

ASRA

AUSTRALIAN SPORT ROTORCRAFT ASSOCIATION INCORPORATED

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ASRA MISCONDUCT & DISCIPLINARY PROCEDURES MANUAL

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- Second Edition: March 2010 – ASRA Disciplinary and contravention sections of the Operations Manual and ASRA By-Law 2010.01
- Third Edition: November 2022 – incorporating the CASA Part 149 preventative, corrective, remedial, and disciplinary policy and procedures together with ASRA By-Law 2010.01 (as amended)
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INTRODUCTION

This fourth edition of the ASRA Disciplinary Procedures Handbook has been created as

part of the ASRA transition from operation under CAO 95-series Exemptions over to self-administration under CASR Parts 103 and 149.

The second-edition ASRA Disciplinary Procedures Handbook operated primarily to administer the ASRA By-Law 2010.01 otherwise known as the 'ASRA Enforcement Scheme 2011' which commenced on 1 March 2011.

The 2011 Enforcement Scheme has been developed by ASRA in 2009 and early 2010 working in conjunction with CASA and CASA consultants Aerosafe Risk Management Pty Ltd following an Industry Risk Profile having been undertaken in 2009. 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 was modified by CASA for 2010-2011 to require ASRA to make effective progress toward rectifying the enforcement shortcomings.

The result was the ASRA By-Law 2010.01, which was devised to operate in these ways:

- (a) to provide an easily understandable system of breaches or infractions of operational requirements together with readily identifiable penalties, so that members and enforcement officials alike would be able to understand what to do to deal with the breach or multiple breaches, and how to do it;
- (b) to provide a range of enforcement alternatives, including Counselling, Letters of Admonition or Censure, ASRA Enforceable Voluntary Undertakings (where the member concerned undertakes to exercise special care not to commit any further breaches within the period of the Undertaking); or Remedial Training (or both), as well as setting out a comprehensive schedule of Grounding Periods for admitted or proven breaches.
- (c) to provide an easy pathway for a member who admits to breaching behaviour to be subject to Counselling, or to Letters of Admonition or Censure, or to Enforceable Voluntary Undertakings, or to Remedial Training, and/or Suspension of flight privileges;
- (d) to provide a pathway for members wishing to challenge some or all of the allegations made against them for operational breaches to have a right to be heard and to test the reliability of his or her accusers; and
- (e) to also implement a 'Show-Cause' process to be used in respect of ASRA Flight Instructors, Technical Advisers, and 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, and where a complaint or complaints has been received about the member, or where ASRA has been notified by CASA or other government agency, or where the ASRA Board has on its own motion decided to invoke Show-Cause action against the member.

ASRA By-Law 2010.01 has operated effectively for the 11-year period between March 2011 and November 2022, providing:

- (a) certainty, fairness and equality of treatment;
- (b) incentives for a breaching member to engage in better behaviour in the future; and
- (c) incentives for a breaching member to undertake Remedial Training.

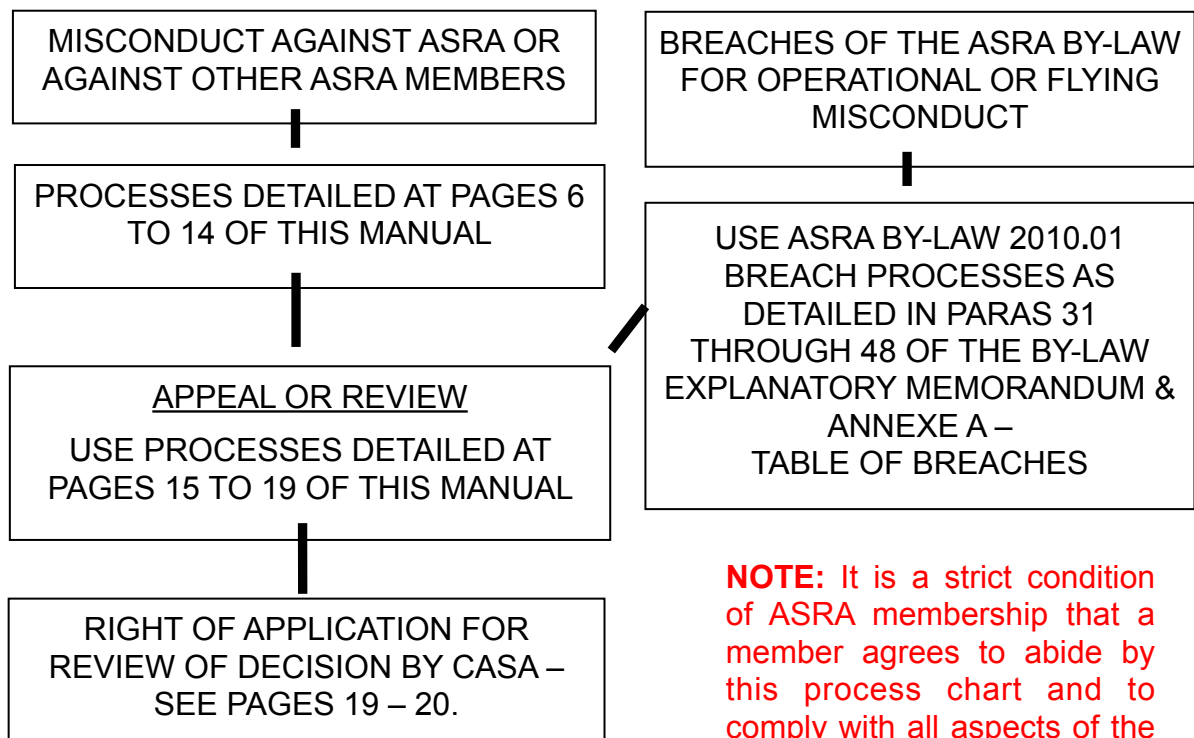
The CASA Part 149 preventative, corrective, remedial and disciplinary policy and procedures Template

The CASA Template has been integrated into this Disciplinary Procedures Manual as Part 1 and introduces several processes not included in ASRA By-Law 2010.01. They are:

- (a) an emphasis on Misconduct of members against ASRA itself, or Misconduct directed personally toward other members; and
- (b) provides a process for Internal Review Process for decisions made under enforcement powers, as well as the right for an Application for Review by CASA.

