

ASRA Enforcement Scheme 2011 (Re-formatted)

ASRA By-Law 2010-01

PART 1- PRELIMINARY

1 Explanatory Memorandum

This By-Law has been developed by ASRA at the insistence of CASA and CASA consultants Aerosafe Risk Management Pty Ltd to address the number one risk identified in an Industry Risk Profile undertaken in 2009, namely that: *'ASRA does not have the full spectrum of enforcement options and authority available to enforce both ASRA and CASA standards and requirements'*. In June 2010 CASA advised ASRA that it considered the implementation of an effective enforcement scheme to be an urgent priority. In addition, in general terms, the Deed of Agreement between CASA and ASRA for 2010-2011 (the document that underpins the CASA financial subsidy of ASRA) requires ASRA making effective progress toward rectifying these shortcomings.

The ASRA Board has itself now recognized that the organisation through to late 2010 has never had an easily ascertainable or accessible system of enforcement, and that what processes were in place were overly centralized and overly dependent on the Operations Manager or the cumbersome convening of disciplinary panels long after an event.

Key Features of the New Enforcement Scheme

Key features are:

NEW SAFETY DISTANCES

(1) Section 11 of the new By-Law provides the following minimum safety distances:

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|-----|---|------------------|
| (a) | <i>from the tip path of a rotating rotor:</i> | 10 metres |
| (b) | <i>from the tip path of an engine driven propeller:</i> | 5 metres |
| (c) | <i>from the tip path of a rotating tail rotor:</i> | 10 metres |

(2) Breaches of these minimum distances attract 8 week grounding orders.

NEW SUPPLEMENTARY POWERS FOR ASRA INSTRUCTORS

(3) Section 9 of the new By-Law solves an obvious problem – that ASRA Instructors have previously not been able to intervene in the operations of full (non-student) pilot certificate holders and, if necessary, exercise operational control. The By-Law provides that if an ASRA Instructor becomes aware that the rotorcraft operations of a member are likely to compromise ground or flight safety, the Instructor can intervene in those activities and – if necessary – exercise operational control up to and including either ordering the member to stay on the ground and not get airborne, or ordering an airborne member to land immediately and not take off again.

(4) Ordering a member to either remain on the ground, or ordering an airborne member to land immediately is called a **Temporary Grounding Order (TGO)**. Temporary grounding orders have a maximum duration of **24 hours**, unless the Instructor concerned has lifted the order or the Operations Manager has lifted the order.

(5) *It should be noted that the imposition of a TGO does not require a Breach of the Enforcement Scheme to have been committed. A TGO is a pre-emptive or preventative process intended to be used when a possibly hazardous situation appears to be developing, and is intended to be used as a “safety valve” to prevent the situation getting worse.*

(6) *It is anticipated that the prospect of being temporarily grounded under a TGO will have a deterrent effect anyway, and is likely to ensure that members will avoid dubious situations developing.*

(7) *Due to the very temporary nature of a TGO, and the fact that a TGO is not to be regarded as a penalty, there is no right of appeal associated with it. The affected member will either have to convince the Instructor concerned that the TGO should be lifted, or convince the Operations Manager that the TGO should be lifted, or simply wait out the 24 hour period.*

(8) *An Instructor cannot impose consecutive TGOs. In other words, successive TGOs cannot be reimposed every 24 hours – this is not the intended purpose of this process. A member can only be the subject of not more than 1 TGO imposed by a single Instructor within a period of 7 days.*

(9) *Note carefully, however, that the ASRA Operations Manager is empowered to impose a TGO of up to 7 days duration – this is intended to take over from an Instructor’s TGO if the potentially hazardous situation is ongoing.*

ASRA ACCIDENT AND INCIDENT INVESTIGATIONS

(10) *Section 8 of the new By-Law clarifies and enhances the situation relating to ASRA incident and accident investigation, and in particular requires ASRA members to co-operate with ASRA investigations and investigators as a strict condition of membership. Also, members are required to loan rotorcraft components suspected to have been contributory to an accident for specialist inspection and analysis.*

ASRA ENFORCEMENT OFFICIALS

(11) *Section 7 of the new By-Law specifies that Instructors, TAs, ASRA officials, Airfield Duty Officers and Committee members of ASRA affiliated regional rotorcraft clubs are now all classed as ASRA Enforcement Officials (EOs), substantially increasing the likelihood that an EO will be present whenever or wherever rotorcraft are gathered. EOs are responsible for the preparation of Breach Notices in the new Enforcement Scheme.*

BREACHES

(12) *A list of 39 breaches of the ASRA Enforcement Scheme has been developed to provide certainty (and deterrence) to members, with readily identifiable penalties and penalty alternatives. (Annexe A to the By-Law).*

2 TYPES OF BREACHES

(13) *Section 12 of the new By-Law provides that breaches are either ‘**Field Breaches**’ or ‘**Administrative Breaches**’. Field Breaches are intended to be used “on the spot” by EOs to immediately deal with problems as they arise in real-time. Administrative Breaches are used where ASRA becomes aware after-an-event that breaching activity has occurred – this will usually occur where ASRA has been contacted by CASA or other government or local government agency investigating a 3rd-party complaint or where it is known that a member has been flying and records are checked revealing that they have not renewed their membership or registration.*

2 TYPES OF FIELD BREACHES

(14) *Field Breaches relate to either a serious rotorcraft technical defect **or** relate to eye witnessed pilot behaviour that either breaches the CASA Exemptions, the CASA Regulation 308 Instruments or the ASRA By-Law itself.*

DEFECT BREACHES

(15) *A Field Breach relating to a serious rotorcraft technical defect has the effect of immediately grounding the particular rotorcraft indefinitely until the defect is satisfactorily fixed to the satisfaction of the EO concerned, or until the Operations Manager or the Technical Manager have lifted the grounding. In other words, the rotorcraft is grounded – not the pilot.*

PILOT MISBEHAVIOUR BREACHES

(16) *A Field Breach for pilot misbehaviour can only be initiated where the breach was directly witnessed by the EO, or where 2 non-EO ASRA members on the ground directly witnessed the breach, or where one airborne non-EO ASRA member directly witnessed breaching activity by another airborne member away from the airfield concerned. This eyewitness requirement is an important safeguard against hearsay or second or third-hand information being used as the basis of a breach. EOs are required to take care that what was witnessed is quickly and accurately summarized in the breach report and must take care to ensure that the witness observations are as reliable as possible. In other words, if the witness evidence is uncertain or confused, then the EO should not initiate the breaching process.*

(17) *Where the evidence appears reliable Where an EO is satisfied that his or her own observations or the witness account or accounts given by others are reliable, the member is required to approach the member complained about and inform them of the allegations made against them. The member being spoken to by the EO is obliged to respond to the EO's inquiries, and depending on the responses given, the EO must then decide to initiate a Field Breach or not.*

