise powers under regulations 5, 8 and 14.

## **Previous consultation and research**

OAR has conducted the following consultation on this issue:

* The Department of Defence (Defence) as the main stakeholder affected has been consulted on an ongoing basis. OAR has worked with Defence to understand the issues any prospective changes would create. This consultation has mostly taken place with the Defence staff placed in the OAR and the Joint Airspace Control Cell but has also extended to other Defence representatives, where necessary.
* OAR has recently established a working group involving OAR and other CASA personnel, Defence and Airservices to consider the technicalities of the proposed changes.
* The Aviation Policy Group and Aviation Implementation Group (comprising of Airservices, Defence and CASA) was briefed on OAR's proposed solution in 2020.
* Separate consultation was undertaken with the Department of Infrastructure, Transport, Regional Development and Communication in April and August 2021 and the OAR solution was supported.
* Qantas, Virgin and the Board of Airline Representatives of Australia were contacted to determine what costs to industry might be as part of a Regulation Impact Statement (RIS). Qantas supplied costings to inform the RIS.
* The Aviation Safety Advisory Panel has been advised that the establishment of a Technical Working Group may not be necessary due to the consultation that has already taken place.

Further consultation is necessary to ensure all of industry and any other interested parties can comment and so everyone has a clear understanding of all aspects of the proposal.

Please read Policy Proposal 2108AS below for further detail on the proposed amendments, expected impact on industry and stakeholders, and implementation and transition of legislation.

# Why your views matter

CASA recognises the valuable contribution community and industry consultations make to the policy decision-making process and future regulatory change. We are consulting to ensure that the proposed new rules are clearly articulated and will work in practice and as they are intended.

Comments are sought from every sector of the community. This includes the general public, government agencies and all sectors of the aviation industry, whether as an aviator, aviation consumer and/or provider of related products and services.

**Documents for review**

All documents related to this consultation are attached in the ‘related’ section at the bottom of the page. They are:

* Policy Proposal - PP 2108AS
* Word Doc - Consultation – Proposed policy on restricted and danger areas outside Australian territory (PP 2108AS)

*Note: The MS Word document is not to be used as an emailed submission, unless there are extenuating circumstances, and this form of submission has been agreed to by the consultation project lead.*

It is important that you read the Policy Proposal 2108ASconsultation document before providing your feedback in the online survey.

Comments on the PP 2108AS should be submitted through the online response form.

### ****What happens next****

At the end of the response period, we will:

* Review each comment and response received
* Publish responses on the Consultation Hub (where we have permission)
* Publish a Summary of Consultation which summarises the feedback received, outlines any intended changes and details our plans for the regulation.

Relevant feedback that improves upon the proposed regulations and is consistent with the regulations and other CASA policy, will be incorporated into the final ruling.

To meet Aeronautical Information Publication timelines for airspace to become effective on 1 December 2022, OAR must submit all airspace changes to Airservices by 6 June 2022. This means that proposals to change the airspace must commence being assessed by OAR and consulted with industry around December 2021 to ensure they can be completed within this timeline.

Temporary measure - CASA 26/21 – Direction – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace Instrument 2021, will continue to address present-day issues until changes to the regulations are made. This instrument expires at midnight on 30 November 2022. CASA expects the issues associated with restricted and danger areas outside Australian territory would be resolved in a permanent legislative instrument by that time and has flagged it as the endpoint of the proposed timeline for implementation and transition. This means that the amended airspace will become effective as this instrument expires on 1 December 2022.

A final part of the transition and implementation will be pilot education. This will commence in June 2022 and run through until final implementation in December 2022. CASA and OAR will continue to provide guidance as necessary after implementation.

# **Give Us Your Views** [Appears on the overview page at the bottom]

[Online Survey](https://consultation.casa.gov.au/regulatory-program/pp1816us/consultation/) [This link is on the front page of the survey and takes you to the survey questions]

**Related**

**Related Links -** List of links to attach to the consultation

[CASA OAR 026/21 – Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instrument 2021](https://www.casa.gov.au/sites/default/files/casa-oar-21026-declaration-and-determination-prds-3621.pdf" \t "_blank)

[CASA 26/21 – Direction – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace Instrument 2021 (legislation.gov.au)(F2021L00514)](https://www.legislation.gov.au/Details/F2021L00514" \t "_blank)

[Aeronautical Information Circular H16/21 - Guidance On The Treatment Of Restricted And Danger Areas Within Australian-Administered Airspace Outside Of Australian Territory](https://www.airservicesaustralia.com/aip/current/sup/a21-h16.pdf" \t "_blank)

[Airspace Regulations 2007](https://www.legislation.gov.au/Details/F2019C00278" \l ":~:text=%20Airspace%20Regulations%202007%20%201%20%281%29%20CASA,of%203%20months%20or%20longer%2C%20CASA...%20More%20" \t "_blank)

**Related Documents -** List of documents to attach to the consultation

* Policy Proposal - PP 2108AS
* Word Doc - Consultation - Restricted and danger areas outside Australian territory (PP 2108AS)

