

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Infrastructure, Transport and Regional Development

Civil Aviation Act 1988
Civil Aviation Safety Amendment (Part 139) Regulations 2019

The *Civil Aviation Act 1988* (the Act) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Subsection 98 (1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. That subsection also provides that the Governor-General may make regulations for the purpose of carrying out and giving effect to the provisions of the *Convention on International Civil Aviation* (Chicago Convention) relating to safety and in relation to the safety of air navigation, being regulations with respect to any other matters for which the Parliament has power to make laws.

Subsection 9 (1) of the Act specifies, in part, that the Civil Aviation Safety Authority (CASA) has the function of conducting the safety regulation of civil air operations in Australian territory by means that include developing and promulgating appropriate, clear and concise aviation safety standards and issuing certificates, licences, registrations and permits.

The Civil Aviation Safety Amendment (Part 139) Regulations 2019 (the Regulations) amend Part 139 of the *Civil Aviation Safety Regulations 1998* (the Principal Regulations) by repealing the existing Subparts 139.A to 139.F of the Principal Regulations and replacing them with new Subparts 139.A to 139.E. The Regulations continue to set out a scheme, under the framework established by the Act, for the safety regulation of aerodromes and related matters.

The Regulations:

- simplify the existing regulatory system by replacing the existing three regulated aerodrome classifications ('certified', 'registered' and 'certain other') with a single regulated classification of 'certified'
- focus on the safety risks associated with increasing numbers of air transport passengers or aircraft movements at an aerodrome and provide for scalable regulatory requirements as aerodrome operations become more complex
- require aerodrome operators to introduce systems for safety management, aerodrome emergency planning and documentation commensurate with increasing levels of risk
- provide a more flexible path for CASA to approve aerodrome operators to adopt alternative means of compliance with regulatory requirements
- provide an opportunity to modernise the regulatory framework and make compliance easier by recognising developments in technology and international standards since Part 139 was first made in 2003.

Under the Regulations, an aerodrome must be certified if it has published terminal instrument flight procedures. These procedures support aircraft that must operate under instrument flight rules providing adequate clearance above terrain and obstacles and safer and more reliable access into aerodromes during reduced visibility or inclement weather.

Provisions of the Regulations that confirm the frequency in use at an aerodrome or radio services providing aircraft traffic information at an aerodrome apply to all aerodromes as it remains critical for safety that these radiocommunications systems and services are standardised.

As of 8 January 2019, there were 194 certified and 128 registered aerodromes. Of these, 95% of the certified and 77% of the registered aerodromes had published instrument flight procedures, meaning that they are required to be certified under the Regulations. Aerodrome operators will continue to be able to elect to have their aerodromes regulated under Part 139, even if they are not required to do so.

With the application of the risk-based triggers, the major impacts of the Regulations compared with the previous regulatory requirements are that:

- current ‘certified’ aerodromes are required to have a safety management system, which is appropriate to the complexity of operations; the SMS requirement may be satisfied by a risk management plan, for example the risk management plan of a government council that operates an aerodrome facility where the plan covers the aerodromes operations
- emergency exercise requirements are not required under the Regulations for most ‘certified’ aerodromes but are replaced with a less costly emergency preparedness (induction style) program
- all previously ‘registered’ aerodromes are subject to the requirement to have an aerodrome manual, and previously ‘registered’ aerodromes that handle significant air transport passenger numbers or aircraft movement numbers are additionally required to undertake regular aerodrome technical inspections.

Consultation

CASA developed the changes through the Airspace and Infrastructure Users Group sub-committee of the Standards Consultative Committee, which was the primary CASA/industry consultation forum at the time. A number of meetings were held during the 2015 to 2017 period.

CASA undertook public consultation on the changes in August 2017, through the release of a Notice of Proposed Rule Making outlining the proposed amendments to Part 139 of the Principal Regulations and the associated Part 139 Manual of Standards (Part 139 MOS). The consultation received 109 responses, including 76 individual responses and 33 responses on behalf of organisations. There was majority support among respondents for the proposals.

In October 2018, the Aviation Safety Advisory Panel (ASAP) convened a technical working group (TWG) to evaluate the regulations. The TWG made a number of suggestions, the majority of which CASA addressed. The ASAP subsequently confirmed that the matters had been satisfactorily resolved and supported the making of the regulations.

Regulation Impact Statement

A Regulation Impact Statement prepared by CASA was assessed by the Office of Best Practice Regulation as compliant with the Best Practice Regulation requirements with a level of analysis commensurate with the likely impacts (OBPR id: 24678). A copy of the Statement is set out in [Attachment A](#).

Criminal law issues

The Regulations provide for 25 offences of strict liability, which are outlined in the Statement of Compatibility with Human Rights.

Consistent with the principles set out in the Attorney-General’s *A Guide to Framing Commonwealth Offices, Infringement Notices and Enforcement Powers* (September 2011) (the AGD Guide) and the Sixth Report of 2002 of the Senate Standing Committee for the Scrutiny of

Bills, *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (26 June 2002), the strict liability offences are considered reasonable, necessary and proportionate to the objective of ensuring aviation safety. In this regard, the offences are regulatory in nature, in other words their aim is to insist on reasonable compliance with regulated safety standards by those conducting activities which are otherwise intrinsically or potentially unsafe unless such high standards of compliance are met. Not having to prove fault in the relevant circumstances aims to provide a strong deterrent. To this extent, and in this context, the offences are consistent with other safety-focussed regulatory regimes and do not unreasonably or impermissibly limit the presumption of innocence. The offences are designed to achieve the legitimate objective of ensuring the integrity of the overall aviation safety regulatory scheme by promoting compliance and deterring non-compliance.

The rationale is that people who owe general safety duties should be expected to be aware of their duties and obligations. In the context of the operation of aerodromes, including certified aerodromes that have published instrument flight procedures designed to provide aircraft with adequate clearance above obstacles, and in the context of the operators of frequency confirmation systems and certified air/ground radio services, a defendant to a prosecution can reasonably be expected to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

Similarly, a person with responsibility for erecting very tall structures or conducting activities with high emission effluxes can reasonably be expected to know that they have aviation safety-related obligations under the Regulations, and the mental, or fault, element can justifiably be excluded.

For strict liability offences in the Regulations, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made that conduct innocent, it will be incumbent on the prosecution to establish, beyond reasonable doubt, that there was not an honest and reasonable mistake of fact.

The Regulations also contain two provisions that reverse the evidential burden of proof in relation to prescribed defences to strict liability offences (“offence-specific defences”). Consistent with section 4.3.1 of the AGD Guide, the provisions have been included in the Regulations because they relate to matters that are peculiarly within the knowledge of a defendant and/or would be significantly more difficult and more costly for the prosecution to disprove than for the defendant to establish the matter.

Details and justification of the offence-specific defences are provided in the Statement of Compatibility with Human Rights.

In practice, any enforcement action contemplated by CASA is subject to the provisions of CASA’s “just culture” policy as set out in CASA’s Regulatory Philosophy.

Incorporation by reference

In accordance with paragraph 15J (2) (c) of the *Legislation Act 2003* and subsection 98 (5D) of the Act, the legislative instrument applies, adopts or incorporates matters contained in the following instruments:

- the aerodrome manual for a particular aerodrome
- the safety management system for a particular aerodrome, where such systems are documented
- other systems, as required under the Part 139 MOS, for a particular aerodrome, where such systems are documented
- the Part 139 MOS.

Under subsection 98 (5D) of the Act, the instruments and other writing may be incorporated as in force or existing at a particular time or from time to time, including instruments that do not exist when the Regulations are made.

The following table contains a description of the documents incorporated by reference into the Regulations, the manner of incorporation and how they may be accessed.

Document	Description	Manner of incorporation	Accessibility of document
aerodrome manual, for an aerodrome	“Aerodrome manual” is defined in the CASR Dictionary as the manual mentioned in regulation 139.045 of CASR, which is a document that governs the day to day safe operation of an aerodrome. Specific requirements for aerodrome manuals will be prescribed in the Part 139 MOS	As an aerodrome manual exists from time to time, consistent with any requirements prescribed in the Part 139 MOS, under paragraph 139.045(2)(b), to keep the manual up to date	Not publicly or freely available. The aerodrome manual is a proprietary document prepared by, and used exclusively by, the aerodrome operator and will generally include commercial in confidence information about the operator’s business. The incorporated requirements of an aerodrome manual are at the aerodrome operator-specific level and apply only to the operator and its personnel.
safety management system (SMS), for an aerodrome	An SMS, for an aerodrome, is a set of processes and procedures to ensure that the safety performance of the aerodrome is monitored and safety risk management measures are kept up to date to ensure safe operation of the aerodrome	As the SMS exists from time to time	Not publicly or freely available. An SMS is a proprietary document prepared by, and used exclusively by, the aerodrome operator and may include commercial in confidence information about the operator’s business. The incorporated requirements of an SMS are at the aerodrome operator-specific level and apply only to the operator and its personnel.

Document	Description	Manner of incorporation	Accessibility of document
other systems, for an aerodrome	Regulation 139.105 imposes requirements on the operator of a certified aerodrome in relation to systems for the aerodrome other than SMS. The regulation applies only to systems prescribed in the Part 139 MOS. Such systems may relate to matters such as wildlife hazard management, airside vehicle control and aircraft parking control. Such systems will manage risk in relation to specific aspects of aerodrome operations	As each kind of system exists from time to time	Not publicly or freely available. The systems would be proprietary to, and prepared and used exclusively by, the aerodrome operator. The systems may include commercial in confidence information about the operator's business. The incorporated requirements of the systems are at the aerodrome operator-specific level and apply only to the operator and its personnel.
Part 139 MOS	Legislative instrument that prescribes matters for Part 139 of CASR (Aerodromes)	As the MOS is in force from time to time, in accordance with section 10 of the <i>Acts Interpretation Act 1901</i> and section 13 of the <i>Legislation Act 2003</i>	When made, this document will be freely available on the Federal Register of Legislation

In the case of an aerodrome manual, safety management system or other system of an aerodrome, CASA considers it unlikely that the relevant owner of the document would sell CASA the copyright at a price that would be an effective and efficient use of CASA funds, or otherwise permit CASA to make the document freely available. CASA has incorporated the documents in the instrument because:

- they are appropriate and necessary to give effect to the safety regulatory scheme under Part 139
- they provide individual aerodrome operators with flexibility in the way that they comply with the safety objectives served by the Regulations, rather than CASA prescribing a “one size fits all” set of rules for the detailed operation and safety management of aerodromes
- no other, freely available documents are available that serves these purposes.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at [Attachment B](#).

Commencement and making

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out in Attachment C.

The Regulations commence 18 months after the Regulations are registered on the Federal Register of Legislation.

Transition period

A period of 18 months is provided from making of the regulations to commencement to provide enough time for CASA and aerodrome operators to transition to the new scheme. Operators of aerodromes certified at the making of the Regulations are not expected to experience significant changes during transition and will be deemed to be certified under the Regulations at the time of commencement.

Aerodromes that are “registered” at the making of the Regulations will be reclassified as certified aerodromes at the time of commencement. Transitional arrangements to be made in 2019 are proposed to provide a further transition period of up to two years for operators of such aerodromes to create, and operate in accordance with, an aerodrome manual and applicable safety systems. CASA will provide an online tool and supporting template to assist aerodrome operators with the development of an aerodrome manual.

Authority: Subsection 98(1) of the *Civil Aviation Act 1988*

**Post Implementation Review of Aerodrome Regulations CASR Part 139
Regulation Impact Statement**

Summary

CASA currently regulates aerodromes to ensure that aviation safety standards are met for the safe operation of aircraft. The current Part 139 legislative framework applies to the operators of Certified, Registered and 'Certain Other' aerodromes. There are currently 194 Certified and 128 Registered aerodromes.

CASA, in consultation with industry, has undertaken a post implementation review of Part 139 to ensure that the requirements are still fit for purpose and to identify improvements. The review has found:

- Aerodrome standards that are not consistently based or scaled on risk;
- Inconsistencies with the co-ordination of emergency planning and management matters which typically fall under State, rather than Federal jurisdiction;
- Aerodrome standards, in some cases, are not aligned with international standards and current industry best practice; and
- Administrative terms, guidance and requirements which are out of date or suboptimal.

CASA's assessment is that the current regulations impose unnecessary compliance costs that could be reduced. CASA estimates that the current compliance costs, excluding CASA fees, for the initial regulatory approval is approximately \$17 000 for a certified aerodrome and \$7 000 for a registered aerodrome (Appendix 1). The ongoing compliance costs are estimated at approximately \$46 000 for a certified aerodrome and \$7000 for a registered aerodrome (Appendix 1).

CASA is now proposing the following options for improving the current regulations:

- Removing the registered aerodrome category and creating one certified category with appropriately scaled requirements that are based on risk;
- Basing the requirements for organisational systems on the number of aircraft and passenger movements, including a Safety Management System (SMS) or an alternative risk management plan and Aerodrome emergency plans;
- Scaling the timing of technical inspections and validations based on aircraft and passenger movements;
- Removing the requirement for a 60m wide runway for certain aircraft;
- Introducing more tolerances for slopes and step downs in runway and taxiway surfaces; and
- Updating lighting requirements in line with international practice

Overall, if all of the options for improvement were adopted, the estimated net regulatory saving would be \$2.98m per annum. CASA formally consulted over the period 2015 to 2017, including the publication of a Notice of Proposed Rule Making containing draft regulatory changes in August 2017. The changes are generally supported by industry, with the industry association representing aerodromes supporting all of the options presented in the RIS.