(18) *Narrow exceptions caused by necessity Where a rotorcraft is seen by witnesses to breach regulations, a Breach Notice is inevitable except where:*

(a) *the breaching act was caused by mechanical malfunction (eg, engine failure); or*

(b) *the breaching act was absolutely necessary to prevent injury or death – this exception is to be construed narrowly: it is no excuse to deliberately place the rotorcraft into a situation that might lead to a breaching act becoming necessary because safety margins have been completely eroded away or because the pilot failed to recognize that a dangerous situation was developing.*

(19) *Strict liability for pilot behaviour breaches The concept of strict liability is familiar to most people from motor traffic law. It simply means that it is irrelevant whether a breach was unintentional and inadvertent or intentional and deliberate. Whether deliberate or unintentional, if the breaching act occurred and was satisfactorily witnessed, subject to the narrow exception (above) a Breach Notice **MUST** be prepared.*

(20) *Deliberate / Non-Deliberate can influence penalty options As a matter of common sense, intentional flouting of the regulations can be readily distinguished from inadvertent lapses in concentration that also happen to breach the regulations. Intentional or deliberate flouting of the regulations will result in penalty options being more limited.*

PILOT GROUNDING PERIODS ASSOCIATED WITH BREACHES

(21) *If the EO does decide to initiate a Field Breach relating to pilot behaviour, the member must be immediately informed once the decision is made, because **all** Field Breaches relating to pilot behaviour by full pilot-certificate holders have automatic grounding for set periods associated with those breaches. Once an EO tells the member that Breaching action is being taken, the EO must clearly tell the member that they are now grounded. With this type of breach it is the pilot – and not the rotorcraft – that is grounded. The member **MUST** comply with the **Breach Grounding Order (BGO)** – substantially increased penalties apply to members who ignore or contravene a BGO.*

(22) Grounding periods There are 4 ‘levels’ of grounding, namely:

- (i) 4 weeks for relatively minor breaches (Penalty **P4**)
- (ii) 6 weeks for more serious breaches (Penalty **P3**)
- (iii) 8 weeks for relatively serious breaches (Penalty **P2**)
- (iv) 12 weeks for the most serious breaches (Penalty **P1**)

(23) Grounding periods for multiple breaches Where a member is written up for multiple breaches, then the most serious breach is to be considered the “base breach” and 50% of the grounding period or periods associated with each of the other breaches is to be accumulated on the “base breach” and on each other breach. For example, consider a hypothetical situation where the ‘base breach attracts 12 weeks grounding. Two other breaches each attracting 6 and 8 weeks respectively are written up at the same time. The calculation of grounding time will be 12 weeks + (6 x .5 =) 3 weeks + (8 x .5 =) 4 weeks. Total effective grounding time is therefore 12 + 3 + 4 = 19 weeks. It is ASRA policy that accumulation of grounding time is not to exceed 26 weeks in any case, and therefore it can be seen that “throwing the book” at someone becomes fairly pointless after the 26 week total has been reached or exceeded.

(24) The immediacy of Breach Grounding Orders A key feature associated with a Field Breach initiated for pilot behaviour is that the Breach Grounding Order (BGO) commences immediately the member is told by the EO that he or she is grounded. The member remains grounded at least until the penalties are confirmed by the ASRA Board or the Breach or Breaches are dismissed, withdrawn or – if the breach or breaches are unchallenged – when the grounding period expires. It is a strict condition of membership that ASRA members submit to TGOs or BGOs

BREACH PROCEDURE

(25) Processing of Breaches The Breach Report form that EOs use is intended to be hand-written on-the-spot as soon after the breach has been seen. It is important that the eyewitness accounts be summarised accurately as soon after the incident as possible, while the details are fresh in the minds of the witness or witnesses. The member subject of the breach will be given a single page Breach Notice (usually on the spot) which contains the basic details of the breach and lists the various options available to the member. The EO is required to scan and email, or fax, the Breach Report to the ASRA Registrar within **3 days** of the Breach action being commenced. The Operations Manager or his nominee will then contact the member subject of the breach by phone or email and ask whether the member is accepting the breach or breaches or wishes to challenge all or some of them.

(26) Challenging Breaches A member may challenge a Breach by informing the Operations Manager or the Operations’ Manager’s nominee of that fact **not more than 7 days** from the initiation of the breach. An independent **Presiding Member** will then be recruited from within the ranks of members of more than **5 years standing** within the Association. The Presiding Member must not be a personal acquaintance of either the

EO concerned, or of the witness or witnesses concerned, or of the member subject of the breach. The EO and the member subject of the breach must agree about who the Presiding member is to be. If, however, the member subject of the breach consistently refuses to agree to any proposed Presiding Member, then the Board may appoint one without the member's agreement.

(27) *The Presiding Member's role is to either confirm or dismiss the breach under challenge. A **Challenge Hearing** – if there is going to be one – must be held within **14 days** of the breach being initiated. A Challenge Hearing can be convened as a face-to-face in-person hearing, or can be convened as a telephone conference, or as a web-based video conference. It is even possible to conduct a Challenge Hearing by email exchanges only, or by webchat. The exact way the Challenge Hearing is to be conducted is very much a matter for agreement between the member subject of the breach, the EO concerned, the witnesses (if not the EO) and the nominated Presiding Member. ASRA encourages members to utilise the web-based video conference method because nowadays most people have video-equipped computers either within their own homes or readily accessible.*

(28) *The Presiding Member's Role The **Presiding Member** is required to act judicially in accordance with the guidelines in the ASRA Enforcement Manual. What this means is that they are to act without fear or favour, to behave impartially, to behave decisively, and to conduct the hearing in the manner prescribed. They are to ensure that the eyewitness evidence is given in a clear and concise manner. The member subject of the breach is to be allowed to ask the witness or witnesses questions about what they saw and what they heard. After all the evidence on which the Breach is based is heard, then the member subject of the Breach is to give his or her account, and they can be asked questions by the EO. The Presiding Member may, at any time, ask questions of either the EO or the member subject of the breach to clarify aspects of the evidence. After the member subject of the Breach has given his or her evidence and been questioned, then the Presiding Member will quietly consider whether the Breach has been confirmed or is to be dismissed.*

(29) *The Presiding Member may announce their decision on the spot or they may instead choose to take a reasonable time for deliberation and for this purpose may, at their discretion, conclude the hearing and reserve their decision for not longer than **48 hours**. The Presiding Member is to announce their decision simultaneously to the member subject of the breach, the EO and the ASRA Registrar and Operations Manager simultaneously and it is strongly suggested that the medium of email is used for this purpose. No reply emails to the decision are permitted. The decision is final.*