Limited integration of the ASRA scheme and the CASA scheme

The 2023 Misconduct and Disciplinary scheme operates as follows:



NOTE: It is a strict condition of ASRA membership that a member agrees to abide by this process chart and to comply with all aspects of the ASRA Misconduct and Disciplinary Scheme.

ASRA MISCONDUCT & DISCIPLINARY MANUAL - PART 1

SECTION 1

1.1.a. This Manual forms part of ASRA's aviation administration and enforcement rules under regulation 149.290 of the *Civil Aviation Safety Regulations 1998* (CASR).

1.1.b. This Manual governs the handling and review of preventative, corrective, remedial or disciplinary action by the Part 149 certificate holder (also referred to as an Approved Self-Administering Aviation Organisation (ASAO)), its' key personnel, personnel, members and temporary members.

1.1.c. The objectives of this Manual are to:

- (i) discipline consistent with the requirements of Part 149 of CASR;
- (ii) set out the processes and procedures for dealing with conduct that may constitute a breach of ASRA's Rules and By-Laws, including referral of such conduct for disciplinary or enforcement action;
- (iii) to ensure that key personnel and the general membership of ASRA are aware of the appropriate procedures to follow when allegations or reports of misconduct are made or arise;
- (iv) to ensure that any preventative, corrective, remedial or disciplinary action is subject to an effective and appropriate review process; and
- (v) to ensure that procedural fairness is observed at all times during the process.

1.1.d. This Manual forms part of the ASRA's Exposition and cannot be changed or amended without first obtaining CASA's approval to do so under regulation 149.115 of the CASR.

Member's compliance with this Manual and other ASRA Rules and processes is compulsory

1.2.1.a. When a person becomes a member of ASRA they do so on the condition that they agree to be bound by and will comply with ASRA's Association Rules and By-Laws as well as comply with procedures set out in the Operations Manual, the Technical Procedures Manual, the ASRA Gyroplane Construction Standards (as in force from time to time) and also including these Rules and By-Laws in this Enforcement Manual that provide for preventative, corrective, remedial or disciplinary action to be imposed upon that member.

1.2.1.b. Members undertaking aviation activities may be required to comply with additional policy requirements imposed through legislative requirements imposed due to ASRA's involvement with external bodies, such as the Civil Aviation Safety Authority which regulates the conduct of ASAOs and civil aviation more generally. Other examples include where members participating in certain competitions must abide by the *Anti-Doping Policy* that applies to the relevant Sporting Administration Bodies or where members compete in international competitions as a representative of the Association.

Examples of Misconduct

1.2.2.a. It is not possible to exhaustively list everything that may constitute misconduct or give rise to preventative, corrective, remedial or disciplinary action. If the subject matter relates to the potential for a member to be subject to such action, then it is covered by the terms of this Manual.

1.2.2.b. It is not a prerequisite that the conduct engaged-in by a member is deliberate or intentional for it to be the subject of review under this Manual.

1.2.2.c. Examples of "Association" Misconduct: i.e. - against ASRA or other ASRA members

Some examples of conduct which may warrant the taking of action include:

- Failing to abide by ASRA policy, such as a breach of the Privacy Policy by

disclosing a member's sensitive / personal information;

- Falsification of records, including maintenance records or logbooks;
- Knowingly authorising ASRA application forms which include false information or otherwise being reckless as to the contents;
- Verbally or physically assaulting another person, intimidating another person or creating a hostile environment within the aviation community;
- Intentionally injuring the professional or personal reputation of another member or of ASRA by spreading false or misleading information or making repeated vexatious, frivolous or malicious claims;
- Sexual harassment, which includes but is not limited to inappropriate touching of students, circulating inappropriate material or making unsolicited advances of a sexual nature;
- Disclosing to any unauthorised person or organisation information obtained as an ASRA member that is of a private, confidential or privileged nature;
- A club or operator not following the requirements in relation to membership of students;
- Discriminating against, harassing or bullying (including cyber-bullying) any person.
- Engaging in misconduct which has the potential to bring the ASRA, CASA or the sport into disrepute.

Examples of "Operational" (or Flying) Misconduct by ASRA Members

- Failing to ensure that any activities conducted as a member are authorised under the ASRA's Rules;
- Unintentionally acting contrary to the ASRA Rules due to ignorance or recklessness;
- Engaging in aviation activities without due regard for the safety of others.
- Disregarding manufacturer's maintenance requirements.

NOTE: OPERATIONAL OR FLYING MISCONDUCT HAS BEEN DEALT WITH BY ASRA SINCE 2010 BY USING THE PROVISIONS OF ASRA BY-LAW 2010.01.

IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE TERMS OF THIS MANUAL AND ASRA BY-LAW 2010.001, THIS MANUAL PREVAILS TO THE EXTENT OF THE INCONSISTENCY.

1.2.3. Preventative, Corrective, Remedial or Disciplinary Measures

1.2.3.a. There are a variety of different options, depending on the severity of the issue, the risk consequences, the attitude of the individual or organisation, and the disciplinary record of the individual (including whether the alleged conduct is a first offence). Options include a combination of the following:

- (i) a direction that the individual or organisation makes a verbal and/or written apology;

- (ii) a written warning (noted on a Member's records);
- (iii) varying, suspending or cancelling privileges of a certificate, rating or endorsement, or approval;
- (iv) counselling and/or retraining;
- (v) referral to other relevant authorities, including law enforcement or regulatory authorities; or
- (vi) if the matter is found to be baseless or vexatious, then disciplinary action against the complainant may be considered.

1.2.4. Nature and intent of proceedings

1.2.4.a. ASRA's processes have been developed within ASRA's operational environment. They are not formal legal proceedings being conducted in a court of law and are intended to be as informal as possible while observing and respecting the rights of the parties involved, in the interests of limiting costs, expense and not wasting time. Parties do not have a right to be legally represented in disciplinary proceedings or at any panel hearing.

1.2.4.b. In dealing with any allegations of misconduct under the Manual, ASRA will be guided by and will observe the Guiding Principles as set out below in 1.3.

1.3. Guiding Principles for misconduct procedures

1.3.1. Just and Fair Culture

1.3.1.a. ASRA fosters a "just and fair safety culture" that discourages blaming an individual for making an honest mistake that may have been a contributing factor to an accident or incident. A just and fair culture does not seek to punish honest mistakes. However, gross negligence, recklessness or wilful disregard of regulatory requirements are not considered to be honest mistakes.

