



**Australian Government**  
**Civil Aviation Safety Authority**

## **POLICY PROPOSAL**

### **PP 2108AS**



# **Restricted and danger areas outside Australian territory**

<b>Date</b>	October 2021
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## Policy overview

As part of a solution to an International Civil Aviation Organization (ICAO) notice of deficiency for non-compliance issued against Australia, the Civil Aviation Safety Authority (CASA) is proposing to amend the *Airspace Regulations 2007* (the Regulations). This document contains the detailed policy proposal (PP) intended to form the basis for an amendment regulation to be drafted and consulted upon this year.

## Why are we consulting?

CASA is developing a solution to issues identified with the Regulations drawn into focus in November 2019. ICAO issued a notice of deficiency against Australia due to the publication of restricted areas<sup>1</sup> outside Australian territory but within Australian-administered airspace.. CASA has identified that these restricted areas are not empowered by the Regulations.

To address this, the Office of Airspace Regulation conducted international research to determine how other countries have approached this deficiency. Also, from 2019 to 2021 CASA has conducted preliminary consultation with stakeholders. As a result of the research and preliminary consultation, the OAR has developed a proposed policy position..

Consultation has been ongoing and has now been conducted with the:

- Department of Defence (Defence).
- Aviation Policy Group and Aviation Implementation Group (both groups comprising Airservices Australia (Airservices), Defence and CASA).
- Department of Infrastructure, Transport, Regional Development and Communications (the Department).
- Qantas, Virgin, and the Board of Airline Representatives of Australia.

This PP sets out proposed amendments to the Regulations to allow wider industry and other interested parties to comment on the proposal to address the issues with restricted and danger areas outside Australian territory.

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<sup>1</sup> Ninety-three restricted areas are declared in this manner.

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# 1 Reference material

## 1.1 Acronyms

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

Acronym	Description
Airservices	Airservices Australia
CASA	Civil Aviation Safety Authority
Defence	Department of Defence
Department	Department of Infrastructure, Transport, Regional Development and Communications
ICAO	International Civil Aviation Organization
MEA	Military Exercise Area
MTA	Military Training Area
OAR	Office of Airspace Regulation
Regulations	Airspace Regulations 2007
UNCLOS	United Nations Convention on the Law of the Sea

## 1.2 Definitions

Terms that have specific meaning within this policy proposal are defined in the table below.

Term	Definition
Australian-administered airspace	(a) the territory of Australia and of every external Territory; and (b) the territorial sea of Australia and of every external Territory; and (c) the air space over any such territory or sea.
Australian territory	(a) the airspace over Australian territory; and (b) airspace that has been allocated to Australia by ICAO under the Chicago Convention and for which Australia has accepted responsibility; and (c) airspace administered by Australia at the request of another country.
danger area	An airspace of defined dimensions within which activities dangerous to the flight of aircraft may exist at specified times.
restricted area	An airspace of defined dimensions, above the land areas or territorial waters of a State, within which the flight of aircraft is restricted in accordance with certain specified conditions.

## 1.3 References

### Regulations

Regulations are available on the Federal Register of Legislation website <https://www.legislation.gov.au/>

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Document	Title
Airspace Regulations 2007	Airspace Regulations 2007

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### International Civil Aviation Organization documents

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

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Document	Title
Annex 2 Chapter 1	Rules of the Air
Annex 15 Appendix 1	Aeronautical Information Services
Annex 11	Air Traffic Services

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## 2 Introduction

### 2.1 Background

Australia has a long-standing practice of declaring predominantly military restricted areas outside Australian territory in Australian-administered airspace. This is unacceptable to ICAO and unlawful under international law, with 93 permanent restricted areas declared in this manner. Restricting aircraft outside Australian territory contravenes The United Nations Convention on the Law of the Sea (1962) (UNCLOS) which confirms the concept of freedom of navigation and unrestricted overflight of 'high seas' (those areas which are not part of the territorial waters or internal waters of a State). These concepts are also found in Articles 1 and 2 of the Chicago Convention on International Civil Aviation (1944) (the Chicago Convention) which refers to the UNCLOS (1962) for its definition of high seas.

