

## Explanatory Statement

### Acts Interpretation Act 1901

### Civil Aviation Safety Regulations 1998

### Part 139 (Aerodromes) Manual of Standards Amendment Instrument 2020 (No. 1)

#### Purpose

The *Part 139 (Aerodromes) Manual of Standards Amendment Instrument 2020 (No. 1)* (the **new MOS amendment**) amends the *Part 139 (Aerodromes) Manual of Standards 2019* (the **new MOS**) to make transitional arrangements in anticipation of the commencement of the new MOS on 13 August 2020. This will provide aerodrome operators with more time to implement certain aspects of the new MOS.

#### Legislation

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. The *Civil Aviation Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1998 (CASR)* are made under the Act.

Under regulation 139.005 of CASR (originally contained in the *Civil Aviation Safety Amendment (Part 139) Regulations 2019* (the **new Part 139 regulations**), made on 21 February 2019 and to commence on 22 August 2020), the Civil Aviation Safety Authority (**CASA**) may issue a Manual of Standards (**MOS**) for Part 139 of CASR that prescribes matters required or permitted by that Part to be prescribed, or necessary or convenient for carrying out or giving effect to new Part 139 regulations. This power is complemented by other provisions, throughout new Part 139 regulations, which empower CASA to prescribe specific matters in the new MOS.

#### Legislation — *Acts Interpretation Act 1901*

Under subsection 33 (3) of the *Acts Interpretation Act 1901* (the **AIA**), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Section 4 of the AIA provides, among other things, that if an Act (including a regulation) is enacted and at a time after its enactment (the **start time**) the Act will confer power to make an instrument, that power may be exercised before the start time as if the relevant commencement had occurred. However, in general terms, the exercise of this power does not confer a power or right to impose an obligation on a person before the relevant commencement. Using section 4 of the AIA, the new MOS was made under new regulation 139.005 of CASR, a regulation that originally was not to commence until 22 August 2020.

#### Background

The new MOS sets out the standards for the construction, maintenance and operation of certified aerodromes, and the standards for radiocommunications facilities at all aerodromes. As a result of amendments made to the new Part 139 regulations by the *Civil Aviation Legislation Amendment (Part 139) Aerodromes — Transitional Provisions and Consequential Amendments) Regulations 2020* (the **new Part 139 amendment regulations**), the new Part 139 regulations commence on 13 August 2020, as does the new MOS. The new MOS replaces the Manual of

Standards (MOS) – Part 139 Aerodromes (the *old MOS*) which is consequentially repealed on 13 August 2020 by virtue of the repeal of its original empowering provision by the new Part 139 regulations. (That original empowering provision was in regulation 139.015 of the previous Part 139 of CASR (the *old Part 139 regulations*)).

For the purposes of this commencement, transitional provisions are required to delay or modify the application of a small number of provisions in order to allow more time for implementation by aerodrome operators, in the main, operators who, immediately before 13 August 2020, operated registered aerodromes. The purpose of the new MOS amendment is to create the requisite transitional arrangements for this. The relevant matters are the standards applying to the following: technical inspection programs, aerodrome manual validations and reports, wildlife hazard management plans, aerodrome emergency plans, safety management systems (for both former certified aerodromes and registered aerodromes), and risk management plans.

The new MOS amendment also provides for grandfathering of new aerodrome infrastructure construction and development that had either commenced or reached a prescribed stage of planning or funding maturity. Under the transitional provisions, these aerodrome facility developments may continue to adhere to the relevant standards in the old MOS for aerodrome facilities, for construction of the facility, and from the completion of construction of the facility until the facility is replaced or upgraded. Processes and systems are not aerodrome facilities and, subject to any transitional provisions, the standards for these in the new MOS apply to the operators of all new aerodrome facilities from 13 August 2020.

The new MOS amendment also clarifies the operation of a provision of the new MOS that protects the position of other grandfathered aerodrome operators. These are a category of pre-existing operators who may continue to comply with the physical infrastructure standards prescribed under the old MOS that is otherwise repealed. The new MOS amendment also corrects some description and typographical errors in the MOS.

### **The new MOS**

Details of the new MOS amendment are set out in Attachment A.