1.3.1.b. The processes described in this Manual are intended to promote a "just and fair safety culture": in that any enforcement action taken is to be proportionate, properly founded, conducive to positive safety outcomes and mindful of the circumstances of those involved, including promoting the safety management of aviation generally. Sanctions will generally only be applied where there is evidence of a conscious and wilful violation, or intentional, reckless, or negligent behaviour. The safety of ASRA members and the public is the primary consideration when managing and making decisions regarding misconduct.

1.3.2. Procedural Fairness and "Natural Justice"

1.3.2.a. The terms procedural fairness and natural justice are interchangeable and underpin the procedures and processes required to be observed by a decision maker. Put simply, decision-makers are required to inform people of the case against them or their interests, give them a right to be heard (the 'hearing' rule), not have a personal interest in the outcome (the rule against 'bias'), not to act only upon the direction of others (the rule against 'dictation') and to act only based on logically compelling evidence (the 'evidence' rule). The term procedural fairness is sometimes also called the "duty to act fairly".

1.2.2.b The following procedural fairness / natural justice principles must be observed with respect to all ASRA misconduct and disciplinary proceedings:

- Keeping people informed – this includes all persons whose interests may be

adversely affected or who are the subject of an inquiry – and should including providing details of the grounds for the inquiry.

- Providing respondents adequate and appropriate opportunity to respond to allegations of suspected breaches at the right time and based on all appropriate information (the *hearing Rule*).
- Considering all relevant material related to the matter, including that presented by the accused and not taking into account irrelevant considerations (the *evidence rule*).
- Making reasonable attempts to gather evidence which explains the facts of a situation.
- Acting in a fair, reasonable, impartial and unbiased manner always. This includes declaring potential conflicts of interest if and when they arise (the *rule against bias*).
- Conducting inquiries and all associated tasks in a timely manner, and
- Keeping appropriate records.

1.3.2.c. Enforcement decisions must be:

- Fair, reasonable and follow due process.
- Transparent to those involved.
- Traceable to evidence, logic, rules, requirements and standards.
- Subject to appropriate internal and external review.

1.3.3. The Evidence Rule

1.3.3.a. The rule of evidence attempts to ensure that the disciplinary process and any associated decision is fair for the parties involved. In the case of the process under this Manual, this is to be determined to the civil standard which requires that the facts can be proven at least on the balance of probabilities. Evidence should be verifiable, corroborated, valid, sufficient, current, and authentic.

1.3.4. The Hearing Rule

1.3.4.a. The Hearing Rule requires a decision maker to ensure they properly inform a person of the case against them, or their interests in a case and give them a full opportunity to respond, and to have their response considered to the allegations before findings of fact are made in relation to them. What is considered as full opportunity varies according to the circumstances and requires consideration of what is reasonable in any given situation. Generally, the more serious the allegation and potential sanction the greater the requirement to provide full opportunity to respond.

1.3.5. The Rule against Bias

1.3.5.a The rule against bias requires that a decision-maker approaches their tasks with fairness and an open mind so as to consider the case in an impartial manner rather than by due to any preconception, interests or other influences that may affect the fair consideration of the decision at hand.

1.3.5.b. Bias can take two forms – *actual* or *apprehended*. Actual bias arises where an interest or activity of a decision maker or relevant party can be seen to influence the decision. Apprehended bias occurs when there is a perception (based upon an objective rather than subjective observer) that there may be a bias held by the decision maker.

1.3.5.b.i. The person nominated to conduct investigatory duties and / or to make a decision or ruling, is to ensure they do not have any conflict of interest which may call into question the appearance of impartiality (or perception of impartiality) for the inquiry or decision. Some examples of conflict of interest include;

- where there is a prior or current personal relationship between the decision maker and the witness / complainant / reporter / accused,
- previous disputes with a party to the matter,
- a financial interest with one of the parties (such as co-owner of a business) or,
- having previously investigated and made recommendations against the respondent, etc.

1.3.6. Records to be kept

1.3.6.a. Accurate and detailed records are to be kept by the investigator and ASRA at all times during the course of an investigation. This includes information such as (but not limited to):

- Any contact with the member, including times/dates, methods (e.g., by phone/ email/in person) and subject matter
- Responses from members
- Feedback from witnesses, other members and/or the public
- Any information relevant to the subject matter.

1.3.6.b. All records are to be securely stored by ASRA and be available for inspection upon request by CASA.

SECTION 2 – PROCESS UPON RECEIVING A COMPLAINT

2.1. Informal Process

2.1.a Depending upon the seriousness of the complaint or allegations, an informal approach may be appropriate where the conduct arises from an honest mistake or is relatively minor in nature or when an unsubstantiated or anonymous allegation has been made. An informal procedure may involve a discussion between the parties to resolve the issue and may result in a verbal warning. Verbal warnings (although oral in nature) and any counselling or retraining must still be documented and retained on file. This will assist if the person should be the subject of further infringements or in the event of any related later claims.

2.1.1. Alternative Dispute Resolution

2.1.1.a. A person authorised by ASRA may refer a matter or any issue arising in a matter under their control for Alternative Dispute Resolution, including but not limited to arbitration, conciliation, mediation and/or expert determination.

2.1.1.b. If Alternative Dispute Resolution is unsuccessful the matter will continue to be managed

under these Rules.

2.2. Initiating Action

2.2.a. Any person may report in writing to a person authorised by ASRA that a member(s) or member organisation has acted in breach of the Rules and Regulations or otherwise engaged in misconduct.

2.2.b. A person authorised by ASRA who has authority or responsibility under the Rules or any matter referred to under this Manual may initiate proceedings against a Member or member organisation in accordance with their authorisation.

2.2.c. When an allegation of misconduct or a breach of the rules or regulations is made, or an alleged infringement occurs and it is either witnessed or reported to a person authorised by ASRA, the person authorised by ASRA will assess the matter and take appropriate action.

2.2.d. In the event that a report has been made in writing to more than one person authorised by ASRA concerning the same conduct of a member or member organisation, then the preference will be for the reports to be treated as one matter.