(30) *Standard of Proof in Challenge Hearings The standard of proof in Challenge Hearings is that for the Breach to be confirmed, the Presiding Member must be satisfied on the **balance of probabilities** that the evidence confirms that the alleged breach did occur in the way alleged. In other words, that after taking all the evidence into account, it is more probable than not that the alleged breach occurred. If the Presiding member is not so satisfied, then it is his or her duty to **Dismiss** the Breach. If the Presiding member is satisfied, then it is his or her duty to **Confirm** the Breach.*

PENALTIES

(31) *Settling the Penalties The ASRA Board finalises the penalties. This can only occur after any Challenge Hearing has been conducted. In other words, exactly what penalty option is to be negotiated only after any challenge to any breach is heard. If there is not going to be a challenge to the breach or breaches (or to any one of them), then the penalty options can be negotiated within a few days of the breach action commencing.*

PENALTY ALTERNATIVE: ASRA ENFORCEABLE VOLUNTARY UNDERTAKINGS

(32) Application can be made to the ASRA Board that the grounding periods associated **P3** (6 week) or **P4** (4 week) Breach penalties be “suspended” on the condition that the member breached signs an ASRA **Enforceable Voluntary Undertaking (EVU)**. EVUs are also a part-penalty option available solely at the Board’s discretion for unintentional or non-deliberate **P1**(12 week) and **P2** (8 week) breaches, but members cannot apply for them. This is the equivalent of a good behaviour bond used in courts. This constitutes a “second chance” and a means of resuming flying earlier than would otherwise be the case. Enforcement guidelines are such that where the breach or breaches were inadvertent or unintentional, the Board will allow the member to enter into an EVU in every case. Where the breach or breaches were deliberate or intentional, the Board may refuse an EVU or delay allowing the member to take up an EVU until an appropriate period of grounding has passed. The period of grounding time “already served” between the commencement of the breach and the date on which the EVU is signed is to be deducted from the Total Effective Grounding and the remainder is placed in suspension for the duration of the EVU.

(33) Durations of EVUs ASRA Enforceable Voluntary Undertakings have the following durations:

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|-------|---------------------------|--|
| (i) | EVU for P4 Breach: | EVU of 6 months duration |
| (ii) | EVU for P3 Breach: | EVU of 9 months duration |
| (iii) | EVU for P2 Breach: | EVU of 12 months duration [only if allowed by the Board as an alternative disposition under section 30(b)(iv)] |

(34) Breaching of EVUs If a member is the subject of an ASRA EVU and commits a further Breach within the operative period of the EVU, then upon the subsequent Breach being confirmed the EVU is to be cancelled and the original grounding period remaining that was held in suspension is to be “restored” and served on top (cumulatively) on any grounding period applicable to the fresh Breach. It is not possible to enter into any fresh EVU for breaches confirmed to have been committed while a member was already on an EVU.

PENALTY OPTIONS FOR P2 AND P1 BREACHES

(35) **P1** and **P2** breaches are the most serious breaches. EVUs cannot be applied for by the member for **P1** or **P2** breaches, however the Board may of its own motion offer an EVU to a member for unintentional or inadvertent **P1** or **P2** breaches as part of a punishment arrangement.

(36) For deliberate or intentional **P1** or **P2** breaches, the following procedure is to apply:

- (a) Where the P1 or P2 Breach is deliberate or involves dangerous or hazardous operations or flying The member can apply to the Board to be permitted to undertake a course of remedial flight training, or safety-related ground courses, as recommended by the Operations Manager. If the Board approves the proposal and remedial flying training is permitted, the member will be restored to limited flight status solely to engage in the remedial training as specified. If the remedial training is completed to the satisfaction of the Operations Manager, then the Board can reduce the period of grounding in recognition of the satisfactory completion of the remedial training specified. It should be carefully noted that the amount of time off the grounding period that

*the Board can ultimately allow is not to exceed more than **HALF** of the total initial grounding period applicable.*

(b) Where the P1 or P2 Breach is not-intentional and does not involve any dangerous or hazardous operations or flying The member can apply to the Board to have the period of grounding reduced by either:

(i) proposing a course of remedial training of the kind available in sub-paragraph (30)(a) (above); or

(ii) proposing to the Board that the member make a one-off contribution to a registered children's charity in the sum of \$50 per week of grounding time remaining, payable on a date negotiated with the Board with evidence of the payment being sent to the Registrar; or

(iii) allow the member concerned the alternative of entering into an ASRA EVU of 12 months' duration; or

(iv) any combination of the options available above at the discretion of the Board.

*(c) It should be carefully noted that the amount of time off the grounding period that the Board can ultimately allow under this provision is not to exceed more than **THREE QUARTERS** of the total initial grounding period applicable.*

ASRA SHOW CAUSE NOTICES

(37) Following CASA's example, ASRA has adopted this useful administrative process in Section 19 of the new By-Law as a means of calling to account ASRA Instructors, Technical Advisers or rotorcraft or rotorcraft component importers, manufacturers or sellers. If a complaint about a particular individual in one of these groups is received by the Board, or the Board can of its own motion, issue a Show Cause letter to the individual calling for an explanation in relation to the activity or activities complained of or of concern.

*(38) The Board will issue a 'Show Cause Notice' which requires a written response within **21 days** unless an extension of time is permitted by the Board.*

*(39) The Board may then deliberate and refine the issues over the following **14 days** and issue a 'Request for further particulars', to which the subject member has a further **14 days** within which to respond.*

(40) Failure to engage with or respond to a 'Show Cause' process is regarded as a serious breach of the Enforcement Scheme, leading to membership suspension for the duration of the non-compliance. At the conclusion of the Show Cause process the ASRA Board may:

(a) Rescind any rating, accreditation or authorisation held by the member concerned;