<i>Acronym / abbreviation</i>	<i>Description</i>
<i>AAA</i>	<i>Australian Airports Association</i>
<i>AIP</i>	<i>Aeronautical Information Publication</i>
<i>AIUG</i>	<i>Airspace and Infrastructure Users</i>
<i>CASA</i>	<i>Group</i>
	<i>Civil Aviation Safety Authority</i>
<i>CASR</i>	<i>Civil Aviation Safety Regulations 1998</i>
<i>ICAO</i>	<i>International Civil Aviation</i>
<i>MAAT</i>	<i>Organization</i>
	<i>Manual Authoring and Assessment Tool</i>
<i>MOS</i>	<i>Manual of Standards</i>
<i>NPRM</i>	<i>Notice of Proposed Rule Making</i>
<i>Part 139</i>	<i>Part 139 of CASR</i>
<i>SARP</i>	<i>Standards and Recommended Practices</i>
<i>SCC</i>	<i>Standards Consultative Committee</i>
<i>SMS</i>	<i>Safety Management System</i>

Background

CASA currently regulates aerodromes to ensure that aviation safety standards are met for the safe operation of aircraft. The regulatory requirements for aerodromes administered by CASA are primarily contained in Part 139 of the Civil Aviation Safety Regulations 1998 (CASR) and the subsidiary Part 139 Manual of Standards (MOS), which were implemented in 2003. The current Part 139 legislative framework applies to the operators of Certified, Registered and 'Certain Other' aerodromes.

Certified Aerodromes present the highest risk as they are available to facilitate Air Transport Operations above 30 passenger seats. Registered Aerodromes, like Certified Aerodromes, can support operations using terminal instrument flight procedures. For aircraft operators, these procedures can be compromised by obstacles penetrating the required airspace buffers. Aerodrome operators are required to continually monitor the airspace critical to these procedures, jointly with the terminal instrument flight procedure designer, and to report any actual or proposed obstacles to the designer.

Certain Other aerodromes also present a degree of risk as they can facilitate Air Transport Operations between 9 and 30 passenger seats more than once per week.

CASA and industry both recognised that a comprehensive review of the Part 139 framework was necessary to ensure the Part 139 regulatory framework aligns with current regulatory policy including international standards published by the International Civil Aviation Organization (ICAO), industry developments and also the many evolutions in technology since the original inception of Part 139.

In particular, aerodrome operators and the wider aviation industry are currently experiencing unnecessary cost and operating impacts resulting from:

- the ongoing transition from legacy standards which existed prior to the CASR Part 139 implementation

- requirements in Part 139 MOS which exceed, or are otherwise different from, the equivalent Annex 14¹ of the Chicago Convention requirements without clear justification for the difference
- disconnects between Part 139 and other CASR parts, standards and advisory information
- inflexible standards that necessitate compliance with legacy technology when superior infrastructure and equipment has since become available
- standards that don't reflect the operating requirements for current-generation aircraft
- complexities with understanding the three aerodrome categories under Part 139 as well as Aeroplane Landing Areas and Helicopter Landing Sites, which are unregulated at present.

Many issues currently exist both in the current design of the Part 139 framework and the ability for industry to comply. The latter has resulted in high regulatory service workload for both industry and CASA to facilitate ongoing exemptions to aerodrome operators. Further regulatory development will likely improve rates of compliance whilst maintaining the expected standard of safety

Problem

CASA, in consultation with industry, has undertaken a post implementation review of Part 139 to ensure that the requirements are still fit for purpose and to identify improvements. The review found:

- Aerodrome standards that are not consistently based or scaled on risk;
- Inconsistencies with the co-ordination of emergency planning and management matters which typically fall under State, rather than Federal jurisdiction;
- Aerodrome standards that in some cases are not aligned with international standards and current industry best practice; and
- Administrative terms, guidance and requirements which are out of date or suboptimal.

Standards not consistently based or scaled on risk

As an aggregation of historical and out of date international practices, the existing regulations and standards no longer fully align with current technology, modern risk management practices and modern aircraft performance. To illustrate, the current criteria for aerodromes to be certified is whether aircraft operating at the aerodrome have 30 seats or a 3,400 kg payload, which is not fully within the control of the aerodrome operator nor is it consistent with the definition of 'air transport' in Part 119 of CASR.

The current requirement for an SMS, technical inspections and other management systems is based solely on an aerodrome having a runway suitable for an aircraft with more than 30 passenger seats (or 3,400 kg payload) that is available for regular public transport or charter operations. These criteria apply whether or not such operations are conducted at the aerodrome and do not reflect the risk associated with actual aircraft and passenger movements.

Inconsistent with local area emergency planning

Current emergency planning requirements do not reflect the reality of coordination with emergency services organisations under established State and Territory emergency management legislation. This is particularly an issue for small regional aerodromes.

¹ Annex 14 to the Convention on International Civil Aviation (Chicago Convention) prescribes the SARPs for Aerodromes

Inconsistency with international standards

The post-implementation review identified inconsistencies with international standards. There are several standards that are not consistent with Volume I of Annex 14 to the Chicago Convention and its associated documents. This is particularly the case for lighted visual aids in Chapter 9 of the existing Part 139 MOS.

ICAO has proposed fundamental changes to Volume I of Annex 14 to the Chicago Convention that provide relief to aerodrome operators based on refined physical characteristics for the movement area. ICAO has published a new document PANS – Aerodromes (Doc 9981), which provides guidance on: certification of aerodrome, safety management systems, aerodrome manuals, compatibility of aeroplane operations and infrastructure with aircraft that exceed the existing reference characteristics of the aerodrome. These changes are not reflected in the current Australian requirements.

Administratively out of date

When Part 139 was originally drafted, Manuals of Standards were not originally classified as legislative instruments but were subsequently legislated in later versions. As a consequence, the current Part 139 MOS still contains language and advisory content that is no longer appropriate for a legislative instrument. It therefore needs to be redrafted to meet current legislative drafting standards.

Where a particular standard cannot be met, an aerodrome operator is currently required to seek an exemption against the standard. The exemption is only issued for a limited period, with each repeat application incurring an additional cost. For an exemption that is required because of a geographical, topographical or physical limitation, CASA and industry both seek an enduring solution.

The current regulation contains matters that would more appropriately be dealt with under Part 11 of CASR. The current Part 139 MOS contains matters that would be more appropriately addressed in advisory material. The current Part 139 and Part 139 MOS contain matters now legislated through Part 175 of CASR, which has resulted in regulatory overlap.

Objective

The objective of the review of the Australian aerodrome regulations was to:

- simplify the existing regulatory system by replacing the existing three aerodrome classifications (certified, registered and “certain other”) with a single classification of certified;
- provide a more flexible path for operators to adopt alternative means of compliance with the regulations where it may not, currently, be possible to meet new regulatory requirements;
- focus on the safety risks associated with increasing numbers of air transport passengers or aircraft movements at an aerodrome and provide for scalable regulatory requirements as aerodrome operations become more complex;
- require aerodrome operators to introduce systems for safety management, aerodrome emergency planning and documentation commensurate with the increasing risk; and
- provide an opportunity to modernise the regulatory framework and make compliance easier by recognising developments in technology and international standards since the regulations were first made in 2003.

Options

While one option is to maintain the status quo, the post-implementation review has proposed a number of options for improvement to the current aerodrome regulations.

Option 1 – Status quo

The status quo would maintain the current three tier certification of aerodromes, being certified, registered and ‘certain other’ aerodromes, with only the certified and registered aerodromes authorised by CASA. The primary requirements for an aerodrome to obtain an initial authorisation depend on whether the aerodrome is seeking to be certified or registered. New applicants for a certified aerodrome would be required to:

- complete an application form;
- submit an Aerodrome manual,
- develop an SMS;
- undertake a safety/technical inspection; and
- participate in an initial physical inspection of the aerodrome by CASA.

New applicants for a registered aerodrome would be required to:

- complete an application form providing detailed information about the aerodrome;
- undertake a safety/technical inspection; and
- participate in an initial physical inspection of the aerodrome by CASA.

Ongoing Requirements

Under the status quo, certified aerodromes would be required to meet ongoing requirements, which include:

- participating in CASA audits, generally once every one to two years;
- completing a technical/safety inspection every year;
- completing emergency exercises once every two years;
- undertaking daily serviceability inspections; and
- completing annual table-top emergency program meetings.

For registered aerodromes the ongoing requirements would be:

- participate in CASA audits, generally once every three to five years; and
- undertake serviceability inspections at least twice per week.

International developments

Under the status quo, certified and registered aerodromes would not be able to gain the benefits of reductions in physical infrastructure standards for aerodrome movement areas introduced by the international aviation standard setting body, ICAO, which include.:

- reduction in runway width requirements;
- reduction in separation standards between runways and taxiways and taxiways and taxiways.

These reductions would provide aerodrome operators planning new aerodromes, new runways or simply redesigning their aerodrome airside facilities greater flexibility and reduced costs related to using areas of the aerodrome that are generally restricted in size.

Option 2 would remove the current three tier aerodrome certification system of “certified”, “registered” and “certain other” and replace it with a single tier system of “certified” aerodromes.

Regulations for aerodrome radiocommunication services would apply to all aerodromes, not just those which are certified, as it remains critical for safety that the form and function of communications systems are standardised.

Option 3 would remove the current requirement for all certified aerodromes to have an SMS and instead would require a baseline but scalable SMS for certified aerodromes with more than 50,000 air transport movements or 100,000 aircraft movements annually. For other aerodromes, safety risks would be managed by a risk management plan if they exceed 25,000 air transport passenger movements or 50,000 aircraft movements annually.

The risk management plan would require the aerodrome to have hazard identification, risk assessment and control and a risk register similar to an SMS. The difference is that an SMS requires, amongst other things, management commitment to, and responsibility for, safety and a safety training and promotion system.

In line with international best practice, CASA would still recommend that all aerodromes below the respective trigger criteria implement and utilise an SMS.

Option 4 would require aerodromes with more than 50,000 air transport passenger or 100,000 aircraft movements annually to perform emergency exercises. Aerodromes with fewer than 50,000 air transport passenger movements and 100,000 aircraft movements annually would no longer be required to conduct regular emergency exercises as a program to induct local emergency responders at the aerodrome would be required instead. There would be no additional emergency planning requirements for aerodromes with fewer than 50,000 air transport passenger and 100,000 aircraft movements annually. Furthermore, only international aerodromes, and aerodromes with more than 350,000 air transport passengers annually, would be required to maintain an Aerodrome Emergency Committee.

Other aerodrome operators would be permitted to have their aerodrome emergency management matters coordinated through the applicable local or state emergency planning committee. This option would allow aerodromes with fewer than 50,000 air transport passenger movements and 100,000 aircraft movements annually, typically managed by local councils, to meet their emergency management plan by being included in the overarching state or local emergency management plan.

Option 5 would require all certified aerodromes to have a manual detailing their operating procedures. Whilst existing certified aerodromes are required to have an aerodrome manual this would be a new requirement for existing registered aerodromes that would transition to become a certified aerodrome. Registered aerodromes are currently required to document safety related procedures in writing but this may not take the form of a manual.

Option 6 would require a technical inspection of the aerodrome based on the annual movement rate at the aerodrome. Aerodromes with more than 10,000 air transport passenger movements and 20,000 aircraft movements annually would require an annual technical inspection. For aerodromes below this rate, only an annual validation of their information reported in Aeronautical Information Publication and adherence to the procedures in their aerodrome manual would be required – this however is already mandated under CASR Part 175 for all aerodrome operators with published information.

For the initial movement rates up until 50,000 air transport passenger or 100,000 aircraft movements annually, there would be an option to allow a reduced frequency of some components of the inspection.

Option 7 would align the standard width of runways primarily with the dimensions of the landing gear and not wing span, consistent with the latest amendment to the relevant international standards published by ICAO. This change would effectively remove the requirement for runways intended for the current Code F aircraft, including the A380, B747-800 and B777x to be built to a width of 60m, instead the revised standard would be 45m.

Option 8 would enable aerodromes to apply for enduring approval for physical characteristics at the aerodrome that do not meet current standards. Currently these characteristics require the aerodrome to apply for an exemption to CASA, with these exemptions being limited to a 3-year duration and require reissuing.

Option 9 would introduce a 25 mm step down from the runway edge to a runway shoulder or runway strip and more flexible ‘tie in’ arrangements for intersecting runways or taxiways.

Option 10 would introduce a 5% tolerance for the size of marks and markings. The introduction of new tolerances for visual aids which may reduce the requirement to make small size changes to marks and markings to ensure strict compliance.

Option 11 would introduce revised physical characteristics in line with the revised ICAO Annex 14 amendments, specifically:

- Reduced taxiway to runway separation
- Reduced taxiway to taxiway separation
- Reduced runway strip widths

Option 12 would revise the requirements for visual aids, including:

- Remove the requirement for circling guidance lights at aerodromes without visual circling or circuits
- Adoption of ICAO Annex 14, volume specifications for green lights
- Inclusion of ICAO Annex 14, volume specifications for solid state (LED) lighting which are more cost effective to operate than incandescent and halogen systems

Option 13 would revise the radiocommunication service requirements at aerodromes that are not certified or registered. These aerodromes or aircraft landing areas would be required to have an aerodrome frequency response unit, which is a VHF transceiver that provides an automatic response when the pilot transmits on the traffic frequency, normally on a common traffic advisory frequency for a particular aerodrome.

Impact

Option 1: Status quo

Maintaining the existing regulatory requirements in Part 139 and MOS 139, would impose unnecessary compliance costs on aerodrome operators, in particular aerodromes that are located in rural or regional areas with limited aircraft movements. These unnecessary compliance costs may result in some aerodromes choosing to reduce aviation services to the community in order to lower compliance costs. For example, the Northampton council in 2012 was considering stopping RPT flights in order to avoid the \$6000 annual inspection cost because the number of RPT flights could not justify the additional cost.