In 2007, the OAR became responsible for the administration of the Australian airspace architecture under the *Airspace Act 2007* and the Regulations. In November 2019, ICAO issued a notice of deficiency for non-compliance against Australia due to the publication of restricted areas in Australian-administered airspace.

A second issue also exists. The declaration of danger areas in Australian-administered airspace is acceptable to ICAO and lawful under international law, with 16 permanent danger areas declared in this manner. However, the Regulations only allow declaration of danger areas over Australian territory, unnecessarily limiting options to address airspace risk and making the current danger area declarations unlawful under domestic law.

In 2021, CASA issued *CASA 26/21 – Direction – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace Instrument 2021* as a temporary measure until changes to the Regulations could be made. This instrument:

- removes the restrictions on the passage of aircraft, other than Australian aircraft, through airspace published as permanent restricted areas/temporary restricted areas within Australian-administered airspace but outside of Australian territory, whilst actively discouraging foreign registered aircraft from flying in those areas.
- continues to restrict Australian aircraft through airspace published as a restricted area or temporary restricted area within Australian-administered airspace but outside of Australian territory.
- minimises changes to Airservices, Defence and other airspace user practices until a permanent solution is made.

This temporary measure expires on 30 November 2022 and the expectation is that the issues associated with restricted and danger areas outside Australian territory would be resolved by an amendment to the Regulations. This expectation has been clearly communicated to the public in the [Aeronautical Information Circular H16/21](#), available from Airservices Australia's (Airservices) website.

### 2.2 Regulatory issues

Regulation 6 of the Regulations states that CASA may, in writing, make a declaration designating an area of Australian territory to be a prohibited area, a restricted area or a danger

area. This is an unnecessary limitation to the application of danger areas which should be able to be declared outside Australian territory as they only warn airspace users that dangerous activities may be present and do not restrict passage. As it stands, the current danger area declarations outside Australian territory do not have a legal head of power as regulation 6 only permits declarations to be made in relation to Australian territory. Australian territory is a much smaller geographical area than Australian administered airspace.

Danger areas are a useful tool and are used to warn of a variety of dangers in Australian administered airspace. Military exercise and training activity is the primary reason restricted areas have been established outside Australian territory. CASA considers the international practice of using terms for danger areas that more accurately describe the type of risk such as military training and exercise areas (MEAs and MTAs) would 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.

To address these issues, it is proposed that regulation 6 and 7 be amended to:

- Introduce MEAs and MTAs as a subset of danger areas. The amended 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.
- Allow the declaration of any type of danger areas within Australian-administered airspace.

A further amendment to regulation 6 is proposed, although it is 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*.

Regulation 9 should be amended to allow variation to air traffic services in any type of danger areas outside Australian territory.

An amendment to Regulation 13 is proposed, but it is not related to the main issues. Regulation 13 enables delegates to exercise powers under the Regulations. It is not made clear within this regulation that delegates can exercise powers under regulations 5, 8 and 14. This issue should be rectified whilst the Regulations are being amended.

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 easier clearer to understand, vary services within danger areas outside Australian territory and rectify issues with the delegations under regulation 13.

## 2.3 Previous consultation

Since the ICAO deficiency was issued, OAR has conducted consultation with:

- The Department of Defence (Defence) as the main stakeholder affected has been consulted since 2019 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 embedded in the OAR and the Joint Airspace Control Cell but has also extended to other Defence representatives, where necessary.
- In July 2021 OAR 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 in 2020 on OAR's proposed solution..
- 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 in August 2021 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 was consulted in September 2021.