# **Audience & Interest groups**

**Audience**

* CASA staff
* Air operators
* Flight training organisations
* Pilots
* Air traffic controller
* Foreign operator
* Air traffic service providers
* High Power Rocket Operator

**Interest**

* Airspace and infrastructure
* Operational standards
* Flight training
* Rocketry

# Page 1: Consultation Content

This consultation asks for your feedback on the *proposed amendments to Airspace Regulations* 2007 in PP 2108AS, which would resolve issues with declared restricted and danger areas outside Australian territory*.*

In this consultation, we will ask you for:

* **personal information**, such as your name, any organisation you represent, and your email address
* **consent** to publish your submission
* **your responses** to the proposed changes in the regulations
* **any comments** you may want to provide
* **demographic information** to help us understand your interest in the regulations

The survey has been designed to give you the option to provide feedback on the survey in its entirety or to provide feedback on the policy topics applicable to you.

When you have completed the sections on which you wish to provide feedback, select the **‘Finish’** button at the bottom right of this page.

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| Page | Table of content |
| 1 | Personal information (required) |
| 2 | Consent to publish submission (required) |
| 3 | Feedback on proposed amendments to Regulations |
| 4 | General comments |

# Page 2: Personal information

## First name

*(Required)*

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## Last name

*(Required)*

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## Email address

*If you enter your email address you will automatically receive an acknowledgement email when you submit your response.*

Email

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## Do your views officially represent those of an organisation?

## *(Required)*

*Please select only one item*

Yes, I am authorised to submit feedback on behalf of an organisation

No, these are my personal views.

If yes, please specify the name of your organisation.

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## Which of the following best describes the group you represent?

*Please select only one item*

Aircraft owner/operator

Pilot

Air Traffic Control

Training organisation

Foreign operator

High Powered Rocketry

Other

Please specify “Other” if selected.

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# Page 3: Consent to publish submission

In order to provide transparency and promote debate, we intend to publish all responses to this consultation. This may include both detailed responses/submissions in full and aggregated data drawn from the responses received.

Where you consent to publication, we will include:

* **your last name**, if the submission is made by you as an individual or
* **the name of the organisation** on whose behalf the submission has been made
* **your responses** and comments

We **will not** include any other personal or demographic information in a published response.

Information about how we consult and how to make a confidential submission is available on the **CASA website** [*<https://www.casa.gov.au/rules-and-regulations/landing-*](http://www.casa.gov.au/rules-and-regulations/landing-) *page/consultation-process>* .

Do you give permission for your response to be published?

*(Required)*

*Please select only one item*

Yes - I give permission for my response/submission to be published.

No - I would like my response/submission to remain confidential but understand that de-identified aggregate data may be published.

I am a CASA officer.

Page 3. Feedback on proposed amendments to Regulations

**Proposed Policy 1** – Introduce military training and exercise areas (MEAs and MTAs) as a subset of danger areas, which can be subjected to further conditions.

This will allow these types of danger areas to be subject to further conditions in the six-monthly Designation of Prohibited, Restricted and Danger Areas Declaration and Determination Instrument.

Do you agree with the proposed policy 1?

*Radio buttons*

Agree

Agree with changes (please specify suggested changes below)

Disagree (please set out your reasoning and alternative suggestions below)

Undecided / Not my area of expertise

Comment

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**Proposed Policy 2 -** Allow the declaration of any type of danger areas within Australian-administered airspace.

Do you agree with the proposed policy 2?

*Radio buttons*

Agree

Agree with changes (please specify suggested changes below)

Disagree (please set out your reasoning and alternative suggestions below)

Undecided / Not my area of expertise

Comment

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**Proposed Policy 3 –** Amend word ‘security’ in Regulation 6

Proposed policy to amendment of the word ‘security’ in Regulation 6 to National Security to:

* provide for the declaration of restricted areas in the interest of public safety, the protection of the environment, or for security purposes
* to make the intended meaning clearer and align with wording in the Airspace Act 2007.

Do you agree with the proposed policy 3?

*Radio buttons*

Agree

Agree with changes (please specify suggested changes below)

Disagree (please set out your reasoning and alternative suggestions below)

Undecided / Not my area of expertise

Comment

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**Proposed Policy 4 –** Allow variations to air traffic services in danger areas outside Australian territory.

Do you agree with proposed policy 4?

*Radio buttons*

Agree

Agree with changes (please specify suggested changes below)

Disagree (please set out your reasoning and alternative suggestions below)

Undecided / Not my area of expertise

Comment

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**Proposed Policy 5 –** Make it clearer that powers under regulations 5, 8 and 14 can be delegated.

Do you agree with proposed policy 5?

*Radio buttons*

Agree

Agree with changes (please specify suggested changes below)

Disagree (please set out your reasoning and alternative suggestions below)

Undecided / Not my area of expertise

Comment

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Page 4: General comments

Do you have any additional comments about the proposed policy?

(Please note, this should not include points you have already raised)

Please include in these comments any **impact** this change may have on you or your operation.

Comments

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