Although the savings are relatively small, \$6,000 per annum, it does not seem feasible in the long term to keep RPT services unless the passenger numbers increase dramatically.²

The original Part 139 requirements were not scaled and applied based on safety risk, whilst this is administratively easier for CASA to apply universal requirements it is not a reasonable outcome for low risk aerodromes and may compromise confidence in CASA and other requirements imposed on aerodromes if low risk aerodromes are required to comply with requirements that they deem as unnecessary.

The main benefit of maintaining the existing requirements is that industry and CASA would incur no transition costs in moving to new regulatory requirements. To a certain extent whilst the costs to CASA are excluded from the regulatory burden estimates, they are one reason for CASA to retain the existing requirements without change.

These compliance costs represent the costs incurred by aerodromes to be authorised by CASA and include fees charged by CASA which are not included in the regulatory burden measure published by PM&C.

Option 2: Certified aerodrome category

If Option 2 was implemented the main impact would be for the approximately 128 existing registered aerodromes with terminal instrument flight procedures to transition to being certified in order to ensure obstacles in the vicinity of the aerodrome are monitored. It is possible that some registered aerodromes without these flight procedures could choose not to become certified, however, for this impact analysis CASA has assumed that all registered aerodromes would transition to being certified. The main impact for registered aerodromes that become certified is that they would be required to create, and operate in accordance with, an aerodrome manual. CASA will provide an online tool and supporting template to assist aerodrome operators with the development on an Aerodrome Manual. The cost of this transition is affected by the other options that CASA is considering and the impact for existing registered aerodromes is identified in the following eleven options.

Option 3: Safety Management System

Based on data from July 2018 there were 194 aerodromes required to have a SMS, with 130 registered aerodromes not required to have a SMS (Table 1). If Option 3 was implemented only 86 aerodromes would be required to have a SMS and 18 aerodromes would be required to have either a safety management system or a risk management plan.

Table 1: Organisational Management of Safety Risk

	<i>Current number of aerodromes impacted</i>	<i>Proposed number of aerodromes impacted</i>
<i>SMS</i>	194	86
<i>Risk Management Plan</i>	0	18
<i>No requirement</i>	130	220
<i>Total</i>	324	324

CASA however will still recommend that an SMS is provided at all aerodromes. As existing certified aerodromes have already incurred the cost to establish the SMS, CASA expects that the

² <https://www.northampton.wa.gov.au/documents/48/17-august-2012-part-2>

18 aerodromes that would otherwise comply by developing a risk management plan will instead choose to retain the SMS to avoid the cost of developing a risk management plan. For the remaining 90 certified aerodromes there is less incentive to maintain a SMS, however, the limited feedback from these aerodromes indicates that a significant number will retain the SMS.

CASA’s assessment is that an aerodrome operator would require approximately one to two days to develop the risk management plan unless the aerodrome operator already falls under an enterprise risk management framework i.e. a council risk management plan. The estimated cost of establishing a risk management plan is estimated at \$1,040, with an ongoing annual cost of \$520 (Appendix 2). The cost of establishing an SMS is estimated at \$5,200 with an ongoing annual cost of \$3,120. The primary difference is that the training of staff is not a formal requirement for a risk management plan.

If 45 (approximately 50%) of the 90 certified aerodromes chose to remove their current SMS, the likely saving is the annual cost saving of \$3,120 per aerodrome. This would amount to an annual industry wide saving of \$0.14m (Table 2).

Table 2: Potential Savings associated with refined SMS requirements

	<i>Aerodromes removing SMS</i>	<i>Cost saving per aerodrome</i>	<i>Annual reduction in regulatory burden</i>
<i>SMS savings</i>	45	\$3,120	\$0.14m

In addition, new aerodromes will no longer be required to set up an SMS unless they are international, have more than 50,000 air transport passenger movements or more than 100 ,000 aircraft movements per annum. However, based on recent data showing the number of approved aerodromes is relatively constant over time there is no evidence to suggest that there will be a significant number of new aerodromes built.

Option 4: Emergency planning based on risk

If option 4 is adopted the changes to the emergency plan requirements will result in the number of aerodromes required to undertake biennial emergency exercises being reduced from the current 194 to 86 and the number of aerodromes required to undertake annual Table Top/inductions reduced from 194 to 104 (Table 3).

Table 3: Emergency Plans and Exercises

	<i>Current number of aerodromes impacted</i>	<i>Proposed number of aerodromes impacted</i>
<i>Emergency exercises (biennial)</i>	194	86
<i>Table Top or Induction (annual)</i>	194	104
<i>Local emergency plan</i>	130	220

The estimated cost of an emergency exercise such as simulating the crash of a large passenger carrying aircraft is approximately \$15,000 to organise the exercise, including to provide transport, exercise equipment and other amenities for at least 80 people. These estimates are based on feedback provided by organisations that run emergency exercises.

The cost of a Table-Top and induction program is estimated at \$4,800 for the aerodrome to organise and host the program. These estimates are based on feedback provided by organisations that run emergency Table-Top and induction programs. The cost excludes the value of the time of the SES, police and ambulance services who attend.

For the 108 aerodromes that would benefit by saving the biennial emergency exercise the estimated saving is \$1.62m every two years, or \$0.81m when annualised (Table 4). For the 90 aerodromes that would benefit by saving the annual table-top/induction program the estimated saving is \$0.43m when annualised (Table 4).

The proposed changes will also allow aerodromes managed by local councils to meet their emergency management plan by being included in the overarching state or local emergency management plan. It is CASA's understanding that most aerodrome operators, particularly local government operators, have an emergency management plan that would involve emergency planning for road accidents that could be readily modified to include the aerodrome and possible emergencies occurring at or affecting the operation of the aerodrome.

Table 4: Cost changes for Emergency planning

	<i>Number of aerodromes no longer requiring</i>	<i>Cost</i>	<i>Total cost saving</i>	<i>Annual reduction in regulatory burden</i>
<i>Emergency exercises</i>	108	\$15,000	\$1.62m	\$0.81m
<i>Table-Top</i>	90	\$4,800	\$0.43m	\$0.43m
Total				\$1.24m

Option 5: Aerodrome manual

Under current requirements all certified aerodromes are required to have an aerodrome manual. There are currently 194 certified aerodromes (Table 5). If Option 5 is adopted registered aerodromes that are not currently required to have a manual would be required to develop one. There are currently 130 registered aerodromes that would be impacted by this requirement (Table 5).

Table 5: Aerodrome Manual Requirements

	<i>Current number of aerodromes impacted</i>	<i>Proposed number of aerodromes impacted</i>
<i>Aerodrome manual</i>	194	324
<i>No requirement</i>	130	0
Total	324	324

For registered aerodromes to develop an aerodrome manual, CASA anticipates it will require approximately 5 days for the aerodrome operator to establish the manual using the CASA Manual Authoring and Assessment Tool (MAAT). The estimated time is based on the reported time for preparing an aerodrome manual from a small sample of aerodromes and the average time savings from providing a MAAT for other organisations. This tool will be provided free of charge and provides a compliant manual structure, document control functions as well as sample text and guidance material for each section of the document. The total cost per aerodrome is estimated at \$2,600 and an industry wide cost of \$0.23m for 90 aerodromes (Table 6). The primary benefit of an aerodrome manual is that it contains the processes associated with the management of

aerodrome in a document that is easily assessable to relevant staff at the aerodrome and makes it clear what processes CASA will be examining when undertaking ongoing surveillance. Additionally, the aerodrome manual documents the aeronautical information related to the aerodrome that is published in the Aeronautical Information Publication (AIP) and that is used by pilots and aircraft operators accessing the aerodrome to determine if it is suitable for their operations, making it easier for the aerodrome operator and CASA to verify the published information as required under the civil aviation regulations.

Table 6: Cost Impact of Aerodrome Manual requirement

	<i>Hours</i>	<i>Cost per hour</i>	<i>Cost per aerodrome</i>	<i>Number aerodromes</i>	<i>Annual increase in regulatory burden</i>
<i>Developing a manual</i>	40	\$65	\$2,600	90	\$0.23m

For existing certified aerodromes, there will be some elements of their manual that will require a revision to comply with the new requirements.

Option 6: Technical inspections

If option 6 is adopted the number of aerodromes that are required to have an annual technical inspection will decrease from the current 194 to 145 (Table 7). Within the aerodromes required to have a technical inspection, 86 will be required to have all elements of inspection undertaken annually, whereas 59 aerodromes would be able to undertake a full technical inspection every 2 years and the core technical inspection elements in the intervening year.

Table 7: Technical Inspection: number of aerodromes impacted

	<i>Current number of aerodromes impacted</i>	<i>Proposed number of aerodromes impacted</i>
<i>Full technical inspection</i>	194	86
<i>Core technical inspection</i>	0	59
<i>Total requiring an inspection</i>	194	145
<i>No requirement</i>	130	179

The cost of a full technical inspection is approximately \$6,000 for the typical aerodrome, this results in a cost of approximately of \$1.16m for the current inspection requirements for the current 194 certified aerodromes (Table 8). The cost estimate is based on feedback from a small sample of aerodrome consultants that undertake technical inspections for aerodromes.

Table 8: Current technical inspection costs

	<i>Number of aerodromes requiring an inspection</i>	<i>Cost</i>	<i>Total cost</i>
<i>Full inspection</i>	194	\$6,000	\$1.16m

The cost of the core technical inspection is estimated at approximately \$2,000. For the aerodromes with a lower movement rate enabling a simplified inspection every second year and a

full inspection for the following year this will result in a total cost of \$8,000 over 2 years for the inspections, or approximately \$4,000 when annualised. This results in an annual cost of \$0.29m for aerodromes requiring annual full inspections, and \$0.36m for aerodromes with lower movements that are permitted to defer some elements of the inspection (Table 9). The cost estimate is based on feedback from a small sample of aerodrome consultants on the costs of undertaking the different elements of a technical inspection at typical aerodromes.

The total cost of technical inspections under option 6 is \$0.65m, which is a saving of \$0.51m when compared to the current inspection cost of \$1.16m.

Table 9: Costs for the proposed the technical inspection requirement

	<i>Number of aerodromes no longer requiring</i>	<i>Cost</i>	<i>Total cost</i>
<i>Full inspection</i>	49	\$6,000	\$0.29m
<i>Simplified</i>	90	\$4,000	\$0.36m
<i>Total</i>			\$0.65m

Option 7 Runway Widths

If option 7 was adopted it would remove the requirement for 60m wide runways for certain aircraft referred to as Code F and include the A380, B747-800 and B777x. If option 7 is adopted aerodromes seeking to operate with the affected aircraft could operate with 45m wide runways instead of a 60m wide runway with a significant saving for both new runways built for these aircraft types and for existing runways subject to widening. The saving would be slightly greater for widening an existing runway due to the additional costs of moving lights and markings and completing the work at night.

The best available cost estimate is \$10m which is the additional cost of building a 60m wide runway instead of 45m for a new aerodrome. Advice from a consultant aerodrome engineer indicates that this cost would be reflective of widening the runways at all the existing 45 metre runways.

There are a number of components that are included in the \$10m widening cost:

- earthworks
- preparing/placing substrate
- laying new runway surface
- strength of pavement
- additional lights
- runway markings

The most significant factor that could affect the cost is the amount of earthworks to prepare the substrate. The cost is based on a runway length of approximately 2000m with the cost savings greater for longer runways. In addition, the expected cost estimate is based on shoulder strength pavement. Although CASA does not regulate the strength of pavement directly, it is assumed that shoulder strength would be a likely choice for aerodromes to use on the widened section of a runway.

The issue is how many of the aerodromes and runways would be impacted in the future. Currently there are three runways under construction that are aimed at operating the current Code F aircraft. It is difficult to make predictions about the number of aerodromes that could benefit from this change in the future. However, based on industry feedback, CASA has calculated that the number of runways impacted would be one every 10 years. With an estimated cost of \$10m per runway, which equates to an annualised saving of \$1m.

Option 8: Enduring Approvals

If option 8 is adopted approximately 40 exemptions that are currently issued to aerodromes and that require renewal every three years could be converted to an enduring approval.

The cost saving of avoiding the need to apply for an exemption or the renewal of an exemption would vary depending on the complexity of the exemption. Some basic issues only require an email from the aerodrome operator seeking an extension, medium complexity issues would typically be a request in the order of a three-page application, to high complexity issues with consultants preparing a case that can be in excess of 10 pages. CASA has a consistent assessment approach for the assessment of all exemption requests and the cost is based on 6 hours of CASA time.

In terms of an operator’s time, based on CASA’s interpretation of which aerodromes would be required to submit an exemption request, it would be approximately 7 hours for a simple case, 15 hours for a medium complexity case and more than 30 hours for a high complexity case. For simplicity, CASA has assumed that the current 40 exemptions would be within the medium complexity range. Based on this assumption the annualised cost saving is \$4,800 (Table 10).

Table 10: Savings from and an Enduring Approval

	<i>Number of exemptions</i>	<i>Hours</i>	<i>Cost per hour</i>	<i>Total cost saving every 3 years</i>	<i>Annual reduction in regulatory burden</i>
Enduring approval saving	40	15	\$65	\$39000	\$13,000

Option 9: Step-downs and Tie-ins

If adopted, Option 9 would permit a 25 mm step down from the runway edge to a runway shoulder or runway strip and more flexible ‘tie in’ arrangements for intersecting runways or taxiways which reduces pavement costs for initial construction and subsequent overlays. This is a particular benefit to aerodromes when they reseal runways and taxiways.

There are 324 certified or registered aerodromes and it is estimated that they require a reseal every 20 years, with this equating to approximately 16 reseals per year across the industry.

The saving will be a case by case, with a number of factors influencing whether this increased flexibility will provide a benefit. An influencing factor is whether the initial design is consistent with accommodating the step downs and the reasons for resurfacing. If resurfacing is to address the problem of the pavement wearing out, then a 25mm resealing depth is common. However, if the reseal is also to provide greater strength to accommodate larger aircraft operations then the

depth can be greater than 25mm and is more likely to be in the range of 100mm in depth at which point the step-down flexibility is less relevant.