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



## 3 Policy assessment

### 3.1 Intended policy position

CASA's preferred policy options are amendments to the Regulations to introduce MEAs and MTAs (considered a type of danger area) and to allow the declaration of any type of danger area in Australian-administered airspace outside Australian territory. MEAs and MTAs intrinsically inform what the type of risk is present and as a type of danger area they do not impinge upon freedom of navigation and can be declared outside Australian territory. These changes to the Regulations and following airspace changes to be made under the airspace change process will remove the deficiency issued by ICAO and make Australia compliant with international law.

Pilots must inform themselves of the risks present before entering a danger area and must accept the risks of entering the danger area where they choose to do so. Given the added risk that military operations represent, most pilots would be highly unlikely to want to enter an active MEA or MTA. However, MEAs and MTAs will still represent a different risk profile to military participants as non-participants could enter therefore reducing the utility of these areas to Defence. As such, CASA intends to prevent Australian registered aircraft from entering MEAs and MTAs, but this limitation will not apply to internationally registered aircraft. This gives Defence almost identical conditions to conduct military exercises and training outside Australian territory as exists today via airspace restrictions, improves safety for non-participants and achieves compliance with ICAO and international law. This will allow the continuation of Royal Australian Navy activities and joint exercises such as Talisman Sabre which cannot simply be moved closer to shore or onto land. Such activities and exercises are vital to maintaining Australia's defence capabilities.

The ability to declare danger areas outside Australian territory will make the extant danger areas in this airspace consistent with the Regulations. Also, OAR will be able to better address a variety of risks other than military activities in airspace outside Australian territory such as:

- operations to and from oil rigs
- space launching activity originating from Australian territory
- space debris splashing down in the Indian and Pacific oceans
- other issues that may arise from natural or man-made disasters such as volcanic ash or oil spills.

There may be need to vary services in danger areas outside Australian territory and as such the Regulations should cater for this.

Airspace restrictions outside a State's territorial boundaries are an internationally contentious issue. If CASA does not act now, international pressure may eventually force action. Currently these issues are being handled within a timeline that is allowing an orderly transition. If a solution is not put in place, the threat that action will be required remains and this could result in a disorderly transition and a reduction in aviation safety.

## 3.2 Impacts on industry

In terms of compliance, the proposed course of action will create some impacts to industry. This will be in the form of updating documentation in accordance with normal Aeronautical Information Regulation and Control cycles. The OAR has previously consulted some elements of industry to determine costs, with Qantas advising that across the Qantas Group of airlines this cost would be approximately 140 hours or A\$10 000.. This has indicated to CASA that financial implications should be relatively minor and should comprise part of business-as-usual activities. This is an opportunity for industry to raise any issues which have not been identified..

Airservices and Defence will be subject to a similar impact from the change as Air Navigation Service Providers. There will also be an increased workload to Defence, Airservices and OAR in conducting the changes.

Operationally, the proposed change from restricted areas to MEAs and MTAs is not expected to create any impact to industry as the constructs will be very similar to what they are today.

## 3.3 Implementation and transition

The first step in dealing with implementation and transition was to address present-day issues. As noted above, in 2021, CASA issued [CASA 26/21 – Direction – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace Instrument 2021](#) as a temporary measure until changes to the Regulations could be made. This temporary measure expires at midnight on 30 November 2022 and that date is the endpoint of the proposed timeline for implementation and transition.

To accompany the proposed Regulation changes, the OAR will handle changes to airspace in accordance with standard airspace change process procedures. There are 93 restricted areas that will require amendment and the scope of the problem has necessitated establishment of a working group to examine the issue, this work remains ongoing. This is a large task for OAR, Airservices and Defence. 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. That means that proposals to change the airspace must commence being assessed by OAR and consulted with industry around December 2022 to ensure they can be completed within this timeline. Any amended airspace will become effective as the temporary instrument above expires.

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. CASA and OAR will continue to provide guidance as necessary after implementation.

## **4 Closing date for comment**

CASA will consider all comments received as part of this consultation process and will incorporate changes to the regulation as appropriate. Comments on the draft new policy should be submitted through the online response form by close of business 2 November 2021.