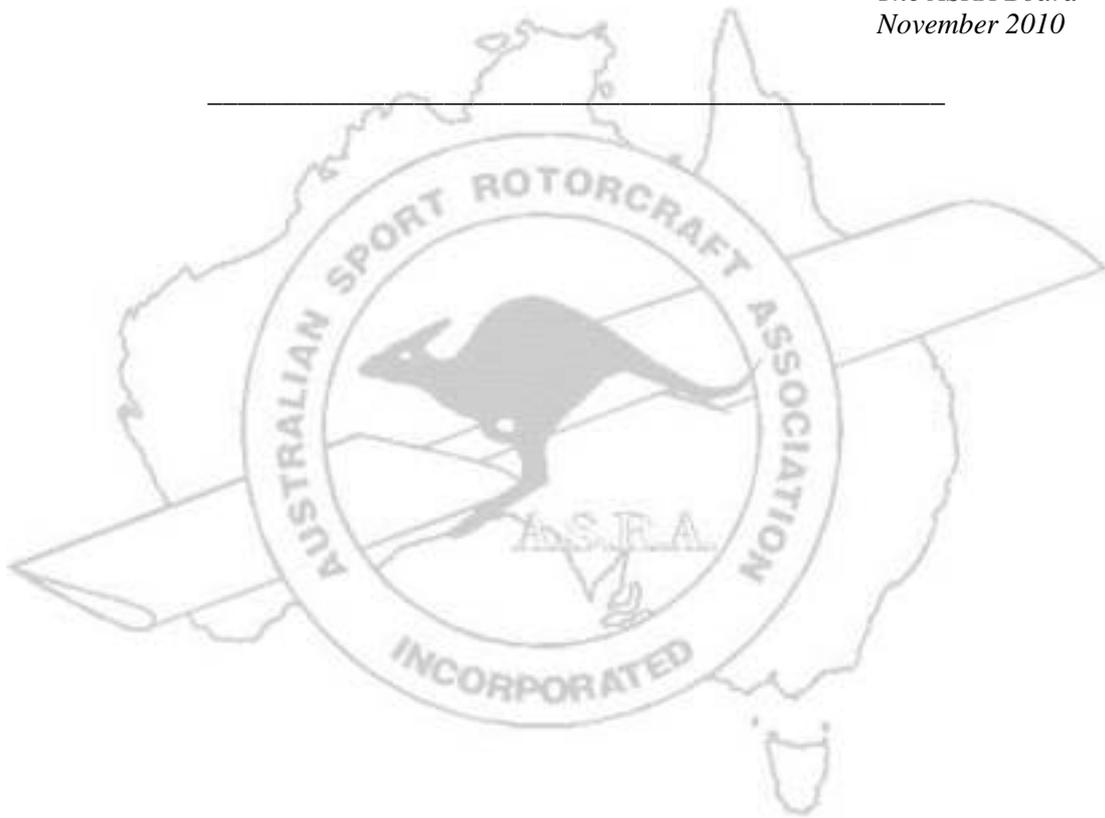
(b) Direct that the member concerned desist permanently from the activities or behaviour that caused the Show Cause process to be initiated; or

(c) any other action agreed by resolution of the Board.

GYROPLANE COMPONENT TRANSFER DECLARATIONS

(41) *One shortcoming in previous ASRA administrative processes has been that while complete rotorcraft are required to have logbooks, when a rotorcraft is 'parted-out' or key components removed or swapped it often is impossible to track the history and provenance of components. A further problem is that from time to time members have sold components to other members, with the buyer ultimately discovering that the real history of the component is not what the seller represented to them. ASRA has therefore decided to initiate a scheme that requires a declaration of a key rotorcraft component's history and provenance to be written out and presented to the intended transferee or recipient of the component. Section 20 of the new By-Law covers the process and an example of the Declaration is included in the new By-Law as Annexe B. These declarations can be used by the recipient as evidence of misrepresentation if the component is later discovered to be not what it was represented to be. Rotorcraft Component Transfer Declarations are not required for brand new items obtained from the manufacturer or distributor.*

*The ASRA Board
November 2010*



PART II – THE ENFORCEMENT SCHEME ASRA BY-LAW 2010-01

2 Commencement

This By-Law commences on 1 March 2011.

3 Contractual basis for flight under Exemption

(1) The CASA Exemptions and/or Regulation 308 Instruments identify ASRA as the Recreational Aviation Administration Organisation (RAAO) that regulates non-VH registered gyroplanes within Australia. This By-Law has been drafted to cover light sport helicopters as well if CASA approval to administer them is granted at any time during the operation of the By-Law.

(2) The Exemptions and/or Regulation 308 Instruments require ASRA membership for a person to be able to enjoy the benefits of the Exemptions and/or Regulation 308 Instruments.

(3) A revised condition of ASRA membership is that an applicant for membership or renewal of membership must agree to abide by the ASRA Enforcement Scheme 2011.

(4) The legal basis for this enforcement scheme enforcement is contractual. Membership or renewal of membership must be refused unless and until the applicant agrees to abide by the ASRA Enforcement Scheme 2011.

4. Enforcement philosophy

(1) ASRA is constituted to advance the interests of rotorcraft activity within Australia and is focused on promoting, rather than restricting, such activity. As such, ASRA expects that members will behave collaboratively and cooperate with each other always in the interest of enhancing rotorcraft safety. ASRA expects that where instances arise where a person's technical or flying preparation or planning are noticeably poor or sub-standard that other members will immediately, informally and co-operatively advise and assist that person to rectify the deficiencies.

(2) In almost all cases this informal counselling is highly effective, and formal breaching procedures should not be utilised where there is insufficient evidence to substantiate a breach.

(3) Where, however, a person is demonstrating a persistent disregard of informal counselling, or continues to demonstrate poor technical or flying preparation or planning, or shows unnecessarily risky behaviour during ground operations or when airborne, or displays dismissive, argumentative, abusive or defiant behaviour when informal counselling is attempted, then breaching action where reliable evidence of breaching behaviour is available must be commenced.

(4) Breaching action is also mandatory when it is discovered that a person has flown while their membership or registration has not been renewed or where a breach of the CASA Exemptions or Regulation 308 Instruments has occurred and where there was no operational necessity for the breach. This applies regardless of whether the breach was intentional or deliberate or unintentional or inadvertent.

5. Enforcement emphasis

- (1) The ASRA Enforcement Scheme 2011 places emphasis on:
 - (a) immediate grounding by Instructors for situations the Instructor considers involve a likelihood that ground or flight safety will be compromised; and
 - (b) immediate grounding by Instructors and other Enforcement Officials when a breach has occurred; and
 - (c) a range of penalty options depending on the nature and seriousness of the breach or breaches.

6. Definitions

‘dangerous or hazardous manner’ for the purposes of this By-Law means activity by a person that has resulted in actual endangerment of the occupant or occupants of the rotorcraft or of persons or property on the ground. The concept is intended to cover situations that any reasonable ASRA member would view as reckless, dangerous, hazardous, unnecessarily risky, etc. It is particularly applicable to deliberate and intentional conduct, but is also be applicable to situations where poor planning and preparation and poor airmanship has resulted in a highly dangerous situation occurring. In particularly serious examples, ASRA reserves the right to elect not to proceed under the ASRA Enforcement Scheme and hand the matter over to CASA.

‘defect constituting a serious risk’ for the purposes of this By-Law means that a rotorcraft has a serious technical defect that can potentially endanger the occupant or occupants. This concept is particularly focused on poor maintenance or the fitting of sub-standard components to an already ASRA registered rotorcraft.

‘ASRA Officer’ for the purposes of this By-Law means any person holding an appointment confirmed by the ASRA Board.