Based on feedback from a consulting pavement engineer, the saving (Table 11) is likely to be in order of \$2,000 to \$3,000 per runway overlay, for some aerodromes it could be more and for some it could be less (i.e. zero). The \$2,000 to \$3,000 sum represents a reasonable average, especially for the step down to the graded area. The cost saving will be greater for aerodromes with a number of runways and taxiways.

Table 11: Step-down and Tie-In Savings

	<i>Number of reseals</i>	<i>Saving per reseal</i>	<i>Annual reduction in regulatory burden</i>
Step-down and Tie-in savings	16	\$2000	\$0.03m

Option 10: Tolerances for the size of marks and markings

If adopted, option 10 would introduce a 5% tolerance for the size of marks and markings. Based on feedback from affected aerodromes it is not possible to estimate the number of aerodromes that could benefit from such tolerances.

Feedback from consulting engineers is that this is likely to be a benefit primarily to regional aerodromes with legacy marks or markings that may benefit during an upgrade by being able to avoid changing the marks or markings on a runway or, more likely, a related taxiway. The magnitude of saving could be in the order for \$2000 to \$3000 in avoiding the need to remove or black out existing markings and paint new ones.

Option 11: Separation distances and strip widths

If adopted, option 11 would provide a benefit for new and existing aerodromes. For new aerodromes and existing aerodromes that currently have a 300m or 150m strip width this will allow the more flexible use of the strip width and it is possible to permit development with that area of land.

Industry feedback whilst supportive of the change could not provide specific aerodromes that would benefit and the magnitude to which individual aerodromes would benefit due to differing characteristics of where aerodromes are located and the alternative uses of land.

Option 12: Circling Guidance Lights

If adopted Option 12 would remove the requirement for circling lights at aerodromes without circling approaches or circuits. This would impact the major international aerodromes that would no longer be required to maintain a separate lighting system. Based on feedback it is assumed that there would be eight existing aerodromes that could benefit from this change. In addition, new runways and aerodromes could benefit and CASA has assumed that there would be one new runway or aerodrome that would benefit from this change every ten years.

The extent of the benefit would be greater for new aerodromes with the cost of installing the circling guidance lights estimated at approximately \$0.75m for international aerodromes supporting low visibility operations based on cost estimates provided by a speciality aerodrome

electrical and lighting engineer. For existing aerodromes the benefit is the avoided maintenance and replacement costs that is estimated at \$0.5m every 10 years. This would produce an estimated annualised saving of \$0.275m (Table 12).

Table 12: Savings associated with changes to Circling Guidance Lights

	<i>Aerodromes impacted every 20 years</i>	<i>Saving per aerodrome</i>	<i>Total cost saving every 20 years</i>	<i>Annual reduction in regulatory burden</i>
<i>New</i>	2	\$0.75m	\$1.5m	\$0.075m
<i>Existing</i>	8	\$0.50m	\$4m	\$0.2m
<i>Total</i>				\$0.275m

The changes to introduce more flexible standards for green lights and LED specific standards would also provide a benefit to industry. Feedback from industry, whilst positive of the changes could not identify the number of aerodromes that could potentially benefit from the changes due to the variety of aerodrome lighting systems and the method by which aerodromes chose to maintain and/or replace their lighting systems over time.

Option 13: Aerodrome Radiocommunication Services

If adopted, Option 13 would apply to any aerodrome or aircraft landing area (ALA) and not just certified or registered aerodromes. There are currently 17 aerodromes that are not certified or registered that would be required to have an aerodrome frequency response unit installed. However, these 17 aerodromes already have an aerodrome frequency response unit installed as published in the Aeronautical Information publication (AIP) and therefore would meet the requirement with no additional cost.

Overall impact

Many certified aerodromes will benefit economically without any reduction in safety from risk-based criteria that will remove requirements for Management Systems, based on the number of aircraft and passenger movements, including the SMS or the alternative risk management plan and aerodrome emergency plans. The new requirements will largely impact existing registered aerodromes that do not have an aerodrome manual or a risk management plan. However, the impact should be limited to an upfront commitment of approximately one week for the aerodrome officer to develop the manual using the online MAAT and guidance material for the risk management plan.

There will be savings with the introduction of more relaxed tolerances, outcome-based standards, removing the requirement for certain time-limited exemptions and removing the need for a 60m wide runway. Overall, the annualised savings for all of the options are estimated at \$2.98m (Table 13).

Table 13: Savings by Option

	Option Name	Annualised cost \$m (- indicates a saving)
<i>Option 3</i>	Organisational approach to safety	-\$0.14
<i>Option 4</i>	Emergency planning	-\$1.24
<i>Option 5</i>	Aerodrome manual	\$0.23
<i>Option 6</i>	Technical inspections	-\$0.51
<i>Option 7</i>	60m wide runways	-\$1.00
<i>Option 8</i>	Enduring approval	-\$0.01
<i>Option 9</i>	25mm step down	-\$0.03
<i>Option 12</i>	circling guidance lights	-\$0.28
<i>Total</i>		-\$2.98

Safety

CASA's assessment is that the proposed options will be a safety improvement or at least safety neutral with the changes to refine requirements consistent with international standards.

CASA's assessment of the safety risks posed by aerodromes overall is low and this is partly informed by CASA analysis of the aviation occurrence data.³ Other than one incident where an aircraft landed on a closed runway and it was noted that the unserviceability markings were placed in long grass, there are no incidents, serious incidents or accidents that have actions of the aerodrome operator as a causal or contributing factor. Whilst the lack identified incidents or accidents does not indicate that the probability of such an incident or accident occurring in the future is zero, it is CASA's assessment that the safety of aerodromes would be maintained by frequent aerodrome serviceability inspections, annual technical inspections and air transport operators operating with a SMS.

CASA's assessment is that the equivalent safety can be achieved for existing certified aerodromes with a low number of aircraft or passenger movements that would no longer be required to have a SMS or undertake full technical inspections annually, and instead could comply with a risk management plan and the deferral of some aspects of the technical inspection.

Simulation of emergency exercises

For the simulation of emergency exercises at aerodromes, the key safety issue is the likelihood of an accident requiring the co-ordination of emergency services to evacuate a large passenger carrying aircraft. The most relevant accident rates to consider are for high capacity charter aircraft as these are the aircraft that are the type subject to the emergency exercises.

The accident rate for high capacity charter (aeroplanes) over the 10 years to 2016 is 4 per million departures (ATSB 2018). Whilst the ATSB has not published the phase of flight for these accidents CASA estimates that approximately 30% occur during the take-off or landing phase indicating that they occur at an aerodrome⁴.

Based on these estimates, the probability of an accident for a high capacity charter aircraft would be approximately 1.2 in every million flights. This indicates that at an aerodrome with 100, 000 movements the accident occurrence rate would be one every 8.3 years. At aerodromes with

³ Unpublished ATSB occurrence data for Charter and RPT: 2002 to 2011.

⁴ Based on analysis by Boeing that 29% of fatal accidents occur on take-off or landing:
http://www.boeing.com/resources/boeingdotcom/company/about_bca/pdf/statsum.pdf

50,000 movements the accident occurrence rate would be one every 16.7 years, or one in every 83 years for aerodromes with 10,000 movements.

In addition, not all accidents at an aerodrome would require the emergency service response. Whilst not ideal, one indication of the rarity of these accident types is that over the last 30 years there have been no accidents at an aerodrome that have required the evacuation of 10 plus seat aircraft following an accident.

Overall, the low accident rate for the type of aircraft subject to the simulation of emergencies, with only a subset of these accidents occurring at an aerodrome and only a further subset of these requiring emergency services to evacuate an aircraft indicates that removing the requirement for the simulation of emergencies and instead replacing it with a table-top induction program from aerodromes with aircraft movements between 10 000 and 100 000 would have no negative safety impact.

Travelling public

These requirements will not directly alter any interactions between the travelling public and aerodromes. However, the travelling public may indirectly benefit from decisions that aerodromes make as a result of the implementation of the preferred options, with aerodromes passing on savings to aircraft operators in the form of lower landing charges that could be passed on to travellers in the form of lower ticket prices. The extent of any savings is likely to be small because the savings for aerodromes represent only a small component of their expenditure and the typical landing charges per passenger at aerodromes is a relatively low proportion of the ticket price and is typically in the range of \$10 to \$20.

The most significant impact on the travelling public is likely to occur at small regional aerodromes at which the current cost of establishing and maintaining a certified aerodrome cannot be justified in terms of the revenue received from RPT flights. The changes may enable some aerodromes that are currently registered and cannot receive RPT flights, of larger than 30 seat aircraft, the ability to become a certified aerodrome and accept these RPT flights in the future resulting in this transport option being available to the travelling public in these regional areas. Similarly, it may enable existing certified aerodromes with a low number of RPT flights the ability to maintain their existing certified aerodrome approval and the ability to maintain the RPT flight options for the travelling public.

Recreational pilots

For the non-commercial users of aerodromes, such as recreational pilots, there may be a benefit in terms of lower fees from aerodromes, however, any savings are likely to be small and a small percentage of the total cost of recreational flights. The extent of any savings is likely to be small because the savings for aerodromes represent only a small component of their expenditure and is therefore unlikely to result in any significant reduction in landing charges. Moreover, the landing charges at regional aerodromes for recreational flyers is a relatively low proportion of the total cost of undertaking a recreational flight. The landing charge is approximately \$10 to \$20 per landing, with the hire of an aircraft and fuel costs in order of \$250 per hour for a small aircraft typically used by recreational pilots.

Consultation

The proposed changes were developed in conjunction with an aerodromes industry working group which met seven times to review and comment on the drafts prior to release for public consultation.

CASA developed the proposed changes through the Airspace and Infrastructure Users Group (AIUG) sub-committee of the Standards Consultative Committee, which was the primary CASA/industry consultation forum at the time. A number of meetings were held during 2015 to 2017.

In August 2017 CASA published a Notice of Proposed Rule Making document on its Consultation Hub outlining the proposed changes along with the proposed amendments to Part 139 and the Part 139 MOS.

CASA received 109 responses through the Consultation Hub survey, including 76 individual responses and 33 responses on behalf of an organisation. Where permission was granted individual responses are published on the CASA website. CASA has analysed the feedback and published a summary of the consultation document on its website.

Overall, there was majority support for the proposals. Although still supported overall, the proposals that attracted the highest number of suggestions for change were:

- replacing the existing manual of standards
- introducing the ‘accountable manager’ responsibility.

For the remaining nine proposals, the ‘acceptable without change’ response far outweighed the other options. Feedback from respondents who found the proposals acceptable complimented the consultation process and appreciated the flexibility of the proposals and the attempts to reduce operating costs and regulatory burden.

Where respondents suggested changes to the proposals, common themes included concerns about risks around introducing scalability for aerodromes with regular public transport (RPT) aircraft and concerns with cost and practical application of technical standards and other requirements for small (such as council-run) aerodromes.

In October 2018, the Aviation Safety Advisory Panel (ASAP) convened a technical working group (TWG) to evaluate drafts of the Part 139 regulations. The TWG made a number of suggestions, the majority of which CASA sought to address. The ASAP subsequently confirmed by letter dated 30 November 2018 their support for the making of Part 139.

The Australian Airports Association (AAA), which is the main industry association representing over 340 airports and aerodromes, collaborated with CASA in the review of the aerodrome regulations. The AAA was a member of our AIUG project team and the TWG. The AAA CEO is also a member of the ASAP which endorsed the proposed Regulations and MOS. Additionally, AAA has invited CASA to present at Divisional meetings, their annual national conferences and has hosted webinars where AAA members can listen to the proposed changes and ask questions. The AAA fully supports the making of the proposed regulations and MOS.

Implementation and Review

CASA is proposing to implement the proposed changes by amending Part 139 and the Part 139 MOS in February 2019 and providing updated guidance material and associated forms later in 2019. CASA will be providing a Manual Authoring and Assessment Tool (MAAT) to assist aerodromes prepare a suitable Aerodrome Manual and related application documents.

The regulations are proposed to commence 18 months from the day on which they are made. The proposed transition period is up to two years for existing aerodromes from when the new regulations commence.

Review

CASA will monitor and review the regulatory changes on an ongoing basis during the transition phase, with careful consideration given to the feedback received from affected stakeholders, in particular aerodromes. CASA will consider this feedback and make any necessary changes to internal processes or the regulatory requirements. The key areas of stakeholder transition feedback that CASA will be focused on are the reasonableness of the requirements and whether the requirements reflect the original intent of the amendments.

After the transition period, an important way that CASA will monitor the effectiveness of the implemented option(s) is surveillance of aerodromes to ensure that they are implementing their processes as documented in their aerodrome manual. CASA will also continue to monitor any changes to international standards, technology and accident and incident data from the ATSB. This information will help inform any future changes required to either the Part 139 requirements or CASA procedures.

Conclusion

Overall, the proposed amendments would:

- reduce the complexity of the current regulation;
- provide a more flexible path for operators to adopt alternative means of compliance where it is not currently possible to meet MOS requirements; and
- simplify the certification processes.

The major impacts of removing the current three-tier aerodrome certification system of 'certified', 'registered' and 'certain other' aerodromes, and replacing it with a single authorisation using safety risk-based standards, would be that:

- some aerodromes would no longer be required retain their existing safety management system
- emergency exercises would be removed for most certified aerodromes and replaced with a less costly emergency preparedness (induction style) program
- existing registered aerodromes would be required to have an aerodrome manual
- some existing registered aerodromes with significant air transport passenger movements would be required to undertake regular aerodrome technical inspections.