2.2.e. The person authorised by ASRA is to conduct an initial assessment, including investigating and gathering evidence, while ensuring procedural fairness and affording the respondent a fair opportunity to be heard. The person authorised by ASRA may then decide to proceed as follows:

- (i) Where an allegation or breach is substantiated, the person authorised by ASRA will frame the matter for action and may, subject to any exceptional circumstances, issue sanctions by way of an ASRA Sanction Notice (ASN); or
- (ii) Where an allegation or report cannot be substantiated, or is deemed vexatious, frivolous or malicious, or the assessment suggests no action is warranted, the person authorised by ASRA may determine not to proceed further with the matter; or
- (iii) The person authorised by ASRA may determine some alternative action is required, including:
 - (a) informal resolution procedures;
 - (b) education;
 - (c) counselling, retraining and/or issue of a warning and/or;
 - (d) referral of the matter to the ASRA Safety Manager (SM), or to consult with the CEO if the alleged conduct requires referral to law enforcement authorities.

2.2.f. A person authorised by ASRA is required to report disciplinary matters to the SM, and/or the President within 7 days of either issuing a ASN or finalising the complaint.

2.2.g. CASA may direct ASRA to initiate enforcement action against a member in accordance with Part 149 of the *Civil Aviation Safety Regulations 1998* and the ASRA Part 149 Exposition.

2.2.h. CASA may initiate action itself against an ASRA member in accordance with Part 149 of the *Civil Aviation Safety Regulations 1998* and the ASRA Part 149 Exposition.

2.3. ASRA Sanction Notices (ASN)

2.3.a. An ASN may only be issued by a person authorised by ASRA.

2.3.b. An ASN will be issued, other than in exceptional circumstances and with the approval of

the ASRA President (the Accountable Manager, or “AM”), where an infringement of the Rules has been established and the conduct warrants a disciplinary response.

2.3.c. An ASN should be issued to the member or member organisation **within 14 days** of a person authorised by ASRA becoming aware of the infringement.

2.3.d. With the authorisation of the President (the Accountable Manager, or “AM”), the **14-day time limit** set out in 2.3(c) may be extended. If the matter is considered exceptionally serious the time can be extended to a maximum of **two years**.

2.3.e. Disciplinary action should not be finalised until the member has been notified of the impending ASN and been given the opportunity to respond. All attempts must be made to contact the member or member organisation immediately, notifying them of the ASN details. All details relating to an infringement, including sanctions imposed and notification records, must be formalised and recorded on an ASN with copies to be provided to the member or member organisation, the SM and the AM.

2.3.f. In the case of a member organisation, the ASN will be issued to the Responsible Person, Chief Flying Instructor and/or the owner.

2.3.g. The ASN will state any disciplinary action and/or corrective action required, list the regulation(s) alleged to have been breached, as well as making it clear to the respondent when and where the alleged breaches occurred. Should the offense details change, or further details are discovered during the disciplinary process, the person authorised by ASRA may modify or vary the ASN without requiring the disciplinary process to be restarted but subject to giving notice to the member.

2.3.h. An ASN is not to provide for imposition of a monetary or financial penalty upon the member, unless such is expressly provided for under the ASRA's exposition [such as 2010 By-Law paras 15.1(d) and 18.1(b)(ii) for operational or flying breaches] and with the prior approval of CASA. Note that ASRA uses the CASA ASN process **ONLY** for a Member's Misconduct directed toward ASRA itself or directed toward another ASRA Member.

SECTION 3 – POWERS

3.1. Authorised Persons

The following is a list of position holders authorised by ASRA to exercise preventative, corrective, remedial or disciplinary action under Part 149 of the CASR.

3.1.1. Authorised Persons having Enforcement Powers

The following ASRA office holders have enforcement powers:

- (a) The President (Accountable Manager);
- (b) The Head of Flight Operations (HOFO) or their appointed Assistant;
- (c) The Safety Manager;
- (d) The Chief Training Pilot;
- (e) Chief Flying Instructors, Senior Instructors and Instructors;
- (f) A current member of the ASRA Board not otherwise identified above;
- (g) A current member of the ASRA Executive not otherwise identified above;
- (h) The Head of Airworthiness and Maintenance (HAM) or their appointed Assistant; and
- (i) ASRA Senior Technical Advisers and Technical Advisers.

3.1.2. Enforcement Powers available to persons identified at 3.1.1(a) to (g)

Express powers available to those persons identified at 3.1.1(a) to (g) (above) include:

- (i) the power under this Manual to issue a statement of complaint / allegation to a member accused of misconduct directed toward ASRA or to another ASRA member;
- (ii) the power to issue an ASRA Sanction Notice as defined under Section 2.3 of this Manual;
- (i) the power to refer a matter involving misconduct (by a member toward ASRA, or to another ASRA Member) to a Review Officer;
- (ii) the powers expressly available to various ASRA Enforcement Officials as stated in ASRA By-Law 2010.01 paragraph 7(1), 7(2) and 7(3); and
- (iii) for the avoidance of any doubt, emergency powers that are - in cases where the authorised person perceives that a significant risk to ground or flight safety is occurring - **TO SUMMARILY:**
 - i. **ORDER** a person operating a gyroplane on the ground, such as running the engine and propeller, or rotating the rotor either by way of pre-rotation or unrestrained windmilling, or taxiing that aircraft, **TO CEASE THAT ACTIVITY IMMEDIATELY;** or
 - ii. **ORDER** a person operating an airborne gyroplane **TO IMMEDIATELY LAND AND NOT RESUME FLYING FOR A PERIOD OF NOT MORE THAN 24 HOURS.**

3.1.3. Express Powers available to the Head of Airworthiness and Maintenance (HAM) (or Assistant HAM - if any) and to ASRA Senior Technical Advisers and Technical Advisers

Authorised persons holding current ASRA HAM, AHAM, STA or TA authorisations have the following powers:

- (i) the power under this Manual to issue a statement of complaint / allegation to a member accused of misconduct directed toward ASRA or to another ASRA member;
 - (ii) the power to issue an ASRA Sanction Notice under Section 2.3 of this Manual;
 - (iii) the power to refer a matter involving Misconduct (by a member toward ASRA, or to another ASRA Member) to a Review Officer;
 - (iv) the powers expressly available to various ASRA Enforcement Officials as stated in ASRA By-Law 2010.01 paragraph 7(1), 7(2) and 7(3);
 - (v) for the avoidance of doubt, this includes emergency power as detailed in ASRA By-Law 2010.01 to order a gyroplane grounded **indefinitely** until a deficiency resulting in the gyroplane not complying with ASRA Construction Standards is fully rectified **OR** a 'defect constituting a **serious risk to flight safety** is rectified so that the gyroplane will be brought back into compliance with ASRA Construction Standards.
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SECTION 4 - INTERNAL REVIEW PROCESS AND DECISIONS

4.1 Purpose

4.1.a. The purpose of an Internal Review is to provide an opportunity for a Member who is the subject of a determination by a person authorised by ASRA, to seek independent review of that determination. In particular, the Internal review will examine the facts of a matter so as to ensure that:

- (i) the grounds for an Internal Review come within the scope of preventative, corrective, remedial or disciplinary action under Part 149 of the CASR;
- (ii) the determination made by the person authorised by ASRA was properly based on the facts and application of the rules and regulations;
- (iii) that procedural fairness and natural justice requirements were observed and did not adversely affect the determination.