‘rotorcraft’ for the purposes of this By-Law means an ASRA registered gyroplane or an ASRA registered helicopter.

‘rotorcraft operations’ for the purposes of this By-Law includes the simultaneous rotation of an engine-driven propeller and the rotation of a gyroplane rotor by any means; or the rotation of a helicopter rotor and tail rotor under power; or the wheeled taxiing under power of any rotorcraft; or any practice takeoff run or attempted takeoff or aborted takeoff of a gyroplane.

‘rotorcraft flight’ for the purposes of this By-Law includes any time the rotorcraft is airborne under its own power or by means of autorotation, regardless of the height, air or groundspeed of that rotorcraft.

7. Delegation of certain powers to certain classes of ASRA members

- (1) The following classes of ASRA members are now classified as ‘ASRA Enforcement Officials’ (hereinafter called ‘EO’s’):
 - (a) ASRA Board members or ASRA officers (for pilot misbehaviour breaches);

- (b) ASRA Chief Flying Instructors, Senior Instructors, Instructors and Assistant Instructors (hereinafter called 'Instructors') (for pilot misbehaviour breaches or technical deficiencies);
- (c) ASRA Technical Advisers (TA's) (for technical deficiencies);
- (d) a Duty Officer at a flying gathering appointed or elected under Section 4.01(2) of the Operations Manual for the duration of that gathering (for pilot misbehaviour breaches); and
- (e) a current ASRA member who is also a current Board or Committee member of an ASRA affiliated state or regional gyroplane club (for pilot misbehaviour breaches).

(2) If a particular EO holds an appointment or accreditation that falls across more than one of the above categories, then the member is entitled to exercise the powers that arise from each category to which they belong.

(3) EOs are the only persons authorised to initiate Breach action and write out Breach Notices.

8. ASRA investigators and co-operation by members

(1) The following persons are empowered to act as ASRA Investigators:

- (a) the ASRA Operations Manager;
- (b) a current ASRA member appointed by the Operations Manager to act as an investigator in relation to accidents or incidents generally; or
- (c) a current ASRA member appointed by the Operations Manager to act as an investigator in relation to a specific incident or accident.

(2) It is a condition of membership that an ASRA member co-operate with an ASRA Investigator in relation to an incident or accident in which they are involved or which they have witnessed.

(3) It is a condition of membership that an ASRA member make a rotorcraft or rotorcraft component available for inspection by an ASRA Investigator in relation to an incident or accident in which they are involved and that such inspection is to be allowed within **3 days** of the request being made unless the ASRA Investigator negotiates a different timeframe with the member concerned. If the rotorcraft or any components thereof are for the time being in the custody of police or the ATSB, this membership condition will only become applicable from the time that the rotorcraft or the relevant component has been returned to the owner/member.

(4) It is a condition of membership that an ASRA member will loan a rotorcraft component to ASRA for in-depth inspection if that component has contributed to an incident or accident or has failed unexpectedly in some way and which may have wider implications for general rotorcraft safety. Any such loan is to be negotiated on reasonable terms.

9. Enhanced Instructors' Powers – Temporary Grounding Orders (TGO)

(1) In addition to general enforcement powers conferred on Enforcement Officials, ASRA Instructors and the Operations Manager now have these additional powers:

(a) if concerned that an ASRA pilot certificate holder is or might be conducting his or her gyroplane **ground activities or preparation for flight** in a manner that is **likely to compromise ground or flight safety**, an ASRA Instructor may:

(i) approach the member and inquire about the activities of concern; and

(ii) the member is required to co-operate and respond to those inquiries.

(b) if the explanations given by the member are inadequate or it appears likely to the ASRA Instructor that despite the instructor's counselling and advice that the member is likely to continue conducting his or her ground activities or preparation for flight in a manner that is likely to compromise ground or flight safety, the ASRA Instructor may:

(i) order that the member **cease the activities of concern** to the ASRA Instructor **and remain on the ground until further order**; and

(ii) it is a condition of membership that members comply with an ASRA Instructors' Temporary Grounding Order (TGO).

Example: Instructor Jones observes pilot Smith loading fuel into his rotorcraft. Jones inquires about the likely destination and duration of Smith's intended flight, and after taking into account the distances and prevailing wind and weather conditions, Instructor Jones forms an opinion that the fuel load is inadequate for the flight. If Smith refuses to load more fuel or is overly-confident of the likelihood of not running out of fuel, then Jones can order Smith to stay on the ground until Jones is satisfied that Smith has loaded adequate fuel.

(c) if an ASRA Instructor directly observes **airborne conduct** by an ASRA pilot certificate holder that the Instructor considers is likely to unnecessarily reduce safety margins or compromise flight safety, an ASRA Instructor may:

(i) if the airborne member is in radio contact, the ASRA Instructor can order that the member immediately **cease his or her airborne activities** and return to the site where the Instructor is located for counselling or redress;

(ii) if the airborne member is not contactable by radio, at the time the member lands the ASRA Instructor may direct the member to **cease** his or her gyroplane activities or operations **and not resume flying** until further order.

(d) A TGO will remain in effect for **24 hours** unless earlier expressly lifted by the ASRA Instructor who imposed the order (or by the ASRA Operations Manager).

(e) A TGO is available to ASRA Instructors as a preventative measure to interrupt activity or behaviour of concern to the ASRA Instructor.

(f) A person temporarily grounded under these provisions will not have committed a breach and will not be further penalised **unless** they disobey the temporary grounding order (which is Breach ESB-02, leading to immediate membership suspension).

(2) A TGO of up to **7 days** duration may be imposed by the Operations Manager acting on the advice of any Instructor who has imposed a 24 hour TGO. This is not a penalty but is a preventative measure. The Operations Manager may impose a TGO at any time during or after the expiration of an Instructor's 24 hour TGO, and the grounding time remaining is to be calculated from the time the Operations Manager's TGO commenced and not from when the Instructor's TGO commenced.

(3) It is a condition of membership that members comply with an ASRA Instructors' or the Operations Manager's TGO.

10. Strict liability and operational necessity

(1) The breaches listed in Annex A to this By-Law are subject to strict liability. Strict liability means that proof of only the act is required, and the question of whether the act was intentional or unintentional or deliberate or inadvertent is irrelevant for the purposes of commencement of breaching action.

(2) However, if it is established that the breaching activity was an operational necessity because of a mechanical malfunction or the need to safeguard life or prevent imminent injury, then no breaching action is to be initiated. (Example 1: Pilot Smith experiences an engine failure that results in him landing on a public road. ASRA will not initiate breaching action but the police might. Example 2: Pilot Smith is subsequently discovered to have not renewed his membership and registration at the time he force-landed on the road: he will be breached for flying an unregistered gyroplane and flying while membership not current, but still not for landing on the public road. Example 3: Pilot Jones is observed flying along and over the main street of a country town: he will be breached).