Most certified aerodromes would benefit economically without any reduction in safety from risk-based criteria that remove the requirement to retain their safety management system and to conduct regular emergency exercises. The new requirements would mostly impact on existing registered aerodromes. For the proposed introduction of an aerodrome manual, the impact should be limited to an upfront commitment of approximately 5 days for the aerodrome operator to develop the manual using the online MAAT and supporting template provided by CASA.

References

ATSB 2018, *Aviation occurrence statistics: 2007 to 2016*, Canberra.

PM&C 2016, Guidance Note: *Regulatory Burden Measurement Framework*, Canberra.

Appendix 1: Current Compliance Costs for Aerodromes

These compliance costs represent the costs incurred by aerodromes to be authorised by CASA and include fees charged by CASA which are not included in the regulatory burden measurement framework (PM&C 2016).

Initial requirements

The primary requirements for an aerodrome to obtain an initial regulatory approval depend on whether the aerodrome is seeking to be certified or registered. New applicants for a certified aerodrome are required to:

- complete an application form;
- submit an Aerodrome manual, typically these are 40 to 80 pages;
- develop a Safety Management System;
- undertake a safety/technical inspection;
- participate in an initial physical inspection of the aerodrome by CASA; and
- pay a CASA application and assessment fee.

New applicants for a registered aerodrome are required to:

- complete an application form providing detailed information about the aerodrome;
- undertake a safety/technical inspection;
- participate in an initial physical inspection of the aerodrome by CASA; and
- pay a CASA application and assessment fee.

Ongoing Requirements

For certified aerodromes the requirements are:

- participate in CASA audits, generally once every one to two years;
- complete a technical/safety inspection every year;
- complete emergency exercises once every two years;
- undertake daily serviceability inspections; and
- complete annual table-top emergency program meetings.

For registered aerodromes the requirements are:

- participate in CASA audits, generally once every three to five years and for the cost estimates CASA has assumed once every four years; and
- undertake serviceability inspections at least twice per week.

Estimated compliance costs

The initial compliance costs for a certified aerodrome are estimated at \$16,760 (Table A1) and \$7,400 for a registered aerodrome (Table A2), plus CASA fees of approximately \$8000 per aerodrome.

Table A1: Initial compliance costs for Certified Aerodromes

Certified	Hours	Wage rate per hour	Cost
Application form	8	\$65	\$520
Aerodrome manual	80	\$65	\$5,200
Safety Management System			\$5,200
Safety/technical inspection			\$4,800
Physical inspection of the aerodrome by CASA	16	\$65	\$1,040
Total			\$16,760

Table A2: Initial compliance costs for Registered Aerodromes

Registered	Hours		Cost
Application form	24	\$65	\$1,560
Safety/technical inspection			\$4,800
Physical inspection of the aerodrome by CASA	16	\$65	\$1,040
Total			\$7,400

The ongoing requirements are estimated at \$46 185 for a certified aerodrome (Table A3) and \$7020 for a registered aerodrome (Table A4).

Table A3: Annual compliance costs for Certified Aerodromes

Certified	Hours		Cost
CASA audits	16	\$65	\$1,040
Technical/safety inspection			\$6,000
Emergency exercises once every two years			\$7,500
Annual table-top emergency program meetings			\$4,800
SMS maintenance and staff training			\$3,120
Daily serviceability inspections	365	\$65	\$23,725
Total			\$46,185

Table A4: Annual compliance costs for Registered Aerodromes

Registered	Hours		Cost
CASA audits (once every 4 years)	16	\$65	\$260
Serviceability inspections (twice per week)	104	\$65	\$6,760
Total			\$7,020

Appendix 2: Cost Impact for implementing and maintaining a Safety Management System

SMS Upfront Costs

There is a requirement for the aerodrome to develop, implement and maintain an SMS, and a program of training for safety sensitive staff. Based on feedback from organisations that have recently implemented a CASA approved SMS, including RPT operators, and certain maintenance organisations and flight training schools CASA has estimated the resource commitment to set-up a SMS. The set-up of an SMS manual, process forms and spread sheets is estimated to take one individual approximately 6 days or 48 hours. When valued at \$65 per hour this equates to an estimated establishment cost of \$3,120. The aerodrome would be required to provide initial staff SMS induction training which would be approximately 8 hours for 4 safety sensitive personal, or a total of 32 hours which when valued at \$65 per hour equates to cost of \$2080. Therefore, the total upfront SMS cost is estimated at \$5,200.

SMS On-going Costs

For aerodromes there will be an on-going requirement to provide staff with refresher training to cover both the organisation's SMS principles and processes. Based on feedback from organisations currently operating an SMS indicates that for the ongoing management of the SMS. This could be accomplished by approximately 8 hours per year for refresher training covering SMS for 4 staff, with an estimated cost of \$2,080 when the 32 hours in total is valued at a wage rate of \$65 per hour. An additional 2 days (or 16 hours) per year is required to maintain/amend SMS policies and processes for the safety manager/designate at an estimated cost of \$1,040 when the 16 hours is valued at a wage rate of \$65 per hour. Therefore, the on-going requirement for an SMS is estimated at \$3,120.

Risk Management Plan estimated cost impact

The estimated cost of establishing a risk management plan is estimated at to require approximately 16 hours of work for one individual which when valued at \$65 per hour equates to \$1,040. The ongoing requirement is estimated to require approximately 8 hours for the risk register to be updated and processes updated. This 8 hours when valued at \$65 per hour equates to an estimated cost of \$520.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Civil Aviation Safety Amendment (Part 139) Regulations 2019

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The legislative instrument (the Regulations) amends the *Civil Aviation Safety Regulations 1998* (CASR) to substitute a new Part 139 to provide for the certification of aerodromes that meet prescribed standards, and to provide for requirements in relation to radiocommunications and hazards at all aerodromes. Operators of aerodromes that have terminal instrument flight procedures are required to hold an aerodrome certificate.

Subpart 139.A provides for preliminary matters, including the issue of a Manual of Standards (MOS) for Part 139 and the granting of approvals by the Civil Aviation Safety Authority (CASA) for Part 139 purposes.

Subpart 139.B creates a scheme for the application for, and grant of, aerodrome certificates. The Subpart also provides for the suspension or cancellation of a certificate.

Subpart 139.C regulates the operation and maintenance of aerodromes in respect of which an aerodrome certificate has been granted (certified aerodromes). The Subpart prescribes requirements for: an aerodrome manual; facilities and equipment; inspections, monitoring and reporting of matters for certified aerodromes; various safety and risk management plans and procedures; aerodrome personnel; and ground surveillance systems in specified circumstances. The Subpart also prescribes requirements to allow CASA to conduct tests and requires persons to comply with specified requests for data in relation to certified aerodromes.

Subpart 139.D regulates aerodrome radiocommunication services, including with respect to frequency confirmation systems and air/ground radio services, at all aerodromes (whether certified or not).

Subpart 139.E regulates hazards relating to aircraft operations, including identifying and determining that a hazard exists and notifying CASA of potential hazards. Although the Subpart primarily relates to hazards near aerodromes when aircraft are closer to the ground, the Subpart regulates hazards generally.

Human rights implications

The Regulations engage the right to a fair trial and fair hearing in Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR).

The right to a fair trial and fair hearing: presumption of innocence

Article 14(1) of the ICCPR provides that, in the determination of a criminal charge, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Other provisions of Article 14 provide for minimum guarantees for persons in criminal proceedings.

The presumption of innocence in Article 14(2) imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proven beyond reasonable doubt. For the charge to be proven beyond reasonable doubt, the legal and evidential burden is on the prosecution.

The Regulations include strict liability provisions and provisions that reverse the evidential burden of proof for defences, which engage the rights enshrined in Article 14 of the ICCPR.

Strict liability offence provisions

There are 25 offences of strict liability prescribed in the Regulations.

Strict liability offences engage the presumption of innocence through the imposition of liability without the need to prove fault. A strict liability offence will not impermissibly limit the right to the presumption of innocence if the offence pursues a legitimate aim and is reasonable, necessary and proportionate to that aim.

Nature of strict liability provisions

Subpart 139.B provides 2 strict liability offences relating to when an aerodrome is required to be certified and for failing to notify a cessation of certification.

Subpart 139.C provides 18 strict liability offences in relation to the operation and maintenance of a certified aerodrome. The offences relate to a wide range of operational matters, including:

- the requirements to have an aerodrome manual
- compliance with the aerodrome manual
- aerodrome facilities and equipment
- aerodrome inspections, monitoring and reporting
- safety management systems and risk management plans
- emergency preparedness and aerodrome emergency plans
- aerodrome personnel
- requirements for aerodrome ground surveillance systems.

Subpart 139.D provides 3 strict liability offences in relation to the operation of frequency confirmation systems and air/ground radio services.

Subpart 139.E provides 2 strict liability offences in relation to the notification of CASA of potential hazards.

Reasonableness, necessity and proportionality

The strict liability offences relate to administrative and safety requirements that must be adhered to by individuals and aerodrome operators to ensure the integrity of the aviation safety system, with particular regard to the safe operation of aerodromes. The imposition of strict liability offences in the amendments limits the right to the presumption of innocence. However, the limitation is necessary to ensure that aerodrome operators and other specified persons, on whom obligations are given under law in relation to aviation activities, act in accordance with the requirements of Part 139. The limitation also ensures that CASA retains oversight over such organisations as is necessary to ensure the safety of air navigation.

Further, the defence of honest and reasonable mistake, as set out in section 9.2 of the *Criminal Code Act 1995* (Criminal Code), will be available to the defendant in all offence provisions. If relied upon, this is an evidential burden on the defence to prove, on the balance of probabilities, that the accused had an honest and reasonable mistaken belief of fact which, if those facts existed, would not have constituted an offence.

The strict liability offences in this instrument are considered reasonable, necessary and proportionate to the objective of ensuring aviation safety. The offences are regulatory in nature, in other words their aim is to insist on reasonable compliance with regulated safety standards by those conducting activities which are otherwise intrinsically or potentially unsafe unless such high standards of compliance are met. Not having to prove fault in the relevant circumstances aims to provide a strong deterrent. To this extent, and in this context, they are consistent with other safety-focussed regulatory regimes and do not unreasonably or impermissibly limit the presumption of innocence. The offences are designed to achieve the legitimate objective of ensuring the safety and integrity of the aviation industry and the public.

The offences are also proportionate in that they fall at the lower end of the penalty scale, not exceeding 50 penalty units, and are otherwise consistent with the guidance set out in *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011. All but one of the offences incur a penalty of less than 50 penalty units (ranging from 5 to 25 penalty units), which is appropriate given the safety regulation purposes of Part 139.

Reversal of burden of proof provisions

A total of 2 offence provisions impose a reversed evidential burden of proof on the accused in relation to defences. The fact elements that are the subject of the reversals of the burden of proof can be found in the table below. The reversed burden must pursue a legitimate aim and be reasonable, necessary and proportionate to that aim.

The reversal of the evidential burden of proof only applies to an exemption from an offence provision once the prosecution discharges the legal and evidential burden of proof to establish the commission of the offence. The burden of adducing or pointing to evidence only requires a defendant to suggest a reasonable possibility that the matter relating to the defence exists or does not exist. This is in accordance with subsection 13.3(6) of the Criminal Code.

Aim

The aim of CASA and its regulatory framework, including Part 139 of CASR, is to uphold aviation safety by prescribing the conduct of persons involved in civil aviation operations.

The provisions reversing the burden of proof pursue this aim as they are each attached to a defence to a strict liability offence in circumstances where the defence relates to a safe aviation practice.

Reasonableness, necessity and proportionality

The provisions imposing a reversal of the burden of proof are reasonable as they provide the defendant with the opportunity to adduce evidence of specific conduct that exculpates the defendant from a strict liability offence.

The provisions imposing a reversal of the evidential burden of proof are necessary and proportionate for the following reasons:

- the relevant information or evidence is peculiarly within the knowledge of the defendant
- it is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

The table below details the provisions giving rise to a reversal of the evidential burden of proof, describes the factual matter that is the subject of the reversal of the burden, and sets out the justification for the reversal of the burden.

The factual matters are not required under Part 139 to be the subject of documentary evidence, for example because they relate to matters of judgement by the defendant, or are matters that are subject to words and actions only.

Exemptions to offences, and justification of the reversed burden of proof		
Item	Provision description	Justification for reversal of evidential burden of proof
1	Subregulation 139.055(2) provides that subregulation 139.055(1) does not apply to the operator if the operator does not comply with the procedures set out in the aerodrome's aerodrome manual and the non-compliance is necessary to ensure the safety of aircraft. The operator must tell CASA of the non-compliance in accordance with regulation 139.060.	<p>Whether or not the non-compliance with the aerodrome manual was “necessary to ensure the safety of aircraft” will, in any particular circumstance, be peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.</p> <p>For the important requirement to comply with an aerodrome manual, it is reasonable and proportionate to require a defendant to explain why a non-compliance was necessary on the grounds of safety.</p>
2	Subregulation 139.140(5) provides that subregulation 139.140(3) does not apply if the person has taken all reasonable steps available to the person to obtain the data requested and has been unable to obtain the data.	Whether or not the defendant has taken all reasonable steps to obtain requested data will, in any particular circumstance, be peculiarly within the knowledge of the defendant and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Implication on right to presumption of innocence

The provisions reversing the evidential burden of proof are consistent with the presumption of innocence, as they are within reasonable limits that take into account the importance of the objective being sought while maintaining the defendant's right to a defence. In particular, the burden is reversed only in circumstances where the matter to be established is within the knowledge of the defendant, and is significantly more costly for the prosecution to disprove than it is for the defendant to establish. In the context of regulatory offences that are directed to secure compliance with the high standards appropriate for the operation of aerodromes, including through providing an appropriate deterrent against breaches of those standards, it is reasonable, necessary and proportionate for a defendant to be required to establish matters that provide an alternative safe practice that is significantly more difficult and / or costly for the prosecution to prove than it is for a defendant to establish.