4.1.b. Subject to there being identified grounds for the Internal Review, the Internal Review process serves as the Member's opportunity to have their matter internally reviewed by ASRA.

4.2 How to lodge an Internal Review Request

4.2.a. A Member who is the subject of a determination made and served on them by a person authorised by ASRA that involves the variation, suspension or cancellation of an authorisation may apply to have that determination reviewed by lodging a Request for Internal Review Form (**RfR**):

- (i) with the ASRA Secretary **within twenty one (21) days** after the member has received an ASN or other sanction(s);
- (ii) which references the relevant ASN(s) and sets out in detail the reasons why the person is dissatisfied with the decision;
- (iii) if necessary, provide any additional information the person would like the Internal Review to consider; and
- (iv) specify the decision that person believes is the preferable decision.

4.2.b. The ASRA Secretary will forward the RfR to a Review Officer immediately upon receipt of the application.

4.2.1. Time Limitation on Review Officers for Internal Review Panel

4.2.1.a. If an RfR is not lodged within the 21-day time limit, then a member who is the subject of a determination by a person authorised by ASRA may **within 12 months of the determination AND** with the authorisation of the Accountable Manager **AND** demonstrating some exceptional circumstances exist, apply for an extension of the time period to lodge an **RfR**.

4.2.1.b. In no circumstances will an extension request to lodge an RfR be accepted more than 12 months after a determination is made by a person authorised by ASRA.

4.2.1.c. An ASRA Review Officer will make an internal review decision within 21 days of ASRA receiving an RfR request. In the event that an internal review decision is not made within 21-days ASRA is taken to have affirmed the original decision.

4.3. Grounds for Internal Review

4.3.a. A person who is dissatisfied with one of the following decisions may apply to ASRA for an Internal Review:

- (i) a decision of the ASAO to refuse to issue an authorisation to the person;
- (ii) a decision of the ASAO to issue an authorisation to the person in terms different from those applied for
- (iii) a decision of the ASAO to vary, suspend or cancel an authorisation issued to the person other than at the person's request;
- (iv) a decision to attach conditions to an authorisation issued to the person, other than at the person's request;
- (v) a decision to vary conditions attached to an authorisation issued to the person, other than at the person's request.

1. Review Officer

4.4.a. A Review Officer may be appointed to consider an application for Internal Review referred to them by the ASRA Accountable Manager.

4.4.b. The Review Officer shall:

- (i) ensure they are free from any form of bias, including not being involved in the original decision-making process;
- (ii) review all the relevant facts and circumstances of the matter, including material submitted by the person requesting the review;
- (iii) seek additional information from any person if required;
- (iv) review any submission provided by the person requesting the review;
- (v) evaluate the application of procedural fairness during the decision-making process;
- (vi) determine whether the review will be conducted by the Review Officer (i.e., for non-complex matters), or whether an Internal Review Panel is required to be established in order to conduct the Internal review (i.e., for complex matters); and
- (vii) for non-complex Internal Reviews, decide the outcome of the Internal Review.

4.4.c. The Review Officer may make a decision to;

- (i) Affirm, vary, or set aside the original decision; and
- (ii) If the Review Officer sets aside the decision-make such other decision as the Review Officer considers appropriate.

4.4.d. The Review Officer shall in every case notify the ASRA President (i.e., the Accountable Manager) and the Member of the proposed Internal review decision (and the reasons for the decision) within 21-days of receiving the application.

4.4.e. If the Review Officer is unable to act for any reason, including if the Review Officer considers that the matter is outside their expertise or that a conflict of interest may arise, an

alternative Review Officer is to be appointed.

4.5 Fees

4.5.a. A Member may be charged administration fees and may incur any other charges as ASRA considers appropriate and proportionate, in relation to the conduct of the Internal Review process.

4.5.b. When a member submits an RfR and it is accepted for lodgement:

- (i) they must pay an administrative fee, or an amount otherwise determined by the Review Officer to be reasonable in the circumstances (i.e., reflective of the administrative costs of conducting the Internal Review); and
- (ii) In the event the Internal Review does not affirm the original decision, the administrative fee will be fully or partly refunded to the member at the discretion of the Review Officer.

4.5.c. An application for an ASRA Internal Review is not complete until any administration fee payable for the review is paid in full.

SECTION 5 – INTERNAL REVIEW PANEL HEARING

5.1 Internal Review Panel (Complex Internal Reviews)

5.1.1. An Internal Review Panel (“Panel”) may be convened to hear a request for Internal Review referred by a Review Officer under 4.2(b) where the matter is considered complex.

5.1.b. Each Panel member must hold current ASRA membership.

5.1.c. Panel members may include industry peers, experts in relevant fields or persons with relevant expertise as determined at the discretion of the Review Officer provided they are ASRA members. A Panel must consist of up to 5 members. The number of persons on a particular panel is at the discretion of the Review Officer.

5.1.d. The Review Officer will appoint a Panel Chairperson and the Panel members (noting the Review Officer may be appointed to any of those roles).

5.2 Review Panel Procedure (incl. Video Hearings)

5.2.a. The Review Panel is to:

- (i) ensure they are free from any form of bias, including not being involved in the original decision-making process;
- (ii) review all the relevant facts and circumstances of the matter, including material submitted by the person requesting the review;
- (iii) seek additional information from any person if required;
- (iv) review any submission provided by the person requesting the review;
- (v) evaluate the application of procedural fairness during the decision-making process;
- (vi) determine whether the review will be conducted by the Review Officer (non-complex matters), or whether an Internal Review Panel is required to be established (i.e., complex matters); and
- (vii) decide within 21-days of receiving an application for an Internal Review the outcome of the Internal Review.