11. Safety distances from rotating propellers and rotors

(1) The following minimum safety distances shall be maintained at all times from persons not involved in the operation of a rotorcraft:

- (a) from the tip path of a rotating rotor: **10 metres**
- (b) from the tip path of an engine-driven propeller: **5 metres**
- (c) from the tip path of a rotating tail rotor: **10 metres**

(2) Persons involved in the operation of a rotorcraft within these minimum safety distances are to remain within sight of the pilot in command at all times and if intending to move under the plane of the spinning rotor itself must always remain in eye contact with the pilot in command, approach only from the front, and only move under the plane of the rotor when the pilot in command has tilted the rotor disc up at the front to some extent and has given and is maintaining a "thumbs up" signal.

12. Procedures for breaches

(1) "Field Breaches". The breaching process can only occur when an ASRA EO has directly witnessed the breaching or unsafe behaviour, or the technical defect, with the sole exception being breaching behaviour that has been directly observed by:

(a) one ASRA member (who is not an ASRA Enforcement Official) who was **airborne** at the time he or she saw the breaching behaviour which occurred away from the airfield; or

(b) two ASRA members (neither being an ASRA Enforcement Official) if the incident or behaviour was **observed from the ground** at or near an airfield.

(2) In instances covered by sub-para (a) and (b) above, the ASRA EO must promptly make relatively detailed notes of the allegations and have the relevant member or members sign the notes. If the noted complaint appears to be well based (ie, that the observation is accurate and reliable), then the ASRA EO must act on that information. The ASRA EO must immediately thereafter speak to or attempt to speak to the member against whom a complaint has been made, and inform them that they are grounding them. The ASRA EO must inform the member concerned that they are the subject of breaching action and they are to cease flying operations forthwith. An oral order is sufficient. The formal breach paperwork is to be prepared as soon as practicable thereafter.

(3) “Administrative Breaches”. In situations where it has been subsequently discovered that a breach has occurred previously (ie, after-the-event, such as where it is subsequently discovered that a gyroplane was not currently registered and the pilot observed flying had not renewed his or her membership as at the date of the observed flying), then breaching action is mandatory. In these types of instances the nominated ASRA EO who directly observed the flying activity will act on the direction of the ASRA Registrar in relation to whether the membership or registration was current at the time the flying was observed. The breach will then be written up by the ASRA EO who witnessed the original activity.

(4) Administrative breaches can also be initiated where ASRA has received a **3rd party complaint** either directly or via a government agency or CASA, the requirement of a direct ASRA eyewitness is not required. Whether or not breaching action is initiated will depend on the strength of the evidence presented from the 3rd party. In these circumstances the breaching action will be initiated by the ASRA Registrar, the Operations Manager or another ASRA Enforcement Official nominated by the Operations Manager.

13. List of breaches

(1) The breaches applicable to ASRA members are listed at Annexe A to this By-Law.

14. Confirming or Dismissing a Breach Challenged by the Member Concerned

(1) A member subject of a breach may either:

(a) accept the breach or breaches and apply to the Board for finalisation of the penalties in accordance with the options available under this By-Law; or

(b) accept some of the breaches and challenge others, in which case the finalisation of penalties cannot occur until after the outcome of a Challenge Hearing is known; or

(c) challenge the breach or breaches.

(2) A member who wishes to challenge a breach or breaches must inform the Operations Manager or the Operations Manager's nominee of that fact not more than **7 days** from the initiation of the breach.

(3) A Challenge Hearing is a hearing presided over by a member of more than **5 years** standing who is not a close acquaintance of either the EO, the witnesses or the member subject of the breach. Both the EO and the member subject of the breach must consent to the proposed member of long standing being proposed as the Presiding Member, but if agreement between the parties cannot be achieved on who the Presiding Member should be, the Board may of its own motion appoint a Presiding Member after taking into account the concerns of the EO or the member subject of the breach.

(3) The Presiding Member is then to be appointed by the Operations Manager or the Operations Manager's nominee. The role of the Presiding member is to either confirm the breach or dismiss the breach in accordance with the hearing guidelines in the ASRA Enforcement Manual.

15. Penalties

(1) The penalty codes in Annex A are:

- (a) **"P4"** - **4 weeks** grounding, with an option of signing a 6 month Enforceable Voluntary Undertaking to take special care not to commit any further breaches within the period of the undertaking.
- (b) **"P3"** - **6 weeks** grounding, with an option of signing a 9 month Enforceable Voluntary Undertaking to take special care not to commit any further breaches within the period of the undertaking.
- (c) **"P2"** - **8 weeks** grounding, with possible alternatives being (for intentional breaches) undertaking remedial training courses) or for unintentional P2 breaches, to undertake remedial training courses or make a charitable contribution (or a combination of both) OR signing a 12 month Enforceable Voluntary Undertaking to take special care not to commit any further breaches within the period of the undertaking. All these alternatives are at the discretion of the Board. See section 17 for details.
- (d) **"P1"** - **3 months** grounding. EVUs are not available. Remedial training is the only permissible alternative proposal to reduce the period of grounding for intentional or deliberate breaches, and for unintentional P1 breaches a further alternative of making charitable contributions or a combination of both can be proposed to reduce the grounding period. All these alternatives are at the discretion of the Board. See section 18 for details.
- (e) **"GR"** - **Grounding** means:
- (i) For technical deficiencies The gyroplane concerned must remain on the ground until the technical deficiency is rectified to the satisfaction of the Technical Adviser or other EO who issued the Grounding Order;

- (f) **“MS”**
- (i) **Breaches ESB-03 and ESB-04 - Membership Suspension** for the period of the non-compliance;
 - (ii) **Membership Suspension for 1 month** in relation to refusing to comply with a TGO;
 - (iii) **Breach ESB-02 - Membership Suspension for 1 month** in relation to disobeying a BGO **plus** at the conclusion of the 1 month suspension, the penalty applicable to the breach or breaches will then commence.
- (g) **“SA”** **Breach ESB-01 - Suspension Activation** in relation to breaches of Enforceable Voluntary Undertakings where the grounding period held in suspension is to be “served” on top of (not concurrent with) the grounding penalty applying to the new conduct that breached the EVU.

16. Grounding Periods for Multiple Breaches

- (1) If a member is subject of multiple breaches, the breach that attracts the most severe penalty is to be regarded as the “base breach”. Any other grounding period incurred in relation to other breaches is to be “served” partially concurrent with the base breach and with the other applicable grounding periods.
- (2) The following formula is to be applied to arrive at a total effective grounding period:
 - (a) the “base breach” grounding period is noted in full;
 - (b) 50% of any other grounding periods is then to be added to the “base breach” and any other periods applicable; and
 - (c) the resulting total is the total effective grounding period.
- (3) It is ASRA policy that no more than 26 weeks grounding can be aggregated under this provision.