The right to a fair trial and fair hearing: right to an effective remedy

A person affected by decisions under the Regulations has rights of merit review in accordance with regulation 201.004 of CASR, in addition to administrative law rights under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* and general principles of Australian administrative law. These merits review and administrative law rights exist within a framework for seeking the review of a decision that may not be correct or preferable, or where there has been jurisdictional error.

As such, the rights of persons under the Regulations are linked to existing mechanisms that promote an individual's right to an effective remedy.

Conclusion

This legislative instrument is compatible with human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the safety of aviation operations and to promote the integrity of the aviation safety system.

Details of the Civil Aviation Safety Amendment Part 139) Regulations 2019

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Civil Aviation Safety Amendment (Part 139) Regulations 2019*.

Section 2 – Commencement

This section provides for commencement 18 months after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the *Civil Aviation Safety Amendment (Part 139) Regulations 2019* is made under the *Civil Aviation Act 1988*.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the Schedule according to the terms specified in the Schedule.

Schedule 1 - Amendments

Civil Aviation Safety Regulations 1998

Item 1 Subparts 139.A to 139.F

Item 1 repeals the existing Subparts 139.A to 139.F of the *Civil Aviation Safety Regulations 1998* (CASR) and replaces them with new Subparts 139.A to 139.E.

The new Subparts reflect the changes to aerodromes, radiocommunication services and hazards to aircraft operations as described throughout this attachment.

Subpart 139.A—Preliminary

This Subpart inserts a complete new Subpart 139.A of CASR inclusive of regulations 139.001 to 139.015. It provides an outline of the Part, a head of power for the Part 139 MOS, and a head of power for CASA to issue approvals for certain regulations, and defines effects on other Commonwealth legislation.

Regulation 139.001 provides a simplified outline of this Part as follows:

- the operator of an aerodrome may apply to CASA for an aerodrome certificate. An aerodrome that has an aerodrome certificate is called a certified aerodrome;
- certain aerodromes are required to be certified. Generally, these are aerodromes with terminal instrument flight procedures. Other aerodromes can opt to become certified;
- the operator of a certified aerodrome must meet certain requirements for operating and maintaining the aerodrome, the details of which are prescribed in the Part 139 MOS, and which may vary between aerodromes depending on the nature, complexity and volume of operations;
- an aerodrome (whether certified or not) that provides a frequency confirmation service or air/ground radio service must also meet certain requirements;

- some objects or structures can create a hazard to aircraft operations at an aerodrome and more generally. CASA must be notified of proposals to build such objects or structures and can make determinations about whether they are hazards; and
- providers of aerodrome rescue and firefighting services must be approved by CASA and must comply with operating and technical standards.

Regulation 139.005 provides that CASA may issue a Manual of Standards for Part 139 of CASR to prescribe matters required or permitted or necessary or convenient to be prescribed for carrying out or giving effect to Part 139.

Regulation 139.010 provides that, a person may apply in writing to CASA an approval, if an approval is required under Part 139. The regulation provides that the administrative mechanisms in Part 11 of CASR apply to a decision whether or not to grant such an approval.

Regulation 139.015 provides that Part 139 of CASR does not affect the operation of the *Airports (Building Control) Regulations 1996*, the *Airports (Protection of Airspace) Regulations 1996* or the *Airports (Control of On-Airport Activities) Regulations 1997*.

Subpart 139.B—Aerodrome certificates

This Subpart inserts a complete new Subpart 139.B of CASR inclusive of regulations 139.020 to 139.040. It prescribes matters related to obtaining, applying for, granting and suspension/cancellation of aerodrome certificates.

Regulation 139.020 – Application for aerodrome certificate

Subregulation 139.020(1) provides that a person may apply in writing to CASA for an aerodrome certificate for an aerodrome.

Subregulation 139.020(2) provides that the application has to be accompanied by a copy of the applicant's proposed aerodrome manual for the aerodrome.

Subregulation 139.020(3) provides that regulation 11.045 of CASR applies in relation to an aerodrome certificate. Regulation 11.045 of CASR prescribes matters that CASA can ask an applicant to do, such as to demonstrate services or facilities in connection with an application.

The provisions provide that any person may apply for an aerodrome certificate even if the holding of the certificate is not required under Part 139 of CASR for the aerodrome.

Regulation 139.025 – When aerodromes are required to have an aerodrome certificate

Subregulation 139.025(1) provides that the operator of an aerodrome must hold an aerodrome certificate if there is a terminal instrument flight procedure for the aerodrome, and the procedure is available for use for any aircraft.

Subregulation 139.025(2) provides that contravention of subregulation 139.025(1) is an offence of strict liability, with a maximum penalty of 50 penalty units.

A terminal instrument flight procedure is a procedure designed to facilitate the operation of aircraft in the vicinity of an aerodrome, particularly in bad weather. These provisions mitigate against adverse effects on the safety of air navigation by ensuring that an aerodrome that is able to support operations in inclement weather are suitably equipped and certified.

Some aerodromes have instrument flight procedures that are only for specialised helicopter use. This regulation does not apply to those aerodromes and there is no requirement for such an aerodrome to be certified. These provisions prescribe that an aerodrome need only have an aerodrome certificate if it has a published instrument flight procedure.

Regulation 139.030 provides that CASA must be satisfied of all of the following before granting an aerodrome certificate:

- the aerodrome facilities and equipment comply with the requirements of this Part and the Part 139 MOS;
- the proposed aerodrome manual for the aerodrome complies with the requirements mentioned in regulation 139.045;
- the aerodrome complies with the requirements for safety management systems, emergency preparedness systems and other systems; and
- the applicant is able to operate and maintain the aerodrome safely and in accordance with the aerodrome manual and the civil aviation legislation.

CASA's decision under the regulation is subject to the additional criteria and administrative mechanisms in regulation 11.055 of CASR, which concerns the granting of authorisations.

Regulation 139.035 – Suspension or cancellation of aerodrome certificate by CASA

Subregulation 139.035(1) provides that CASA may, by written notice, suspend or cancel a certificate if CASA reasonably believes that any of the circumstances outlined in this subregulation exist.

One of the circumstances refers to the breach of any condition specified on an aerodrome certificate. While Part 11 of CASR provides CASA with the general power to impose conditions, Part 139 of CASR provides additional limited powers to impose specific conditions on an aerodrome certificate (refer regulation 139.125 of CASR).

Subregulation 139.035(2) provides that, before suspending or cancelling an aerodrome certificate, CASA must give the holder a notice which sets out the facts and circumstances that justify the suspension or cancellation. The notice must invite the holder to show cause, in writing and within 30 days, as to why the certificate should not be suspended or cancelled. CASA is required to consider the contents of any such submission.

Subregulation 139.035(3) provides that suspension or cancellation under this regulation takes effect at the time specified in the notice. If no time was specified, it takes effect from the time the notice was given to the holder of the aerodrome certificate.

Subregulation 139.035(4) provides that suspension under this regulation ceases to have effect at the time specified in the notice. If no time is specified, the suspension or cancellation is considered lifted from the time a notice advising of such is given to the holder of the aerodrome certificate.

Subregulation 139.035(5) provides that an aerodrome certificate is not in force during a period of suspension.

Regulation 139.040 – Notification requirement if aerodrome ceases to be certified

Subregulation 139.040(1) provides that the operator of a certified aerodrome contravenes this regulation if the operator holds an aerodrome certificate, the certificate is suspended or cancelled, and it does not give written notice of the cessation of the certificate to both the Aeronautical Information Services (AIS) and any person responsible for the maintenance of a terminal instrument flight procedure for the aerodrome.

Subregulation 139.040(2) provides that a contravention of subregulation 139.040(1) is an offence of strict liability, with a maximum penalty of 10 penalty units.

This provision mitigates against adverse effects on the safety of air navigation by ensuring that flight crew are made aware that the status of a certified aerodrome has changed. The AIS comprises a number of reference documents that flight crew must refer to during flight planning and operations.

Subpart 139.C—Operation and maintenance of a certified aerodrome

This Subpart inserts a complete new Subpart 139.C of CASR inclusive of Divisions 139.C.1 to 139.C.7. It provides requirements for aerodrome manuals, facilities/equipment and inspections/monitoring/reporting. It also provides for systems that must be in place (safety management, emergency preparedness), aerodrome personnel and ground surveillance systems. This Subpart also provides for the extent to which these requirements may also be prescribed in the Part 139 MOS. These matters are intended to ensure that certified aerodromes are operated safely and appropriately maintained.

Division 139.C.1—Aerodrome manual

This Division inserts a complete new Division 139.C.1 of CASR inclusive of regulations 139.045 to 139.060. It prescribes matters related to the requirement for, amendments to, compliance with and actions to be taken in the event of non-compliance with the aerodrome manual.

Regulation 139.045 – Requirement to have aerodrome manual

Subregulation 139.045(1) provides that the operator of a certified aerodrome must have an aerodrome manual that complies with the requirements prescribed by the Part 139 MOS.

Subregulation 139.045(2) provides that the Part 139 MOS may prescribe requirements relating to the contents, maintenance and accessibility of the aerodrome manual. This list does not limit the matters related to aerodrome manuals that may be prescribed in the Part 139 MOS under subregulation 139.045(1).

Subregulation 139.045(3) provides that the operator of a certified aerodrome contravenes this subregulation if the operator is subject to a requirement mentioned in subregulation 139.045(1), and it does not comply with the requirement.

Subregulation 139.045(4) provides that contravention of subregulation 139.045(3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Regulation 139.050 – Amendments of aerodrome manual

Subregulation 139.050(1) provides that if the operator of a certified aerodrome amends the aerodrome manual, the operator must give CASA written notice of the amendment and provide a copy of the amended part of the manual identifying the amendment within 30 days.

Subregulation 139.050(2) provides that contravention of subregulation 139.050(1) is an offence of strict liability, with a maximum penalty of 5 penalty units.

Regulation 139.055 – Compliance with aerodrome manual

Subregulation 139.055(1) provides that the operator of a certified aerodrome must operate the aerodrome in accordance with the procedures set out in the aerodrome manual.

Subregulation 139.055(2) provides that subregulation 139.055(1) does not apply if an aerodrome operator contravenes a requirement of the aerodrome manual, the non-compliance is necessary to ensure the safety of aircraft, and the operator advises CASA of the non-compliance in accordance with regulation 139.060.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 139.055(3) provides that contravention of subregulation 139.055(1) is an offence of strict liability, with a maximum penalty of 25 penalty units.

Regulation 139.060 – Notice of non-compliance with aerodrome manual

Subregulation 139.060(1) provides that this regulation applies if the operator of a certified aerodrome does not comply with a procedure set out in its aerodrome manual, as mentioned in regulation 139.055.

Subregulation 139.060(2) provides that the operator must advise CASA in writing of the non-compliance within 30 days.

Subregulation 139.060(3) provides that contravention of subregulation 139.060(1) is an offence of strict liability, with a maximum penalty of 5 penalty units.

Division 139.C.2—Aerodrome facilities and equipment

This Division inserts a complete new Division 139.C.2 of CASR inclusive of regulations 139.065 to 139.070. It provides for aerodrome facilities, equipment and the conduct of aerodrome works.

Regulation 139.065 – Aerodrome facilities and equipment

Subregulation 139.065(1) provides that the Part 139 MOS may prescribe requirements relating to aerodrome facilities and equipment for certified aerodromes.

Subregulation 139.065(2) provides a non-exhaustive list of requirements that may be prescribed by the Part 139 MOS in relation to aerodrome facilities and equipment.

Subregulation 139.065(3) provides that the operator of an aerodrome contravenes this subregulation if any of the applicable requirements of the Part 139 MOS are not met.

Subregulation 139.065(4) provides that contravention of subregulation 139.065(3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Regulation 139.070 – Planning and carrying out aerodrome works

Subregulation 139.070(1) provides that the Part 139 MOS may prescribe requirements relating to the planning, notification and carrying out of aerodrome works at a certified aerodrome.

Subregulation 139.070(2) provides that the operator of an aerodrome contravenes this subregulation if any of the applicable requirements of the Part 139 MOS are not met.

Subregulation 139.070(3) provides that an aerodrome operator must ensure works do not create a hazard to aircraft or cause confusion to pilots.

Subregulation 139.070(4) provides that contravention of subregulation 139.070(2) or (3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Division 139.C.3—Aerodrome inspections, monitoring and reporting

This Division inserts a complete new Division 139.C.3 of CASR inclusive of regulations 139.075 to 139.090. It provides that the Part 139 MOS may prescribe matters related to aerodrome inspections, the requirement to provide information to aeronautical information service providers, the reporting of changes or occurrences and the requirement to monitor the airspace surrounding the aerodrome for infringements.

Regulation 139.075 – Aerodrome inspections

Subregulation 139.075(1) provides that the Part 139 MOS may prescribe requirements relating to the conduct of aerodrome inspections.

Subregulation 139.075(2) provides a non-exhaustive list of requirements that may be addressed by the Part 139 MOS in relation to aerodrome inspections.

Subregulation 139.075(3) provides that the operator of a certified aerodrome contravenes this subregulation if the operator is subject to a requirement under subregulation (1) and the requirement is not met.

Subregulation 139.075(4) provides that contravention of subregulation 139.075(3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Regulation 139.080 – Reporting information to AIS providers

Subregulation 139.080(1) provides that the Part 139 MOS may prescribe requirements relating to the reporting of aerodrome information to AIS providers.

Subregulation 139.080(2) provides a non-exhaustive list of topics that may be addressed by the Part 139 MOS in relation to the substance, form and procedures for reporting matters to AIS providers.

Subregulation 139.080(3) provides that the operator of a certified aerodrome contravenes this subregulation if the operator is subject to a requirement under subregulation (1) and the requirement is not met.

Subregulation 139.080(4) provides that contravention of subregulation 139.080(3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

This provision mitigates against adverse effects on the safety of air navigation by ensuring flight crew have access to relevant and accurate information about certified aerodromes that the flight crew may wish or need to use. The AIS comprises a number of reference documents that flight crew are must refer to during flight planning and operations.

Regulation 139.085 – Reporting changes or occurrences at aerodromes

Subregulation 139.085(1) provides that the Part 139 MOS may prescribe requirements relating to the reporting of changes of occurrences at aerodromes.

Subregulation 139.085(2) provides a non-exhaustive list of requirements related to the substance, form and procedures for reporting that may be addressed by the Part 139 MOS for subregulation (1).

Subregulation 139.085(3) provides that the operator of a certified aerodrome contravenes this subregulation if the operator is subject to a requirement under subregulation (1) and the requirement is not met.

Subregulation 139.085(4) provides that contravention of subregulation 139.085(3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Regulation 139.090 – Monitoring airspace and reporting infringements

Subregulation 139.090(1) provides that the Part 139 MOS may prescribe requirements relating to monitoring for, and reporting of, infringements and potential infringements of objects into airspace around a certified aerodrome.

Subregulation 139.090(2) provides a non-exhaustive list of requirements that may be included in the Part 139 MOS for subregulation 139.090(1).

Subregulation 139.090(3) provides confirmation that a gaseous or other emission that affects airspace may be classified as an infringement, even though it is not a solid object.

Subregulation 139.090(4) provides that the operator of a certified aerodrome contravenes this subregulation if the operator is subject to a requirement under subregulation 139.090(1) and the requirement is not met.

Subregulation 139.090(5) provides that contravention of subregulation 139.090(4) is an offence of strict liability, with a maximum penalty of 10 penalty units.

This provision mitigates against adverse effects on the safety of air navigation by ensuring obstacles infringing defined parts of airspace around a certified aerodrome are identified and managed. The intent of this regulation is to ensure structures are not erected, either permanently or temporarily, in such a way that they infringe certain airspace and cause a hazard to air navigation.

This regulation is closely related to regulation 139.165 of CASR. This regulation places responsibility on the operator of a certified aerodrome to monitor structures and other things within the vicinity of the aerodrome. Regulation 139.165 requires other persons to advise CASA of the proposal to build structures and other things with a height of 100 metres or more. The desired safety outcome is that structures both within the vicinity of an aerodrome and outside the vicinity are known to CASA in order to allow suitable assessment and hazard notification to be conducted as required.

Division 139.C.4—Safety management, emergency preparedness and other systems

This Division inserts a complete new Division 139.C.4 of CASR inclusive of regulations 139.095 to 139.105. It provides for safety and risk management, emergency preparedness and other miscellaneous systems related to safety management at a certified aerodrome.

Regulation 139.095 – Safety management systems and risk management plans

Subregulation 139.095(1) provides that the Part 139 MOS may prescribe requirements for when a certified aerodrome must have a safety management system or a risk management plan, and the requirements for such a system or plan.

Subregulation 139.095(2) provides that, with regard to a safety management system, the operator of a certified aerodrome contravenes this subregulation if any requirement under subregulation 139.095(1) in relation to the system is not met.

Subregulation 139.095(3) provides that, with regard to a risk management plan, the operator of a certified aerodrome contravenes this subregulation if any requirement under subregulation 139.095(1) in relation to the system is not met.

Subregulation 139.095(4) provides that contravention of subregulation 139.095(2) or (3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Regulation 139.100 – Emergency preparedness and aerodrome emergency plans

Subregulation 139.100(1) provides that the Part 139 MOS may prescribe requirements for aerodrome emergency preparedness and aerodrome emergency plans.

Subregulation 139.100(2) provides a non-exhaustive list of requirements that may be prescribed by the Part 139 MOS for subregulation 139.100(1).

Subregulation 139.100(3) provides that, with regard to *emergency preparedness*, the operator of a certified aerodrome contravenes this subregulation if any of the applicable requirements are not met.

Subregulation 139.100(4) provides that, with regard to *an emergency management plan*, the operator of a certified aerodrome contravenes this subregulation if any of the applicable requirements of the Part 139 MOS are not met.

Subregulation 139.100(5) provides that contravention of subregulation 139.100(3) or (4) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Regulation 139.105 – Other aerodrome systems

Subregulation 139.105(1) provides that the Part 139 MOS may prescribe requirements for kinds of systems that certified aerodromes must have (other than a safety management system). The regulation mentions, by way of a non-exhaustive list, systems for wildlife management, airside vehicle control and aircraft parking. The regulation enables CASA to prescribe such kinds of systems in the Part 139 MOS, subject to the system being for safety-related purposes consistent with the objects of the Act.

Subregulation 139.105(2) provides that, with regard to other kinds of systems, the operator of a certified aerodrome contravenes this subregulation if any of the applicable requirements of subregulation 139.105 (1) are not met.

Subregulation 139.105(3) provides that contravention of subregulation 139.105(2) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Division 139.C.5—Aerodrome personnel

This Division inserts a complete new Division 139.C.5 of CASR inclusive of regulations 139.110 to 139.120. It provides for the operator of a certified aerodrome to have specified personnel with defined responsibilities, and for those personnel to meet prescribed requirements relating to training, qualifications and experience. It also prescribes the requirement to have certain other aerodrome personnel.

This Division provides that the Part 139 MOS may also prescribe requirements concerning personnel carrying out the responsibilities of positions identified in this Division.

Regulation 139.110 – Aerodrome personnel

Requirement to have personnel

Subregulation 139.110(1) provides that the operator of a certified aerodrome must have personnel that can carry out the responsibilities of the accountable manager, reporting officer, works safety officer (required only when aerodrome works are being carried out at the aerodrome) and any other position prescribed by the Part 139 MOS.

Subregulation 139.110(2) provides that such a person may be an employee, contractor or person employed by a contractor. It also provides that responsibilities for a position may be undertaken by more than one person.

Subregulation 139.110(3) provides that the operator of a certified aerodrome contravenes this subregulation if any position requirements of subregulation 139.110 (1) are not met.

Subregulation 139.110(4) provides that a contravention of subregulation 139.110(3) is an offence of strict liability. The penalty for the offence has been established as 20 penalty units.

Accountable manager

Subregulation 139.110(5) prescribes the responsibilities of the aerodrome accountable manager, who has overarching responsibility for compliance with the safety regulatory requirements ensuring safe operation of the aerodrome and operation of the aerodrome in accordance with the aerodrome manual.

Reporting officer

Subregulation 139.110(6) prescribes the responsibilities of the aerodrome reporting officer, who has responsibilities for monitoring the serviceability of the aerodrome and compliance with the reporting and related obligations under regulations 139.080 (reporting information to AIS providers), 139.085 (reporting changes or occurrence at the aerodrome) and 139.090 (monitoring airspace and reporting infringements) of CASR.

Works safety officer

Subregulation 139.110(7) prescribes the responsibilities of the aerodrome works safety officer, who is responsible for ensuring aerodrome safety during the performance of aerodrome works.

These provisions ensure that an aerodrome operator maintains a suitable organisational structure, and personnel that are capable of safely carrying out the operator's aviation activities.

Regulation 139.115 – Training etc. of aerodrome personnel

Subregulation 139.115(1) provides that the Part 139 MOS may prescribe requirements for training, knowledge, qualifications or experience of the personnel identified in subregulation 139.110(1).

Subregulation 139.115(2) provides that the operator of an aerodrome contravenes this subregulation if personnel carrying out the responsibilities of a position identified by subregulation 139.115(1) do not meet the requirements for the position.

Subregulation 139.115(3) provides that a contravention of subregulation 139.115(2) is an offence of strict liability. The penalty for the offence has been established as 20 penalty units.

Regulation 139.120 – Aerodrome personnel carrying out responsibilities

Subregulation 139.120(1) provides that the Part 139 MOS may prescribe requirements relating to personnel carrying out the responsibilities mentioned in subregulation 139.110(1).

Subregulation 139.120(2) provides that the operator of a certified aerodrome contravenes this subregulation if a member of the aerodrome operator's personnel carries out responsibilities identified in subregulation 139.110(1) without being qualified to do so.

Subregulation 139.120(3) provides that a contravention of subregulation 139.120(2) is an offence of strict liability. The penalty for the offence has been established as 20 penalty units.

While regulation 139.120 prescribes the responsibilities for an aerodrome accountable manager, reporting officer and works safety officer, this regulation prescribes responsibilities for other aerodrome personnel prescribed in the Part 139 MOS.

Division 139.C.6—Aerodrome ground surveillance systems

This Division inserts a complete new Division 139.C.6 of CASR inclusive of regulations 139.125 to 139.130. It prescribes the circumstance under which an aerodrome ground surveillance system must be installed or varied at a certified aerodrome, as well as the scope and technical requirements for the system. A ground surveillance system is a system providing routing, guidance and surveillance for the control of aircraft and vehicles. Such a system increases the efficiency of ground operations and contributes to maintaining the safety of ground operations.

Regulation 139.125 – Condition on aerodrome certificate to operate aerodrome ground surveillance system

Request by ATS provider for condition to be imposed or varied

Subregulation 139.125(1) provides that an air traffic service (ATS) provider for a certified aerodrome may request that CASA impose, or vary, a condition on an aerodrome certificate with respect to the operation of an aerodrome ground surveillance system.

Subregulation 139.125(2) provides that a request to impose a condition must include a safety assessment and specify the areas of the aerodrome in which the aerodrome ground surveillance system is to operate.

Subregulation 139.125(3) provides that a request to vary a condition must include a safety assessment and specify the changes to those areas of the aerodrome in which the aerodrome ground surveillance system is to operate.

Subregulation 139.125(4) provides that before making such a request, the ATS provider must consult the operator of the aerodrome in relation to the request.

CASA may impose or vary condition

Subregulation 139.125(5) provides that CASA may impose or vary such a condition regarding an aerodrome ground surveillance system on an aerodrome certificate in accordance with the power provided by regulation 11.067 of CASR.

Subregulation 139.125(6) provides that the condition may include requirements relating to the aerodrome ground surveillance system.

Subregulation 139.125(7) provides that the condition, or variation, that CASA imposes may be different from the condition or variation originally requested by the ATS provider.

Notice of decisions etc.

Subregulation 139.125(8) provides that if CASA imposes a condition, CASA must give notice of the decision to both the ATS provider and the holder of the aerodrome certificate. The condition must not take effect sooner than 6 months after the date of CASA's notice of the decision.

Subregulation 139.125(9) provides that if CASA refused a request from the ATS provider to operate aerodrome ground surveillance system, CASA must give written notice of the decision, including the reasons for the decision, to the ATS provider as soon as practicable.

CASA's other powers to impose or vary conditions not affected

Subregulation 139.125(10) provides that this regulation does not limit CASA's other powers to impose or vary a condition on an aerodrome certificate.

These provisions mitigate against adverse safety outcomes by ensuring that ATS providers, such as air traffic control, are able to effectively monitor the movement of aircraft on the ground.

The provisions are considered necessary because aerodrome operators and ATS providers are typically separate organisations. If an ATS provider considers a ground surveillance system to be vital for safe ground operations, these provisions provide the means to have those systems discussed and implemented in appropriate circumstances.

Ground surveillance systems, however, require the provision of transponders for vehicles requiring access to the taxiways and runways on an aerodrome. These transponders need to be procured, fitted and maintained for each vehicle by the aerodrome operator.

Regulation 139.130 – Requirements for aerodrome ground surveillance systems

Subregulation 139.130(1) provides that the Part 139 MOS may prescribe requirements for aerodrome ground surveillance systems.

Subregulation 139.130(2) provides a non-exhaustive list of requirements in relation to surveillance and communications equipment to be installed on vehicles in movement areas and procedures for vehicles in movement areas at aerodromes where ground surveillance system operates.

Subregulation 139.130(3) provides that, with regard to ground surveillance systems, the operator of a certified aerodrome contravenes this subregulation if any of the applicable requirements of subregulation 139.130 (1) are not met.

Subregulation 139.130(4) provides that contravention of subregulation 139.130(3) is an offence of strict liability, with a maximum penalty of 25 penalty units.

Division 139.C.7—Other matters

This Division inserts a complete new Division 139.C.7 of CASR inclusive of regulations 139.135 to 139.145. It empowers CASA to access aerodromes for the purpose of conducting tests, to request data from operators and to request data from air traffic service providers.

Regulation 139.135 – Access to aerodromes to conduct tests

Subregulation 139.135(1) provides that the operator of a certified aerodrome must allow CASA to conduct tests of aerodrome facilities, equipment or procedures, for the purposes of ensuring the safety of aircraft, as outlined by this subregulation.

Subregulation 139.135(2) provides that the operator must, for such a test, allow CASA access to any part of the aerodrome, any aerodrome facilities and equipment or any of the operator's records relating to the aerodrome for such a test.

Subregulation 139.135(3) provides that CASA must give reasonable notice of any tests and must carry out the tests at a reasonable time.

Subregulation 139.135(4) provides that the requirements in subregulations 139.135(1) and (2) do not limit the operation of regulation 305 of *Civil Aviation Regulations 1988* (CAR). Regulation 305 of CAR provides for access of authorised persons to an aerodrome for the purpose of conducting inspections.

These provisions mitigate against adverse effects on the safety of air navigation by ensuring that an aerodrome facilities, equipment and procedures can be monitored to check that they meet at least the minimum prescribed regulatory standards.

Regulation 139.140 – Requests for data from aerodrome operator

Subregulation 139.140(1) provides that CASA may request the operator of a certified aerodrome to produce aircraft movement data of a kind prescribed in the Part 139 MOS for this subregulation.

Subregulation 139.140(2) provides a non-exhaustive list of data types that may be prescribed by the Part 139 MOS.