5.2.b. The Review Panel may make a decision to;

- (i) Affirm, vary, or set aside the original decision; and
- (ii) If the Review Officer sets aside the decision-make such other decision as the Review Officer considers appropriate.

5.2.c. The Review Officer shall in every case notify the ASRAAM and the Member of the proposed Internal review decision (and the reasons for the decision) within 21-days of receiving the application.

5.3 Review Panel Chairperson Responsibilities

5.3.a. Where it has been resolved to have a Review Panel, the Chairperson must ensure all necessary arrangements are made including:

- (i) appointment of the Members of the Panel in accordance with clause **5.3 (c)**; and
- (ii) providing all Members of the Panel with all relevant information regarding the Internal review.

5.3.b. While there is no statutory obligation to advise the member of precisely who will sit on the Panel, it is reasonable to advise the member of who has been chosen to form the Panel as this may avoid (legitimate) objections by the member and delays once the Panel is assembled.

5.3.c. It is incumbent upon the Review Officer to ensure to his/her satisfaction that Panel members:

- (i) are suitably qualified to judge issues which may be brought before such a panel;
- (ii) are aware of the responsibilities which they are to undertake; and
- (iii) declare any potential conflict of interest that they may be aware of.

5.3.d. The Review Chairperson shall:

- (iii) cause detailed minutes to be made of all hearings before a Panel; and
- (iv) provide copies to the ASRA Accountable Manager as soon as practicable after determination is made, where a permanent record will be kept.

5.4 Outcomes

5.4.1. Power of the Internal Review Panel

5.5.1.a. The Review Panel may make a decision to;

- (a) Affirm, vary, or set aside the original decision; and
- (b) If the Review Panel sets aside the decision-make such other decision as the Review Panel considers appropriate.

5.5 No Claim for Reversed Determinations

5.5.a. A Member who has a sanction of any kind imposed by a person authorised by ASRA or on review, has no rights of claim against ASRA, the ASRA Members who imposed the sanction, the Board or any officer, employee, contractor or agent of ASRA, even if the determination is subsequently overturned upon review.

5.6 Application for Review by CASA

5.6.a. A person must make an application for an internal review under these Rules before applying to CASA for review of an ASRA Internal Review decision.

5.6.b. The application to CASA must be in accordance with the requirements of Civil Aviation Safety Authority CASR Part 149.610 and:

- (i) made in the approved form;
- (ii) **within 21 days** after the ASRA Internal Review decision, or longer if CASA allows; and
- (iii) include all of the information required by CASA;

5.6.c. A person seeking a Review by CASA of an ASRA Internal Review decision may obtain information about that process by emailing sport@casa.gov.au

5.6.d. If requesting a review of the Internal Review decision by CASA, the person must notify ASRA of the application to CASA in accordance with regulation 149.615.

5.6.e. Upon receiving the above notification, ASRA will provide CASA with the material specified in regulation 149.620 within 28 days after receiving the notice.

5.6.f. The making of an application to CASA under 149.610 for review of an Internal (ASRA)

Review decision does not set aside the ASRA Internal Review decision. It is only upon CASA making a decision that the ASRA Internal Review decision is affirmed, varied or set aside.



ASRA DISCIPLINARY HANDBOOK PART 2

Explanatory Memorandum issued in 2011 to assist in the interpretation and administration of ASRA By-Law 2010.01 operative from 1 March 2011

This By-Law was developed by ASRA at the insistence of CASA and CASA consultants Aerosafe Risk Management Pty Ltd in 2009 and 2010 to address the number one risk identified in an Industry Risk Profile undertaken in 2009, namely: '**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 2010 ASRA Board recognized that the organisation through to late 2010 had 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 Head of Flight Operations (HOFO) or the cumbersome convening of disciplinary panels long after an event.

Key Features of the 2010 Enforcement Scheme

Key features are:

ROTOR AND PROPELLER SAFETY DISTANCES

1. Section 11 of the 2010 By-Law specifies the a pilot-in-command of a gyroplane and nearby ASRA members are to ensure that bystanders and spectators not involved with the operation of the gyroplane do not approach or stand closer than these minimum safety distances:

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

2. Breaches of these minimum distances attract **8-week** grounding orders.

2010 SCHEME - ENHANCED 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 HOFO 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 HOFO 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 HOFO 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 2010 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 2010 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 breaches of the ASRA Enforcement Scheme was developed in 2009 – 2010 to provide certainty (and deterrence) to members, with readily identifiable penalties and penalty alternatives. (Annexe A to the By-Law).

TWO TYPES OF BREACHES IN THE 2010 SCHEME

14. Section 12 of the 2010 By-Law provides that breaches are either ‘**Field Breaches**’ or ‘**Administrative Breaches**’.

15. Field Breaches were intended to be used “on the spot” by EOs to immediately deal with problems as they arise in real-time.

16. Administrative Breaches were to be 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.

TWO TYPES OF FIELD BREACHES

17. Field Breaches relate to either a serious rotorcraft technical defect **OR** relate to eye witnessed pilot misbehaviour.

DEFECT BREACHES – BREACHES A-01 and A-02

18. 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 HOFO or the HAM have lifted the grounding. In other words, the rotorcraft is grounded – not the pilot.

PILOT MISBEHAVIOUR BREACHES

19. 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.

20. 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.

21. 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.

22. 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.

23. 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

24. 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.

25. The member MUST comply with the **Breach Grounding Order** (BGO) – substantially increased penalties apply to members who ignore or contravene a BGO.

26. 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**)

27. 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.

28. 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.

29. 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.

30. 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

31. 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 HOFO 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.

PROCEDURE WHERE A MEMBER ELECTS TO CHALLENGE OR DISPUTE AN ALLEGATION

32. Challenging Breaches A member may challenge a Breach by informing the HOFO or the HOFO's nominee of that fact **not more than 7 days** from the initiation of the breach.

33. 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.

34. 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.

35. The Presiding Member's role is to either confirm or dismiss the breach under challenge.
36. 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.
37. 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.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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.
43. 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**.
44. The Presiding Member is to announce their decision simultaneously to the member subject of the breach, the EO and the ASRA Registrar and HOFO 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.
45. 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

46. 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

47. Application can be made to the ASRA Board that the grounding periods associated with **P2**

(8 week), **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). 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.