Example: Pilot Smith has incurred a “base breach” grounding of 8 weeks (P2). He has 2 other breaches attracting 6 weeks (P3) and 4 weeks (P4).

The calculation is:

$8 \text{ weeks} + (6 \times 0.5 =) 3 \text{ weeks} + (4 \times 0.5 =) 2 \text{ weeks. Total} = 13 \text{ weeks.}$

Total Effective Grounding Period = 13 weeks.

17. ASRA Enforceable Voluntary Undertakings

- (1) ASRA Enforceable Voluntary Undertakings (EVU) are the equivalent of a ‘good behaviour bond’ used in Courts. They represent an opportunity to be allowed to resume flying but it is under the condition that if the member commits further breaches during the period of the undertaking, then the member will be grounded not only for the subsequent breach, but will also be required to remain grounded for the further period of time “owing” on the original breach representing the period between the date of signing the undertaking and the expiration date of the original penalty.

- (2) An ASRA EVU is a penalty alternative available to the Board in relation to:
- (a) any **P4** breach;
 - (b) any **P3** breach; and
 - (c) unintentional or non-deliberate **P1** and **P2** breaches.
- (3) Whether a member will be permitted to enter into an ASRA EVU is entirely at the discretion of the Board, but it is to be noted that EVUs should ordinarily be allowed for **P3** and **P4** breaches.
- (4) A further EVU cannot be entered into in relation for breaches committed while an EVU is already in force.
- (5) If a member commits a further breach within the operational period of an ASRA EVU, the fact that he or she has committed a subsequent breach (once admitted or confirmed) will result in a separate breach being initiated for the breach of the EVU – see breach ESB-01).

Example: Pilot Smith has signed a 12 month EVU 3 weeks into an 8 week grounding (a P2 grounding). He is therefore entering an undertaking with 5 weeks held in suspension. He then commits a further breach 11 months later, attracting a 4 week grounding (P4). He is therefore grounded for $4 + 5 = 9$ weeks.

18. Conversion or commutation of certain penalties

- (1) For **P1** or **P2** breaches, the following alternatives procedure is to apply:
- (a) Where the P1 or P2 Breach is deliberate or involves dangerous or hazardous operations or flying The member can apply to the Board to be permitted to undertake a course of remedial flight training, or safety-related ground courses, as recommended by the Operations Manager. If the Board approves the proposal and remedial flying training is permitted, the member will be restored to limited flight status solely to engage in the remedial training as specified. If the remedial training is completed to the satisfaction of the Operations Manager, then the Board can reduce the period of grounding in recognition of the satisfactory completion of the remedial training specified. It should be carefully noted that the amount of time off the grounding period that the Board can ultimately allow is not to exceed more than **HALF** of the total initial grounding period applicable.
 - (b) Where the P1 or P2 Breach is not-intentional and does not involve any dangerous or hazardous operations or flying The member can apply to the Board to have the period of grounding reduced by either:
 - (i) proposing a course of remedial training of the kind available in sub-paragraph (16)(1)(a) (above); or
 - (ii) proposing to the Board that the member make a one-off contribution to a registered children's charity in the sum of \$50 per week of grounding time remaining, payable on a date negotiated with the Board with evidence of the payment being sent to the Registrar; or
 - (iii) allow the member concerned the alternative of entering into an ASRA EVU of 12 months' duration; or

(iv) any combination of the options available above at the discretion of the Board.

(2) The amount of time off the grounding period that the Board can ultimately allow under sub-section 17(1)(b) is:

- (i) for aggregated multiple breaches - not to exceed more than **THREE QUARTERS** of the total initial grounding period applicable; or
- (ii) for a single breach – **THREE QUARTERS** of the applicable grounding period.

19. Show Cause Notices

- (1) Show Cause Notices are used in relation to:
 - (a) ASRA Instructors and Assistant Instructors;
 - (b) ASRA Technical Advisers;
 - (c) ASRA members who are manufacturing or assembling gyroplanes or supplying gyroplane components to other ASRA members, or who are importing gyroplane types or assisting other members to import single gyroplanes into Australia.
- (2) A Show Cause Notice may be issued in circumstances where:
 - (a) a complaint or complaints have been received about the conduct of the nominated member;
 - (b) where the ASRA Board has received 3rd party information from a government agency or CASA; or
 - (c) where the ASRA Board by resolution decide to initiate the Show Cause process against a member in one of the categories above;
- (3) The Show Cause Notice will contain a concise summary of the alleged complaint, deficiency, shortcoming or behaviour and will call for an explanation from the member within **21 days**. This period may be extended at the discretion of the Board on request by the member concerned.
- (4) Upon receipt of the member's explanation the ASRA Board may refine the issues over a period of **14 days** and if necessary request further information from the member concerned. A further **21 day** response period is allowed, subject again to an extension at the discretion of the Board on request by the member concerned.
- (5) At the conclusion of the Show Cause process, the ASRA Board may:
 - (a) Rescind any rating, accreditation or authorisation held by the member concerned;
 - (b) Direct that the member concerned desist permanently from the activities or behaviour that caused the Show Cause process to be initiated; or
 - (c) any other action agreed by resolution of the Board.

(6) Failure or refusal to engage in or co-operate with a Show Cause Process is a serious breach attracting suspension of all membership privileges for the duration of the non-compliance.

20. Rotorcraft Component Transfer Declarations

(1) A rotorcraft component transfer declaration in the form set out as Annexe B must be completed by the person selling or transferring the component to another member (or to a member of the general public) and the declaration must be shown to the person prior to sale or transfer and given to them if the sale or transfer of the component actually occurs:

- (a) matched sets of rotor blades or single blades;
- (b) hub bars (gyroplanes) or rotor hubs (helicopters);
- (c) propellers (complete);
- (d) engines (complete);
- (e) propeller re-drives or gearboxes (complete);
- (f) friction clutches, sprague clutches or freewheel units; or
- (g) tail rotor gearboxes.

(2) Rotorcraft component transfer declarations are not required for new components.

21. Register of breaches

(1) The ASRA Registrar is to maintain a permanent register of breaches, noting the type of breach and final penalties imposed. Entries from the register of breaches may be used as evidence without further proof in any future hearing or proceeding constituted or arranged under the ASRA Constitution.

22. Transitional Provisions

(1) Upon commencement of this By-Law, paragraphs 1 to 5, 9 and 10 of ASRA Operations Manual section 2.11 are rendered inoperative.

(2) Upon commencement of this By-Law, the ASRA Disciplinary Procedures Handbook (April 2007) is withdrawn.