Subregulation 139.140(3) provides that the operator of a certified aerodrome contravenes this subregulation if the operator does not comply with a request from CASA for data within the timeframe mentioned in subregulation 139.140(4).

Subregulation 139.140(4) provides that the operator must comply with any such request from CASA within either 28 days of the request being given, or any longer period specified by CASA in the request.

Subregulation 139.140(5) provides that subregulation 139.140(4) does not apply if the person does not possess the data after having taken all reasonable steps to obtain it.

A defendant bears an evidential burden in relation to the matters in this subregulation. The matter to be established is peculiarly within the knowledge of the defendant and it is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Subregulation 139.140(6) provides that contravention of subregulation 139.140(3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Regulation 139.145 – Requests for data from ATS providers

Subregulation 139.145(1) provides that CASA may request an ATS provider to provide aircraft movement data of a kind prescribed in the Part 139 MOS for this subregulation.

Subregulation 139.145(2) provides a non-exhaustive list of data that may be prescribed by the Part 139 MOS for subregulation 139.145(1).

Subregulation 139.145(3) provides that the ATS provider must comply with any such request within either 28 days, or a longer period specified by CASA in the request.

Subpart 139.D—Aerodrome radiocommunication services

This Subpart inserts a complete new Subpart 139.D of CASR inclusive of Divisions 139.D.1 to 139.D.2. It provides requirements for the operation of aerodrome radio equipment and services.

Division 139.D.1—Frequency confirmation system

The Division inserts a complete new Division 139.D.1 of CASR which provides requirements for frequency confirmation systems at certified aerodromes. A frequency confirmation system, for example an aerodrome frequency response unit (AFRU), provides an automatic response to confirm to a pilot that he or she is transmitting on the correct frequency. An AFRU is generally installed for that purpose at aerodromes that do not have an air traffic control service.

Regulation 139.150 – Frequency confirmation systems for aerodromes

Subregulation 139.150(1) provides that the Part 139 MOS may prescribe circumstances in which an aerodrome is required to have a frequency confirmation system, as well as requirements for such systems. This regulation applies to all aerodromes, not just those which are certified. It remains critical for safety that the form and function of communications systems are of the same standard as those installed and operating at certified aerodromes.

Subregulation 139.150(2) provides that the operator of an aerodrome contravenes this subregulation if the aerodrome has a frequency confirmation system and the system does not meet a requirement for the system under subregulation 139.150(1).

Subregulation 139.150(3) provides that the operator of a certified aerodrome contravenes this subregulation if the aerodrome does not have a frequency confirmation system when the Part 139 MOS requires it to have one.

Subregulation 139.150(4) provides that contravention of subregulation 139.150(2) or (3) is an offence of strict liability, with a maximum penalty of 10 penalty units.

These provisions mitigate against adverse effects on the safety of air navigation by ensuring that prescribed equipment is available that will assist with the situational awareness of pilots operating around an aerodrome with frequency confirmation systems including those installed at certified aerodromes.

Division 139.D.2—Air/ground radio service

This Division inserts a complete new Division 139.D.2 of CASR which provides requirements for air/ground radio services at aerodromes, including uncertified aerodromes. An air/ground radio service provides supporting communications to pilots and aircraft operators in order to maintain safe operations at an aerodrome. For aerodromes that are not required to hold a certificate, it remains critical for safety that the form and function of radiocommunications services are of the same standard as those installed and operating at certified aerodromes.

Regulation 139.155 – Air/ground radio service must be approved

Subregulation 139.155(1) provides that the operator of an aerodrome contravenes this subregulation if there is an air/ground radio service for the aerodrome and the operator does not hold an approval under regulation 139.010 for the service.

Subregulation 139.155(2) provides that CASA may grant an approval only if satisfied that the service meets the applicable requirements of the Part 139 MOS.

Subregulation 139.155(3) provides that regulation 11.045 of CASR applies in relation to approval of an air/ground radio service, meaning that CASA is able to request an applicant seeking approval of an air/ground radio service, to demonstrate the service, and to permit CASA to inspect relevant facilities and equipment.

Subregulation 139.155(4) provides a definition for *certified air/ground radio service*; one for which approval under subregulation 139.155(1) is held.

Subregulation 139.155(5) provides that contravention of subregulation 139.155(1) is an offence of strict liability, with a maximum penalty of 10 penalty units.

Regulation 139.160 – Requirements for operating certified air/ground radio service

Operator of radio service must hold approval

Subregulation 139.160(1) ensures that a certified air/ground radio service for an aerodrome is operated only by a person who holds an approval under regulation 139.010. The obligation falls on the operator of the aerodrome.

Subregulation 139.160(2) provides that CASA may grant an approval only if satisfied that the person meets the applicable requirements of the Part 139 MOS.

Part 139 Manual of Standards may prescribe requirements

Subregulation 139.160(3) provides that the Part 139 MOS may prescribe requirements for the operation of certified air/ground radio services.

Subregulation 139.160(4) provides a non-exhaustive list of requirements that may be prescribed by the Part 139 MOS for subregulation 139.160(3).

Subregulation 139.160(5) provides that the operator of an aerodrome contravenes this subregulation if any of the applicable requirements prescribed by the Part 139 MOS are not met.

Offence

Subregulation 139.160(6) provides that a contravention of subregulation 139.160 (1) or (5) is an offence of strict liability. The penalty for the offence has been established as 10 penalty units.

Subpart 139.E—Hazards to aircraft operations

This Subpart inserts a complete new Subpart 139.E of CASR inclusive of Divisions 139.E.1 to 139.E.2. It provides requirements for aerodrome operators and other persons to notify CASA of proposed structures and activities. The requirements are not limited to aerodrome operators and include persons proposing to construct or erect certain objects or structures or undertaking an activity that will create emissions which may be deemed by CASA to create a hazard to aircraft.

Division 139.E.1—Notifying potential hazards

This Division inserts a complete new Division 139.E.1 of CASR inclusive of regulations 139.165 to 139.170. It provides requirements for persons to advise CASA of any proposed structures, objects or activities that may cause a hazard to air navigation.

Regulation 139.165 – Notifying CASA of certain proposed objects or structures

Subregulation 139.165(1) provides that this regulation applies if a person proposes to construct or erect a structure that will have a height of 100 metres or more, will generate certain gaseous efflux or is of a kind prescribed by the Part 139 MOS.

Subregulation 139.165(2) provides that the person must notify CASA of the proposed object or structure in writing. The notice must be given as soon as practicable after the person forms the intention to construct or erect the proposed object or structure. The subregulation provides a list of information that must be included in the notification.

Subregulation 139.165(3) provides that a contravention of subregulation 139.165(2) is an offence of strict liability. The penalty for the offence has been established as 10 penalty units.

Subregulation 139.165(4) provides that the kinds of structures and objects mentioned in paragraphs 139.165(1)(a) and (b) do not limit the kind of structures that may be prescribed by the Part 139 MOS.

These provisions mitigate against adverse effects on the safety of air navigation by ensuring that structures do not cause an unidentified hazard. Notification of proposed hazards will allow associated risks to be managed by allowing CASA to make an informed determination about the impact of the structure on aviation safety in accordance with regulation 139.175 of CASR.

This regulation is closely related to regulation 139.090 of CASR, which places a responsibility on an aerodrome operator to monitor structures within the vicinity of its aerodrome. Regulation 139.165 requires other persons to advise CASA of structures being built. The desired safety outcome is that structures within or outside the vicinity of any aerodrome are known to CASA.

Regulation 139.170 – Notifying CASA of activities that create certain emissions sources

Subregulation 139.170(1) provides that this regulation applies if a person proposes to conduct an activity that will create an emissions source that will generate a gaseous efflux exceeding a stated speed, or will conduct an activity creating an emissions source of a kind prescribed by the Part 139 MOS.

Subregulation 139.170(2) provides that the person must notify CASA of the activity in writing. The subregulation provides a list of information that must be included in the notification.

Subregulation 139.170(3) provides that a contravention of subregulation 139.170(2) is an offence of strict liability. The penalty for the offence has been established as 10 penalty units.

Subregulation 139.170(4) provides that the kinds of emissions mentioned in paragraphs 139.170(1)(a) do not limit the kinds of emissions sources that may be prescribed by the Part 139 MOS.

This regulation is closely related to regulations 139.090 of CASR. Regulation 139.090 places a responsibility on an aerodrome operator to monitor emissions sources within the vicinity of its aerodrome.

This regulation does not apply in relation to the proposed construction or erection of *structures or objects*, which is regulated under regulation 139.165.

Division 139.E.2—Determination of hazards

This Division inserts a complete new Division 139.E.2 of CASR inclusive of regulations 139.175 to 139.185. It provides CASA with the authority to determine whether structures, objects or activities are a hazard to aircraft operations. It applies to both proposed and existing items.

The provisions in this Division mitigate against risks to the safety of air navigation by enabling CASA to determine that certain structures and activities are hazards to aircraft operations, and to ensure that information about hazards is published for the information of flight crew.

Determination of hazards also enables the management of associated aviation safety risks by activating powers for the marking and removal of hazards under:

- Division 9 of Part 9 of CAR;
- the *Civil Aviation (Buildings Control) Regulations 1988*; and
- Part 12 of the *Airports Act 1996* and the related *Airports (Protection of Airspace) Regulations 1996*.

Regulation 139.175 – Determination that certain existing objects, structures or emissions sources are a hazard to aircraft operations

Subregulation 139.175(1) provides that CASA may determine that objects or structures subject to regulation 139.165 are considered a hazard to aircraft operations.

Subregulation 139.175(2) provides that CASA may determine that creating an emissions source that generates a gaseous efflux with a certain velocity or is the kind mentioned in regulation 139.185 is considered a hazard to aircraft operations.

Subregulation 139.175(3) provides that when a structure or activity is determined to be a hazard, CASA must ensure particulars are published in applicable aviation information publications, unless the hazard is one that a person is obliged to report as the operator of a certified aerodrome under Division 139.C.3 of CASR. Subregulation 139.175(3) also provides that CASA must give written notice of the determination to the person responsible for the structure or activity, if known.

Regulation 139.180 – Determination that certain proposed objects, structures or emissions sources are a hazard to aircraft operations

Subregulation 139.180(1) provides that CASA may determine that certain proposed objects and structures (subject to regulation 139.185) are considered a hazard to aircraft operations.

Subregulation 139.180(2) provides that CASA may determine that proposed activities (those subject to regulation 139.185) are considered a hazard to aircraft operations.

Subregulation 139.180(3) provides that when a proposed structure or activity is determined to be a hazard, CASA must give written notice of the determination to the person who is proposing the structure or activity. If an approval is required from a third-party authority to construct or erect the object or structure or conduct the activity, CASA must also give written notice to that authority.

Regulation 139.185 – Kinds of objects, structures or emissions sources that may be hazards

Subregulation 139.185(1) provides that the Part 139 MOS may prescribe kinds of objects, structures or emissions sources that may constitute a hazard for the purposes of regulations 139.175 and 139.180.

Subregulation 139.185(2) provides that the kinds of objects or structures mentioned in paragraphs 139.175(1)(a) and (b), and 139.180(1)(a) and (b), do not limit the matters that may be prescribed in the Part 139 MOS under subregulation 139.185(1).

Subregulation 139.185(3) provides that the kinds of emissions sources mentioned in paragraphs 139.175(2)(a), and 139.180(2)(a) do not limit the matters that may be prescribed in the Part 139 MOS under subregulation 139.185(1).

The intent of this regulation is to ensure that CASA has sufficient scope to determine any objects, structures and activities that may constitute a safety hazard to aircraft operations.

Item 2 Regulation 201.003

This item renumbers the existing regulation subregulation 201.003(1) to accommodate the insertion of new subregulation (2) in item 3 below. Under existing subregulation 201.003(1), neither the Commonwealth nor CASA is liable in negligence or otherwise for any loss or damage incurred by anyone because of, or arising out of, the design, construction, restoration, repair, maintenance or operation of a limited category aircraft or an experimental aircraft, or any act or omission of CASA done or made in good faith in relation to any of those things.

Item 3 At the end of regulation 201.003

This item creates a new subregulation 201.003(2). Consistent with the exclusion of liability described in subregulation 201.003(1), the item provides the following:

Neither the Commonwealth nor CASA is liable, as a consequence of CASA exercising powers to conduct tests under regulation 139.135, or for any act or omission of CASA done or made in good faith in relation to those powers.

The tests under regulation 139.135 are tests conducted by CASA at certified aerodromes relating to facilities, equipment or procedures. The exclusion of Commonwealth and CASA liability is for any act or omission of CASA done or made in good faith in the course of conducting such tests.

Item 4 Part 1 of the Dictionary (definition of *aerodrome certificate*)

This item updates a cross reference in the definition of *aerodrome certificate*.

Item 5 Part 1 of the Dictionary (definition of *aerodrome manual*)

This item updates a cross reference in the definition of *aerodrome manual*.

Item 6 Part 1 of the Dictionary (definition of *aerodrome works*)

This item amends the definition of *aerodrome works* so that it additionally encompasses building or maintenance works that may create a hazard at an aerodrome.

Item 7 Part 1 of the Dictionary

This item inserts new definitions into the CASR Dictionary for the purpose of the provisions of Part 139 relating to frequency confirmation systems, air/ground radio services and certified air/ground radio service.

Item 8 Part 1 of the Dictionary (definition of *obstacle*)

This item repeals the definition of *obstacle*, which is defined in the CASR dictionary.

Item 9 Part 1 of the Dictionary (definition of *obstacle limitation surface*)

This item substitutes a new definition of *obstacle limitation surface* to reflect that the surfaces are ascertained in accordance with the Part 139 MOS.

Item 10 Part 1 of the Dictionary

This item inserts a new definition of *Part 139 Manual of Standards*, as meaning the Manual of Standards issued by CASA under regulation 139.005.