48. Durations of EVUs ASRA Enforceable Voluntary Undertakings have the following durations:

- (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)]

49. 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

50. **P1** and **P2** breaches are the most serious breaches. EVUs are **NOT** available for **P1** breaches, however the ASRA Board may consider an application by a member subject of an unintentional or inadvertent **P2** breach to enter into an EVU.

51. 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 HOF0. 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 HOF0, 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 subparagraph (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) proposing a combination of remedial training and a charitable contribution as negotiated between the breached member and the Board; or
 - (iv) in the case of a P2 breach, allow the member concerned the alternative of entering into an ASRA EVU of 12 months' duration.
- (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

52. 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, EOs, 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 ASRA 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.

53. The ASRA 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.

54. The ASRA 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.

55. 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.
-

ASRA DISCIPLINARY HANDBOOK PART 2A

CEASE AND DESIST NOTICES

Purpose

2A.01 Although most of this Disciplinary Procedures Handbook is devoted to formally dealing with misconduct or operational or flying breaches, occasionally an opportunity arises where the best strategy is to **prevent** breach action becoming necessary by stopping the behaviour.

2A.02 Therefore, if a member is reasonably found to be behaving in a way that is overly disruptive, or seemingly determined to spread disinformation, or engaging in “stalking-like” behaviour, either in person or on social media, the ASRA Board can resolve to issue a **Cease and Desist Notice** to the member or members involved. A sample of an email notice is set out below:

- BY EMAIL -

AUSTRALIAN SPORT ROTORCRAFT ASSOCIATION
CEASE AND DESIST NOTICE

Date: *insert date*

From: ASRA Board

To: *insert name of member or members*

TAKE NOTICE that ASRA has been reliably informed that you have been:

Insert details of the problematic behaviour with reasonable specificity concerning date or dates, place or places, persons affected, and whether the behaviour involves one or two instances, or whether it involves a sustained course of conduct.

YOU ARE HEREBY ORDERED TO FORTHWITH CEASE AND DESIST -

Insert a short CAPITALISED summary of the behaviour

**YOU ARE HEREBY WARNED THAT ANY CONTINUANCE OF THE BEHAVIOUR
DESCRIBED ABOVE IS LIKELY TO RESULT IN DISCIPLINARY PROCEEDINGS AGAINST YOU**

Signed,

Insert name of issuing officer

For and on behalf of the ASRA Board

DO NOT IGNORE THIS NOTICE

ASRA BY-LAW 2010-01 (amended)

NOTE: This By-Law was written using the word 'rotorcraft' instead of 'gyroplane' to contingently provide for the possibility of helicopters being introduced as an addition to gyroplanes if CASA ever permitted ultralight helicopters to be administered by ASRA.

[PARAS 1 & 2 omitted]

Commencement

This By-Law commenced on 1 March 2011.

3 Contractual basis for flight under ASAO administration

- (1) The CASR Parts 103 and 149 identify ASRA as an Approved Self-Administering Aviation Organisation (ASAO). ASRA administers non-VH registered gyroplanes within Australia.
- (2) A condition of ASRA membership is that an applicant for membership or renewal of membership must agree to abide by the ASRA Enforcement Scheme 2011.
- (3) 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 Disciplinary Procedures Handbook, the processes set out in the CASA Part 149 preventative, corrective, remedial, and disciplinary policy and procedures Template included as Part 2 of the Handbook, and the ASRA 2011 Enforcement Scheme as set out as Part 3 of the ASRA Disciplinary Procedures Handbook 2022..

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 rotorcraft Listing has not been renewed or where a breach of the CASA CASR Part 103 operational and flight limitations 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 that the Instructor considers

involve a likelihood that ground or flight safety will be compromised, as well as immediate grounding of any rotorcraft by a Technical Adviser if it is manifesting a defect that is either a serious risk to flight safety or is non-compliant with ASRA Construction Standards.; 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 Listed 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 Listed gyroplane or an ASRA Listed 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 take-off run or attempted take-off or aborted take-off 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. Enforcement powers of 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, and Instructors (hereinafter called 'Instructors') (for pilot misbehaviour breaches and/or technical deficiencies); and
- (c) ASRA Senior Technical Advisers and Technical Advisers (TA's) (for technical deficiencies).

(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 Head of Flight Operations (HOFO);
- (b) a current ASRA member appointed by the HOFO to act as an investigator in relation to accidents or incidents generally; or
- (c) a current ASRA member appointed by the HOFO 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 INSTRUCTOR'S POWERS – TEMPORARY GROUNDING ORDERS (TGOs)

- (1) In addition to general enforcement powers conferred on Enforcement Officials, ASRA Instructors and the HOFO 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 HOFO).

(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).

HOFO may separately impose a Temporary Grounding Order (TGO) of a pilot for up to 7 days

(2) A TGO of up to **7 days** duration may be imposed by the HOFO 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 HOFO 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 HOFO'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 HOFO'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 bystanders or spectators 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**

NOTE: Breaches of these minimum distances attract **8-week** grounding orders

(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 given and is maintaining a “thumbs up” signal to the person wanting to approach.

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.

(2a) 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 (i.e., 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 HOFO or another ASRA Enforcement Official nominated by the HOFO.

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 for admitted breaches cannot occur until after the outcome of a Challenge Hearing for the disputed breaches is known; or
 - (c) challenge the breach or all the breaches.
- (2) A member who wishes to challenge a breach or breaches must inform the HOFO or the HOFO'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.
- (3a) 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 HOFO or the HOFO's nominee.

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 P1 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;
 - (ii) For pilot misbehaviour breaches The pilot concerned must not fly for the period of grounding or if the period of grounding is indefinite, until he has received notification from the Head of

Flight Operations (HOFO) that the grounding order is lifted.

(f) **“MS” Membership Suspension** means:

(i) **Breach G-01 - Membership Suspension for 1 month** in relation to Failing or refusing to comply with a TGO; or

(ii) **Breach G-03 – Membership suspension until the member co-operates** in relation to Not co-operating with an ASRA Accident / Incident Investigating ASRA official (if the non-cooperation extends beyond 14 days, the matter is to be immediately referred to the ASRA Board); or

(iii) **Breach G-04 – Membership suspension until the member co-operates** in relation to Failing unreasonably of refusing to respond to an ASRA Show Cause Notice (if the non-cooperation extends beyond 14 days, the matter is to be immediately referred to the ASRA Board).