Annexes

- A. List of Breaches
- B. Sample Gyroplane Component Transfer Declaration

ANNEXE A to ASRA By-LAW 2010-01

Summary Grounding Orders (non-breaching but of up to 24 hrs duration)

- SG-1** Instructor considers that ground or flight safety is likely to be compromised.
SG-2 Flying a rotorcraft in a way as to unnecessarily reduce safety margins.

Breaches relating to Defects (rotorcraft is grounded)

Penalty

- A-01** Rotorcraft with defect constituting a **serious risk** to flight safety. **GR**
A-02 Rotorcraft does not comply with ASRA Construction Standards. **GR**

P1 Breaches – 12 weeks pilot grounding

- P1-01** Flying a rotorcraft in a **dangerous or hazardous manner**. **P1**
P1-02 Operating* a rotorcraft without an ASRA student or pilot certificate. **P1**
P1-03 Carrying a passenger without passenger carrying endorsement. **P1**
P1-04 Flying in acrobatic manoeuvres**. **P1**
P1-05 Flying at night. **P1**

P2 Breaches – 8 weeks pilot grounding

- P2-01** Starting/running engine-driven propeller with bystanders within **5 metres**. **P2**
P2-02 Engaging or spinning rotors with bystanders within **10 metres**. **P2**
P2-03 Taxiing within **10 metres** of bystanders with rotors turning. **P2**
P2-02 Attempting to fly or flying an unregistered rotorcraft. **P2**
P2-04 Flying over a regatta, race meeting or public gathering. **P2**
P2-05 Flying in non-VMC conditions **P2**
P2-06 Flying within a prohibited or restricted area. **P2**
P2-07 Flying into an unauthorised class of airspace **P2**

P3 Breaches – 6 weeks pilot grounding

- P3-01** Pilot certificate holder flying rotorcraft with lapsed or unpaid membership. **P3**
P3-02 Flying within 100m of a public road at less than 300' agl.. **P3**
P3-03 Flying cross-country without endorsement (**>25nm** from takeoff point). **P3**
P3-04 Flying within 8 km of a licensed aerodrome without endorsement. **P3**

P4 Breaches – 4 weeks pilot grounding

- P4-01** Student pilot operating* a rotorcraft unsupervised by instructor. **P4**
P4-02 Student pilot exceeding current restrictions imposed by an instructor. **P4**
P4-03 Flying below 300' agl without permission of landowner. **P4**
P4-05 Flying below 300' agl without a low level endorsement. **P4**
P4-06 Flying above 500' agl without above 500' agl endorsement. **P4**
P4-07 Flying onto or from a beach without endorsement. **P4**

Breaches relating to non-compliance with the Enforcement Scheme

- ESB-01** Breaching the terms of an ASRA Enforceable Voluntary Undertaking **SA**
ESB-02 Failing or refusing to immediately comply with a Grounding Order. **MS**
ESB-03 Not co-operating with an ASRA Accident/Incident Investigating Official **MS**
ESB-04 Failing unreasonably or refusing to respond to a Show Cause Notice. **MS**

Breaches operative **ONLY UNTIL** the Regulation 308 Instruments commence

OLD-01 <input type="checkbox"/> Flying over a city or town, or taking off or landing within 500m of city or town.	P3
OLD-02 <input type="checkbox"/> 2 seater flying within 100m of a dwelling without permission	P3
OLD-03 <input type="checkbox"/> Flying more than 150m from a shoreline without life jacket.	P3
OLD-04 <input type="checkbox"/> Flying with lifejackets more than 18km beyond a shoreline.	P3
OLD-06 <input type="checkbox"/> Taking off with bystanders within 100m laterally.	P4
OLD-07 <input type="checkbox"/> 2 seater flying within 600m horizontally or 500' vertically of cloud.	P4

Breaches operative **ONLY AFTER** the Regulation 308 Instruments commence

NEW-01 <input type="checkbox"/> Flying over a closely settled area.	P2
NEW-02 <input type="checkbox"/> Using a rotorcraft for 'aerial application operations'.	P2
NEW-03 <input type="checkbox"/> Aerial stock mustering without aerial stock mustering endorsement	P2
NEW-04 <input type="checkbox"/> Flying with life jackets more than 20km from shore (other than Bass Strait).	P2
NEW-05 <input type="checkbox"/> Flying within Class C or D airspace without a CASA Class 2 medical.	P3
NEW-06 <input type="checkbox"/> Flying without life jackets over water beyond glide-back-to-shore distance.	P3

Conduct requiring admonition and/or prompt rectification

- Operating an airband VHF radio without holding ASRA authorisation.
- Required warning placards or registration sticker not affixed to rotorcraft.
- Not carrying a pilot certificate while operating or flying a rotorcraft.
- Failing to promptly file an incident or accident report.

NOTES:

***'Operating a rotorcraft'** means running the engine at the same time as the rotors are turning.

** **'Acrobatic manoeuvres'** means unauthorised display flying; or an intentional manoeuvre involving an abrupt forward pitch manoeuvre especially at the top of a zoom climb, reducing g-loading on the rotor to below 1-g; or an abrupt change in a rotorcraft's attitude not necessary for normal flight; or, utilizing bank angles (other than in aerial stock mustering) exceeding 60 degrees.

PENALTY CODES:	P1	12 weeks grounding. Most restricted penalty options
	P2	8 weeks grounding. Greater combination of penalty options
	P3	6 weeks grounding. EVUs likely
	P4	4 weeks grounding, EVUs normal
	MS	"Membership Suspension"
	SA	"Suspended grounding period Activated"

Australian Sport Rotorcraft Association
ANNEXE B to ASRA By-Law 2010-01 (Section 20)

ROTORCRAFT COMPONENT TRANSFER DECLARATION
(Not required for brand new components provided by the original seller)

Name of current owner:

Address of current owner:

Contact phone number(s) and email:

TYPE OF COMPONENT Gyroplane (G) Helicopter (H) Other

Matched set of rotor blades Single rotor blade Tail rotor blade or blades

Hub bar (G) Rotor hub (H)

Propeller (complete) Engine (complete) Propeller re-drive or gearbox (complete)

(H) Friction clutches, Sprague clutches or freewheel units

(H) Tail rotor gearbox (complete)

If component not described in the list above, please describe it here:

Manufacturer:

Serial Number:

Number of hours on
component when obtained:

Number of hours I have
Run up on the component:

I have owned the component for:

I originally got the component from:

The history of the component while I have owned it is:

Accidents / Incidents *The component in my hands or the hands of the previous owners(s) has been involved in the following incidents / accidents and has been repaired / not repaired as follows:*

I certify that all the information detailed above is true and correct

Signature of
component owner

Date: