

## **EXPLANATORY STATEMENT**

### **CIVIL AVIATION ACT 1988**

### **CIVIL AVIATION SAFETY REGULATIONS 1998**

#### **MANUAL OF STANDARDS (MOS) - SUBPART 139.H**

Section 98 of the *Civil Aviation Act 1988* (the Act) provides that the Governor-General may make regulations for the purposes of the Act and in relation to the safety of air navigation.

Subpart 139.H of the *Civil Aviation Safety Regulations 1998* (CASR 1998) established the regulatory requirements for aerodrome rescue and fire fighting services (ARFFS).

Under paragraph 9 (1) (c) of the Act, the Civil Aviation Safety Authority (CASA) has the function of developing and promulgating appropriate, clear and concise standards for civil aviation activities. Civil aviation is a technical field which requires the setting of standards on a wide range of matters with an adequate degree of precision. The level of detail required, the volume of the standards, and the need to amend the standards quickly due to rapidly changing technologies, means that it is not appropriate to set many of these standards in regulation. To date, setting of standards on matters of technical detail has largely been accomplished by way of Civil Aviation Orders or in a variety of advisory publications issued by CASA. However, now and into the future, CASA will be promulgating standards on matters of technical detail in Manuals of Standards (MOSs).

CASR 1998 is divided into various Parts, with each Part dealing with a particular subject of civil aviation regulation. The Part numbers are not sequential, but are aligned with similar numbering used by other countries for their civil aviation laws, in particular, the United States, Canada, New Zealand, and the Joint Aviation Authorities of the European Union. Where CASA determines that CASR 1998 needs to be supported by detailed technical specifications or standards, it will develop and promulgate a MOS which is related only to the Part of CASR 1998 which needs that support. Thus, there are and will be separate MOSs relating to different Parts of CASR 1998.

A MOS prescribes the detailed technical material (specifications and standards) determined by CASA to be necessary to ensure the safety of air navigation. However, a MOS does not prescribe mandatory standards in and of itself. Rather, a specification or standard in a MOS is referred to in a regulation, and it is compliance with the regulation which is mandatory. Thus, for example, a regulation may require that a certain piece of equipment meet the standards prescribed in the relevant MOS, or that an applicant for a particular licence undertake training specified in the relevant MOS.

The *Manual of Standards – Subpart 139.H* (Subpart 139H MOS) was developed in conjunction with the development of new Part 139 of CASR 1998. The MOS contains the technical specifications and standards relating to the provision of ARFFS, of uniform application, determined by CASA to be necessary to ensure the safety of air navigation.

Subpart 139.H of CASR 1998 was made on 26 June 2002 (Statutory Rules 2002 No. 167) and commenced on 1 May 2003. On 24 September 2002, the Opposition gave notice of a disallowance motion against these regulations and communicated its concerns with certain aspects of the regulations to the Government. In response, the Government gave an undertaking to the Opposition to make regulatory amendments addressing the Opposition's concerns.

As a result of this undertaking, Subpart 139.H of CASR 1998 was amended on 1 May 2003 (Statutory Rules 2003 No.75) to provide specifically for the making of the Subpart 139.H MOS, including introduction of mandatory notice and consultation requirements.

Subregulation 139.705 (1) of Part 139 provides that, for the Part, **Manual of Standards** means "the document called 'Manual of Standards (MOS) – Subpart 139.H' issued by CASA under regulation 139.712, as in force from time to time". Regulation 139.712 provides that CASA may issue a Manual of Standards for Subpart 139.H that provides for the following matters:

- (a) standards and criteria for the establishment and disestablishment of an ARFFS;
- (b) standards relating to the procedures, systems and documents required for the provision of an ARFFS;
- (c) standards, including competency standards, minimum qualifications and training standards, for persons engaged in an ARFFS;
- (e) any matter required or permitted by the regulations to be provided for by the Manual of Standards;
- (f) any matter necessary or convenient to be provided for the effective operation of Subpart 139.H.

The inclusion in 139.712 of an express power to make a MOS operates to make the MOS a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*, per subsections 98 (5A) and (5B) of the *Civil Aviation Act 1988*.

Regulations 139.712A to 139.712F inclusive provide for the notification of the intention to issue or amend the Subpart 139.H MOS and the consultation procedures required before the issue or amendment of the Subpart 139.H MOS.

A document entitled 'Manual of Standards (MOS) – Subpart 139.H' was issued by CASA's Head of Airspace, Air Traffic and Aerodrome Standards, Aviation Safety Standards Division, on behalf of CASA, on 19 March 2003. By operation of regulation 202.710 of CASR 1998, that document is taken to be the Subpart 139.H MOS, and the consultation procedures set out in regulations 139.712A, 139.712B and 139.712C are taken to have been complied with in relation to that MOS. It should be noted that in the preparation of the Subpart 139.H MOS, CASA had fully consulted with existing stakeholders and the public, and took into account issues arising out of the comments, in accordance with its normal consultative arrangements for the development of regulatory material.

The Subpart 139.H MOS commenced on notification in a *Special Gazette* of 1 May 2003.