(g) **“Breach & SA”** means:

(ii) **Breach G-02 - Membership Suspension for 1 month** in relation to Breaching the terms of an ASRA **Enforceable Undertaking PLUS** at the conclusion of the 1-month suspension, the original grounding penalty applicable to the breach or breaches will then commence.

16. CALCULATING 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 weeks + (6 x 0.5 =) 3weeks + (4 x 0.5 =) 2 weeks. Total = 13 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 in relation to:

- (a) any **P4** breach;
- (b) any **P3** breach; and
- (c) unintentional or non-deliberate **P2** breaches.

(3) Whether a member will be permitted to enter into an ASRA EVU is entirely at the discretion of the ASRA 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. This may result in the re-imposition of the applicable penalty that the member was liable for before they were admitted to the EVU.

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 HOFO. 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 HOFO, 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) proposing a combination of remedial training and a charitable contribution as negotiated between the breached member and the Board; or

(iv) in the case of a P2 breach, allow the member concerned the alternative of entering into an ASRA EVU of 12 months' duration.

(2) The amount of time off the grounding period that the Board can ultimately allow under subsection 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. ASRA 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.

(4a) 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

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.

Annexes A. ASRA By-law 2010-01 – **LIST OF BREACHES**

ANNEXE A to ASRA By-Law 2010-01

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

“**SG**” means ‘**Summary Grounding for up to 24 hours**’

SG-1 □ Instructor considers that ground/flight safety is likely to be compromised.

SG-2 □ Flying a gyroplane in a way as to unnecessarily reduce safety margins.

Conduct requiring admonition and/or prompt rectification

“**VADM**” means a ‘**verbal admonition**’

VADM-1 □ Operating an airband VHF radio without holding ASRA authorisation.

VADM-2 □ Required warning placards or registration sticker not affixed to gyroplane.

VADM-3 □ Not carrying a pilot certificate while operating or flying a gyroplane.

ASRA BREACHES

Breaches relating to Gyroplane Defects

Penalty

A-01 □ Gyroplane with defect constituting a **serious risk** to flight safety.

GR

A-02 □ Gyroplane does not comply with ASRA Construction Standards.

GR

Breaches relating to Pilot Certificates and Gyroplane Registration

B-01 □ Operating* a gyroplane without an ASRA student or pilot certificate.

GR

B-02 □ Attempting to fly or flying an unregistered gyroplane.

P2

B-03 □ Pilot certificate holder flying gyroplane with lapsed/unpaid membership.

P3

B-04 □ Student pilot operating* a gyroplane unsupervised by instructor.

GR

B-05 □ Student pilot exceeding current restrictions imposed by an instructor.

GR

B-06 □ Carrying a passenger without passenger carrying endorsement. **P1**

Breaches relating to Gyroplane Operation and Flight

C-01 □ Starting/running engine-driven propeller with bystanders within **5** mtrs.

P2

C-02 □ Pre-rotating rotor with bystanders within **10** metres.

P2

C-03 □ Taxying within **10** metres of bystanders with rotors turning.

P2

<u>Breach</u>	<u>Penalty</u>
C-04 □ Flying within 100m of a public road at less than 300' agl unless taking-off or landing.	P3
C-05 □ Flying below 300' agl without permission of landowner.	P4
C-06 □ Flying below 300' agl without a low-level endorsement.	P4
C-07 □ Flying above 500' agl without above 500' agl endorsement.	P4
C-08 □ Flying cross-country without endorsement (>25nm from takeoff point).	P3
C-09 □ Flying within 8 km of a licensed aerodrome without endorsement.	P3
C-10 □ Flying onto or from a beach without endorsement.	P4
C-11 □ Flying in aerobatic / acrobatic manoeuvres**.	P1
C-12 □ Flying over a regatta, race meeting or public gathering.	P2
C-13 □ Flying in non-VMC conditions	P2
C-14 □ Flying at night.	P1
C-15 □ Flying within a prohibited or restricted area.	P2
C-16 □ Flying into an unauthorised Class of airspace.	P2
<u>Breaches relating to Flying Safety (All Enforcement Officials)</u>	
D-01 □ Flying a gyroplane in a dangerous or hazardous manner .	P1
E-01 □ Taking-off with bystanders within 100m laterally.	P4
E-02 □ Flying over a city or town, or taking-off or landing within 500m of a city or town.	P3
E-03 □ 2-seater flying within 600m horizontally or 500' vertically of cloud.	P4
E-04 □ 2-seater flying within 100m of a dwelling without owner permission	P3
E-05 □ Flying more than 150m from a shoreline without life jacket.	P3
E-06 □ Flying with lifejackets more than 18km beyond a shoreline.	P3
F-01 □ Using a gyroplane for 'aerial application operations'.	P1
F-02 □ Aerial stock mustering without aerial stock mustering endorsement.	P2
F-03 □ Flying over a closely settled area.	P2
F-04 □ Flying within Class C or D airspace without a CASA Class 2 medical.	P3
F-05 □ Flying <i>without</i> life jackets over water beyond glide-back-to-shore distance.	P3
F-06 □ Flying <i>with</i> life jackets more than 25 nautical miles from shore (other than when a undertaking Bass Strait crossing)	P2

Breaches relating to non-compliance with this Enforcement Scheme

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

NOTES: *‘**Operating a gyroplane**’ means running the engine at the same time as the rotors are turning either after hand-starting or mechanical pre-rotation.

‘**Bystanders**’ means a spectator not connected with any task directly involved in the maintenance and operation of the gyroplane.

** ‘**Acrobatic / Aerobatic 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 gyroplane’s attitude not necessary for normal flight; or, utilizing bank angles (other than in aerial stock mustering) exceeding 45 degrees.

GROUNDING ORDERS / SUSPENSIONS ACRONYMS

TGO	means “Temporary Grounding Order”
BGO	means “Breach Grounding Order”
MS	means “Membership privileges suspended”
Breach SA	means “Suspended grounding period Activated”

PENALTY CODES:

P1	12 weeks’ grounding.	EVUs not available.
P2	8 weeks’ grounding.	EVUs possible
P3	6 weeks’ grounding.	EVUs possible
P4	4 weeks’ grounding,	EVUs possible

END OF DOCUMENT