### ***Legislation Act 2003***

Under subsection 8 (4) of the *Legislation Act 2003*, (the *LA*), an instrument is a legislative instrument if it is made under a power delegated by the Parliament, and any provision determines the law or alters the content of the law, and it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right. The new MOS amendment satisfies these requirements and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

### **Incorporations by reference**

The new MOS amendment has the effect of incorporating into the new MOS, from 13 August 2020, the relevant standards from the old MOS, as in force immediately before 13 August 2020, that apply to the 2 categories of grandfathered aerodrome operators. The old MOS has certain and precise legal existence and, like the new MOS, is a legislative instrument.

Under subsection 14 (1) of the LA, a legislative instrument may incorporate provisions from another legislative instrument as in force at a particular time, or as in force from time to time. The old MOS is freely available on the Federal Register of Legislation at:

<https://www.legislation.gov.au/Details/F2017C00087/Download>.

## Consultation

In 2017, CASA conducted a post-implementation review of the old Part 139 regulations and the old MOS. This ultimately led to the new Part 139 regulations being made in February 2019, and the new MOS being made and registered in September 2019.

A transition strategy for implementation of the new Part 139 regulations and the new MOS is complex and technically detailed but it is, nevertheless, a technical and machinery matter. Despite that, CASA decided to engage in public and industry consultation from 3 February to 2 March 2020. Included among the implementation policy proposals in this consultation were the matters that are the subject of the new MOS amendment and its transitional provisions.

There were 16 responses from 322 certified and registered aerodrome operators to this consultation and these indicated general support for the transitional provisions. It should be noted that the transitional provisions provide industry with additional time to comply with new requirements and the number of registered aerodromes affected by the new provisions is very small.

Half of the 16 respondents objected to CASA bringing forward the commencement date for the new MOS amendment from 22 August 2020 to 13 August 2020. CASA considered these concerns but regarded 13 August 2020 as, nevertheless, the more appropriate commencement date because it aligns with the publication date of the AIP-ERSA which, as a result, will be able to reflect that all current registered aerodromes will be deemed to be certified aerodromes. If CASA had adhered to the later date, the August 2020 issue of the AIP-ERSA would have been rendered out-of-date within 2 weeks of its publication.

Some respondents commented on the two-year deferral for the requirement to have an SMS and risk management plans, aerodrome emergency plan and exercises, and wildlife hazard management plan, suggesting that these should be included in the aerodrome manual and thus made subject to the same completion timeframe provided for under subregulation 202.702 of CASR for submitting a new aerodrome manual to CASA. CASA considered these comments but noted that, under subregulations 202.702 (5) and (6), the new aerodrome manual for registered aerodromes is required to be submitted any time up until 13 May 2022, whereas under the MOS amendment, such things as SMS, risk management plans, aerodrome emergency plans and exercises are required to be established any time up until 13 November 2022. This means that the aerodrome manual could be prepared well in advance of the time actually being allowed to develop SMS and risk management plans. It is appropriate to allow this extra time to develop and document these new procedures.

Some respondents commented on the two-year deferral for a first aerodrome technical inspection (*ATI*) that is provided for registered aerodromes that currently meet the applicable passenger or aircraft volume trigger numbers for this inspection. CASA considered these comments but noted that conducting an ATI is not a current requirement for these aerodromes and, therefore, the deferral does not create any additional safety risk. In addition, a registered aerodrome with a number of air transport operations and which, as a result, had conducted a safety inspection in the year prior to commencement of the new MOS amendment is required to conduct the ATI within 1 year of commencement of the new MOS.

Following the public consultation, Australia, and indeed the rest of the world, has had to deal with the COVID-19 pandemic. Where it was safe to do so, CASA has provided pilots and operators with temporary alleviation from some regulatory requirements, for example, in relation to the validity and recency of pilot licences and air traffic control licenses. On 15 April 2020, the Australian Airports Association wrote to CASA requesting that commencement of the new MOS amendment be postponed for 12 months due to difficulties some registered aerodrome operators

faced in finding aerodrome technical inspectors and aerodrome consultants, particularly for preparation of new aerodrome manuals.

In considering this request, CASA noted that some aerodrome operators were likely already to be in the process of adopting the new standards in the design and construction of new aerodrome facilities and a 12-month deferral would unduly prejudice them. As a more appropriate mitigating alternative, CASA decided to retain the 13 August 2020 commencement date for the new MOS amendment while adding an additional 3 months to the required completion dates for the transitional arrangements and their requirements.

Subpart 11.J of CASR requires CASA to consult again on the actual transitional provisions in the new MOS amendment. However, in context, this is clearly unnecessary. Although technically detailed, when set in the overall context of previous consultation, the transitional provisions are essentially a matter that could reasonably be described as of a minor and machinery nature. The Director of Aviation Safety has made a Determination to that effect for the purposes of paragraph 11.275 (1) (d) of CASR. The effect of this to relieve CASA of the obligation under Subpart 11.J of CASR to consult again, for a further 4 weeks, on the transitional provisions in the new MOS amendment instrument. A copy of the Determination and the Reasons for it are on the CASA website (<https://www.casa.gov.au/rules-and-regulations/current-rules/legislative-and-non-legislative-instruments/non-legislative-instruments>).

In conclusion, CASA considers that the new MOS amendment had been the subject of reasonable and adequate public and industry consultation, it was generally supported, and that no further consultation is necessary.

### **Regulation Impact Statement (RIS)**

A RIS was prepared by CASA for the new Part 139 regulations and this RIS also covered the new MOS which the regulations empowered. The RIS was assessed by the Office of Best Practice Regulation (**OBPR**) as compliant with the OPBR requirements and contained a level of analysis commensurate with the likely impacts (OBPR id: 24678). A copy of the RIS was included in the Explanatory Statement for the new Part 139 regulations (<https://www.legislation.gov.au/Details/F2019L00176/Download>).

The new MOS amendment does not alter any of the conclusions of the RIS. In addition, under OBPR Guidance Note (February 2016), and the CASA/OBPR agreement (reference OPBR ID No. 14507), amendments to MOSs that are of a minor or machinery nature do not require a RIS. Insofar as the new MOS amendment does not substantially alter existing arrangements but provides only for transitional arrangements, it may be said to be of a minor or machinery nature.

### **Statement of Compatibility with Human Rights**

The Statement in Attachment B is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The MOS amendment is compatible with human rights and, to the extent that it may engage certain rights only by virtue of amending some provisions that were the subject of the earlier Statement of Compatibility for the new MOS, it does so in such a way that rights are not further affected and the earlier Statement may be considered to apply.

However, as noted above, a number of transitional dates have been extended by a further 3 months directly as a result of the effects of the social distancing and other rules arising from the COVID-19 pandemic. In the light of this, the further Statement of Compatibility in Attachment B is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The MOS amendment is compatible with human rights and, to the extent that it engages certain rights there described, it does so in a way that, in the context of the COVID-19 pandemic, as far as practicable, promotes rather than limits those rights.

**Commencement and making**

The new MOS amendment commences on 13 August 2020 immediately after commencement of the new Part 139 regulations. It has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

## Details of the Part 139 (Aerodromes) Manual of Standards Amendment Instrument 2020 (No. 1)

### 1 Name of instrument

This section names the instrument.

### 2 Commencement

Under this section, the instrument commences on 13 August 2020.

### 3 Amendment of the *Part 139 (Aerodromes) Manual of Standards 2019*

This section provides that Schedule 1 amends the *Part 139 (Aerodromes) Manual of Standards 2019*.

## Schedule 1 Amendments

### Amendment No. 1

#### Division 1 General

This amendment creates a new Chapter 1A, Transitional Provisions. It relies on the effect of regulations 202.701 and 202.702, which were inserted into the CASR by the new Part 139 amendment regulations.

The effect of these provisions is to deem operators of existing certified aerodromes and registered aerodromes to be holders of a transitional aerodrome certificates under the new Part 139 regulations until a specified time:

- by which time, to retain the status of certified aerodrome under those regulations, they must have revised their existing aerodrome manual, or developed a new aerodrome manual, in accordance with the new MOS (existing registered aerodrome operators were not previously required to have an aerodrome manual, hence they require time to develop one, *de novo*)
- during which time, they must otherwise comply with the requirements of the new Part 139 regulations and the new MOS
- at the end of which time, the operators must have compliant aerodrome manuals and be issued with new aerodrome certificates.

#### 1A.01 Application

New Chapter 1A comprises 8 Divisions. Under new section 1A.01:

- (a) Divisions 2 to 6, and Division 8 apply to an aerodrome that immediately before 13 August 2020 was a registered aerodrome to which a provision of the new MOS applies on and after 13 August 2020 as a consequence of the operation of regulations 202.701 and 202.702 of CASR; and
- (b) Division 7 applies to an aerodrome that immediately before 13 August 2020 was a certified aerodrome that has scheduled international air transport operations, to which a provision of this MOS applies on and after 13 August 2020 as a consequence of the operation of regulations 202.701 and 202.702 of CASR.

## Division 2 Technical inspection programs

### 1A.02 Technical inspection programs

(See section 1A.01 — this section applies only to a former registered aerodrome.)

Under subsections 12.06 and 12.07 of the new MOS, ATIs are triggered at certain volumes of aerodrome activity measured over the course of a financial year.

Thus, under subsection 12.06 (1), for an aerodrome that, *in the course of a financial year*, has 50 000 or more air transport passenger movements, or 100 000 or more aircraft movements, a technical inspection program must be established and implemented for the aerodrome.

Under subsection 12.06 (2), all elements of the first ATI must be implemented not later than 12 months after official confirmation that there have been 50 000 or more air transport passenger movements, or the date the aerodrome operator becomes aware that there have been 100 000 or more aircraft movements.

Under subsection 12.07 (1), for an aerodrome that, *in the course of a financial year*, has at least 10 000 but less than 50 000 air transport passenger movements, or at least 20 000 but less than 100 000 aircraft movements, a technical inspection program must be established and implemented for the aerodrome.

Under subsection 12.07 (2), all elements of the first ATI must be implemented not later than 12 months after official confirmation that there have been at least 10 000 air transport passenger movements, or the date the aerodrome operator becomes aware that there have been at least 20 000 aircraft movements.

The transitional arrangements are designed to delay the immediate impact and cost of the requirement to conduct ATIs for former registered aerodromes which would otherwise arise on and from 13 August 2020.

Thus, new section 1A.02 applies despite subsections 12.06 (2) and 12.07 (2). For *the first application* of subsection 12.06 (1) or 12.07 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020.

For the first application of subsection 12.06 (1) or 12.07 (1) to an aerodrome, all elements of the first ATI must be implemented not later than 13 November 2022. However, if, in the 12 months immediately before 13 August 2020, a safety inspection had been conducted for the aerodrome under regulation 139.315 of CASR (as in force immediately before 13 August 2020) then for the first application of subsection 12.06 (1) or 12.07 (1) to the aerodrome all elements of the first ATI must be implemented not later than 13 November 2021.

Although for the first application of subsection 12.06 (1) or 12.07 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020, there is no prejudicial retrospectivity arising from this that could adversely affect any aerodrome operator.

First, with respect to subsection 12 (2) of the LA, there is no question of the new MOS, or the new MOS amendment, commencing before they are registered which, were that to occur, would give rise to potential inappropriate retrospectivity under subsection 12 (2).

Secondly, use of the financial year commencing on 1 July 2020 simply means that it will be the data published at the end of the 2020-2021 financial year, or the operator awareness that will arise with respect to the 2020-2021 financial year, that will be instrumental in determining whether the operative trigger to conduct an ATI, at the end of that time, has arisen. This approach is in full conformity with the principle enunciated by Dixon J in *Maxwell v Murphy* [1957] HCA 7 (at paragraph 7):

The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events. But, given rights and liabilities fixed by reference to past facts, matters or events, the law appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption.

This approach was explained and applied by the Full Court in *Robertson v City of Nunawading*, 1973, VR, 819 (Winneke CJ, Gowans and Starke JJ) where it was said of the principle of non-retrospective operation:

It is to be observed that this principle is not concerned with the case where the enactment under consideration *merely takes account of antecedent facts and circumstances as a basis for what it prescribes for the future*, and it does no more than that...

Thus the use, for the commencement of a period over which data or awareness is collected or arrived at, of a financial year which commences on 1 July 2020, some 6 weeks before the relevant new MOS commences, is, at most, no more than a “*reference to past facts, matters or events*” or a “[mere taking] account of antecedent facts and circumstances *as a basis for what [is prescribed] for the future*” and does not involve any retrospective change in the law, or any prejudicial retrospectivity.

### **Division 3 Annual aerodrome manual validation and report**

#### **1A.03 Annual aerodrome manual validation and report**

(See section 1A.01 — this section applies only to a former registered aerodrome.)

Under section 12.11 of the new MOS, an aerodrome manual validation must be carried out if certain volumes of aerodrome activity are measured over the course of a financial year.

Under subsection 12.11 (1), for an aerodrome that, *in the course of a financial year*, has less than 10 000 air transport passenger movements, or less than 20 000 aircraft movements, an aerodrome manual validation (a **manual validation**) must be carried out.

Under subsection 12.11 (2), the first manual validation must be carried out not later than 12 months after official confirmation that there have been less than 10 000 air transport passenger movements, or the date the aerodrome operator becomes aware that there have been less than 20 000 aircraft movements.

Under paragraph 12.11 (11) (d), the manual validation must include a check of the currency and accuracy of aerodrome information published in the AIP.

The transitional arrangements are designed to delay the immediate impact and cost of the requirement to conduct a manual validation for former registered aerodromes which would otherwise arise under the MOS on and from 13 August 2020 in circumstances in which transitioning registered aerodromes do not yet have aerodrome manuals, and for the development



of which, under subregulations 202.702 (5) and (6) of CASR (contained in the new Part 139 amendment regulations), they have been given extra time (up to 13 May 2022).

Thus, new section 1A.03 applies despite subsection 12.11 (2). For *the first application* of subsection 12.11 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020.

For the first application of subsection 12.11 (1) to an aerodrome, the first aerodrome manual validation must be carried out not later than 12 months after CASA grants the aerodrome operator a new aerodrome certificate under paragraph 202.702 (7) (a) of CASR. However, in the interests of aviation safety, the aerodrome operator must conduct a check of the currency and accuracy of aerodrome information published in the AIP not later than the date on which the aerodrome operator would have been required to comply with subparagraph 12.11 (11) (d) (i) if this transitional arrangement had not been made.

Although for the first application of subsection 12.11 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020, there is no prejudicial retrospectivity arising from this that could adversely affect any aerodrome operator, for the reasons discussed above.

## **Division 4 Wildlife hazard management plans**

### **1A.04 Wildlife hazard management plans**

(See section 1A.01 — this section applies only to a former registered aerodrome.)

Under section 17.03 of the new MOS, a wildlife hazard management plan must be prepared and implemented if certain volumes of aerodrome activity are measured over the course of a financial year.

Under subsection 17.03 (1), for an aerodrome that, *in the course of a financial year*, has 50 000 or more air transport passenger movements, or 100 000 or more aircraft movements, the aerodrome operator must prepare and implement a wildlife hazard management plan.

Under subsection 17.03 (2), the plan must be prepared and implemented not later than 6 months after official confirmation that there have been 50 000 or more air transport passenger movements, or the date the aerodrome operator becomes aware that there have been 100 000 or more aircraft movements.

The transitional arrangements are designed to delay the immediate impact and cost of the requirement to prepare and implement a wildlife hazard management plan for former registered aerodromes which would otherwise arise on and from 13 August 2020.

Thus, new section 1A.04 applies despite subsection 17.03 (2). For *the first application* of subsection 17.03 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020.

For the first application of subsection 17.03 (1) to an aerodrome, the wildlife hazard management plan must be prepared and implemented not later than 13 November 2022.

Although for the first application of subsection 17.03 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020, there is no prejudicial retrospectivity arising from this that could adversely affect any aerodrome operator, for the reasons discussed above.

## **Division 5 Aerodrome emergency plans**

### **1A.05 Aerodrome emergency plans**

(See section 1A.01 — this section applies only to a former registered aerodrome.)

Under section 24.02 of the new MOS, certain aerodrome operators must have an aerodrome emergency plan if certain volumes of aerodrome activity are measured over the course of a financial year or if there are scheduled international air transport operations at the aerodrome.

Under subsections 24.02 (1) and (2), the aerodrome operator must have an aerodrome emergency plan for the aerodrome:

- before scheduled international air transport operations commence; or
- not later than 6 months after official confirmation that there have been 50 000 or more air transport passenger movements; or
- not later than 6 months after the date the aerodrome operator becomes aware that there have been 100 000 or more aircraft movements.

The transitional arrangements are designed to delay the immediate impact and cost of the requirement to prepare an aerodrome emergency plan for former registered aerodromes which would otherwise arise on and from 13 August 2020.

Thus, new section 1A.05 applies despite subsection 24.02 (2), and as if the reference in subsection 24.02 (1) to subsection 24 02 (2) were a reference to subsection (3) of section 1A.05.

For *the first application* of subsection 24.02 (1) (as so modified) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020.

For the first application of subsection 24.02 (1) (as so modified) to an aerodrome:

- (a) the aerodrome operator must have an aerodrome emergency plan not later than 13 November 2022; and
- (b) until 13 November 2022, section 24.05 (emergency aerodrome plan testing) does not apply to the aerodrome operator; and
- (c) until 13 November 2022, section 24.06 (procedures for emergency preparedness) applies to the aerodrome operator.

Although for the first application of subsection 24.02 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020, there is no prejudicial retrospectivity arising from this that could adversely affect any aerodrome operator, for the reasons discussed above.

## **Division 6 Requirement for an SMS**

### **1A.06 Requirement for an SMS (registered aerodromes)**

(See section 1A.01 — this section applies only to a former registered aerodrome.)

Under section 25.02 of the new MOS, an aerodrome operator must have a safety management system (an *SMS*) if certain volumes of aerodrome activity are measured over the course of a financial year.

Under subsection 25.02 (1), for an aerodrome that, *in the course of a financial year*, has 50 000 or more air transport passenger movements, or 100 000 or more aircraft movements, the aerodrome operator must have an SMS.

Under subsection 25.02 (2), the plan must be prepared and implemented not later than 12 months after: official confirmation that there have been 50 000 or more air transport passenger

movements, or the date the aerodrome operator becomes aware that there have been 100 000 or more aircraft movements.

The transitional arrangements are designed to delay the immediate impact and cost of the requirement to have an SMS for former registered aerodromes which would otherwise arise on and from 13 August 2020.

Thus, new section 1A.06 applies despite subsection 25.02 (2). For *the first application* of subsection 25.02 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020.

For the first application of subsection 25.02 (1) to an aerodrome, the first SMS must be prepared and implemented not later than 13 November 2022.

Although for the first application of subsection 25.02 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020, there is no prejudicial retrospectivity arising from this that could adversely affect any aerodrome operator, for the reasons discussed above.

## **Division 7 Requirement for an SMS (certified aerodromes with scheduled international air transport operations)**

### **1A.07 Requirement for an SMS**

(See section 1A.01 — this section applies only to the former certified aerodromes with scheduled international air transport operations.)

Under section 25.02 of the new MOS, an aerodrome operator must have an SMS if certain volumes of aerodrome activity are measured over the course of a financial year.

Under subsection 25.02 (1), for an aerodrome that, *in the course of a financial year*, has 50 000 or more air transport passenger movements, or 100 000 or more aircraft movements, the aerodrome operator must have an SMS.

Under subsection 25.02 (2), the plan must be prepared and implemented not later than 12 months after: official confirmation that there have been 50 000 or more air transport passenger movements, or the date the aerodrome operator becomes aware that there have been 100 000 or more aircraft movements.

Under section 25.04 of the new MOS, international aerodrome operators, all of whom are already obligated to have an SMS, must expand that SMS so that it includes additional safety management provisions covering, for example, management commitment, safety objectives, safety accountabilities and responsibilities, appointment of a primary person responsible for the SMS, third-party interfaces, and coordination of emergency response planning (*relevant matters*).

Thus, new section 1A.07 applies to the operator of an aerodrome that, immediately before 13 August 2020, had scheduled international air transport operations. For the first application of paragraph 25.04 (1) (b) to the aerodrome, the first SMS that provides for, and includes documented details of, relevant matters as mentioned in subsections 25.04 (2) to (16) must be prepared and implemented not later than 13 November 2021.

The transitional arrangements are designed to delay the immediate impact and cost of the requirement to have a fully complying SMS for former certified aerodromes with scheduled international air transport operations which would otherwise arise on and from 13 August 2020.

The issue of retrospectivity does not arise because the relevant international aerodrome operators, are already obligated to have a basic SMS, and the transitional provision delays the requirement to enlarge that SMS.

## **Division 8 Risk management plans**

### **1A.08 Risk management plans**

(See section 1A.01 — this section applies only to a former registered aerodrome.)

Under section 26.02 of the new MOS, except when an SMS is provided, an aerodrome operator must have a risk management plan (**RMP**) if certain volumes of aerodrome activity are measured over the course of a financial year.

Under paragraphs 26.02 (1) (c) and (d), for an aerodrome that, *in the course of a financial year*, has 25 000 or more air transport passenger movements, or 20 000 or more aircraft movements, the aerodrome operator must have an RMP.

Under subsection 26.02 (1), the plan must be prepared and implemented not later than 12 months after: official confirmation that there have been 25 000 or more air transport passenger movements, or the date the aerodrome operator becomes aware that there have been 20 000 or more aircraft movements.

The transitional arrangements are designed to delay the immediate impact and cost of the requirement to have an RMP for former registered aerodromes which would otherwise arise on and from 13 August 2020.

Thus, new section 1A.07 applies despite paragraphs 26.02 (1) (c) and (d). For *the first application* of subsection 26.01 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020.

For the first application of subsection 26.02 (1) to an aerodrome, the first RMP must be prepared and implemented not later than 13 November 2022.

Although for the first application of subsection 26.02 (1) to an aerodrome, “financial year” is taken to be the financial year commencing on 1 July 2020, there is no prejudicial retrospectivity arising from this that could adversely affect any aerodrome operator, for the reasons discussed above.

### **Amendment No. 2**

#### **Paragraph 2.04 (3) (a)**

This amendment merely clarifies that a grandfathered facility retains that status as long as it complies, and continues to comply, with the standards which applied to the aerodrome facility and the obstacle limitation surfaces (the **OLS**) immediately before the commencement of the new MOS, *as if those previous standards continued in force (known as **grandfathered rules**)*.

### **Amendment No. 3**

#### **After subsection 2.04 (3)**

This amendment is also for clarification in relation to grandfathered facilities. A new subsection 2.04 (3A) provides that the grandfathered rules apply to a grandfathered facility and, for this purpose, the provisions of the old MOS (including the OLS associated with a runway) are incorporated into the new MOS, as those provisions were in force immediately before 13 August 2020.

A new subsection 2.04 (3B) provides that the requirements of the new MOS in relation to an aerodrome facility apply to a grandfathered facility if it fails to comply with the grandfathered rules in accordance with section 2.04. A Note explains that the purpose of subsection (3B) is to remove any doubt that, despite the incorporation of previous standards for certain circumstances,

any enforcement action for failure to comply with relevant standards provided for by this MOS will be under Part 139 of CASR and this MOS.

#### **Amendment No. 4**

#### **After section 2.04**

#### **2.04A Application — grandfathering of new aerodrome facility developments**

This amendment inserts a new section 2.04A whose purpose is to provide for grandfathering of aerodrome infrastructure developments and redevelopments that had either commenced or reached a prescribed stage of planning maturity so that they could continue to be subject to the old MOS under which the development had begun.

Under subsection 2.04A (1), a *new aerodrome facility*, for an existing aerodrome other than an aerodrome that is compliant with the standards in this MOS for aerodrome facilities, is defined as an aerodrome facility that did not exist at the aerodrome before 6 September 2019, and which meets the other defined criteria. The date, 6 September 2019, is the date the new MOS, with its new prospective standards, was registered and became publicly available. The aerodrome facility must also be one for which the process of bringing it into existence (the *development process*) was started before 6 September 2019; and whose construction is completed:

- for an aerodrome facility under construction before 6 September 2019 — before 13 November 2021
- for an aerodrome facility not under construction before 6 September 2019 — before 13 November 2022.

The expression, *development process*, is also defined to mean any of a number of distinct development stages from actually being under construction to being the subject of certain approvals or funding arrangements.

Subsection 2.04A (3) provides that the standards in the new MOS for an aerodrome facility and the OLS associated with a runway do not apply to the new aerodrome facility as long as it:

- (a) complies with the standards under the old MOS; and
- (b) is not:
  - (i) replaced; or
  - (ii) upgraded; and
- (b) is maintained in accordance with the requirements of this MOS for the same kind of facility.

A Note explains that subsection 2.04A (3) indicates when this MOS does not apply to a new aerodrome facility. Without this protected status, all of the requirements of this MOS would apply. With protected status, only the standards in this MOS for an *aerodrome facility* and for the OLS associated with a new runway that is, or is part of, such a new facility, do not apply. Instead, the standards for the aerodrome facility and runway-associated OLS contained in the relevant old MOS rules apply. Processes or systems are not aerodrome facilities (as defined) and, subject to any transitional provisions, the standards for these in this MOS apply to the operators of all new aerodrome facilities from the completion of construction of the facility until the facility is replaced or upgraded.

Under subsection 2.04A (4), the relevant old MOS rules apply to the new aerodrome facility and for this purpose the relevant old MOS rules, including the OLS associated with a runway, as in force immediately before 13 August 2020 are incorporated into the new MOS.

Under subsection 2.04A (5), the requirements of the new MOS apply to a new aerodrome facility if it fails to comply with the relevant old MOS rules in accordance with this section.

A Note explains that the purpose of subsection (5) is to remove any doubt that, despite the incorporation into the new MOS of previous standards for certain circumstances (*relevant standards*), any enforcement action for demonstrable failure to comply with those relevant standards as provided for by this MOS will be under the new Part 139 regulations and the new MOS. This is because the relevant provisions of these 2 instruments constitute the default applicable rules in the event of such a failure.

Subsection 2.04A (6) makes it clear that the MOS applies to a new aerodrome facility if, before construction of the facility is completed, the relevant or proposed aerodrome operator notifies CASA, in writing, that from a specified date sooner than would otherwise have been the case under this section the facility will comply with the requirements of this MOS for the facility.

### **Amendment No. 5**

#### **Subsection 5.12 (6), the Note only**

This amendment corrects an erroneous reference. The Note should have referred to the runway code number and not the aircraft code number.

### **Amendment No. 6**

#### **Subsection 6.04 (2)**

This amendment corrects a description error.

### **Amendment No. 7**

#### **Subsection 6.08 (2)**

This amendment corrects a description error.

### **Amendment No. 8**

#### **Subsection 6.41 (2)**

This amendment corrects a description error.

### **Amendment No. 9**

#### **Section 6.53, Table 6.53 (1)-1**

This amendment corrects a column title error in the Table.

### **Amendment No. 10**

#### **Figure 8.58 (2)-1**

This amendment corrects an error in depicting a dimension in the Figure.

### **Amendment No. 11**

#### **Section 9.20, the Note**

This amendment corrects a reference to the activation of pilot activated lighting (PAL) from 3 bursts of 1 second to 3 bursts of 3 seconds.

**Amendment No. 12**

This amendment corrects a cross-reference.

**Amendment No. 13**

This amendment corrects an omission. Subsection 9.44 (5) provides for the location of an AT-ASIS (a form of approach slope indicator to guide pilots). It should also have included mention of a PAPI (a different kind of approach slope indicator) which is similarly located.

**Amendment No. 14****Subsection 9.105 (3)**

This amendment corrects a reference to relevant distances for RVR conditions where the inclusion of 550 m is corrected to “less than” 550 m.

**Amendment No. 15****Paragraph 9.105 (4) (a)**

The amendment is consequential on Amendment 12.

**Amendment No. 16****Subsection 9.105 (4), Note 2**

The amendment is consequential on Amendment 12.

**Amendment No. 17****Subsection 9.108 (1)**

This amendment corrects a description error.

**Amendment No. 18****Section 13.02, the Note**

This amendment corrects an erroneous cross-reference.

## Statement of Compatibility with Human Rights

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

### Part 139 (Aerodromes) Manual of Standards Amendment Instrument 2020 (No. 1)

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 legislative instrument

The *Part 139 (Aerodromes) Manual of Standards Amendment Instrument 2020 (No. 1)* (the **new MOS amendment**) amends the *Part 139 (Aerodromes) Manual of Standards 2019* (the **new MOS**) to make transitional arrangements in anticipation of the commencement of the new MOS on 13 August 2020. This will provide aerodrome operators with more time to implement certain aspects of the new MOS.

The new MOS sets out the standards for the construction, maintenance and operation of certified aerodromes, and the standards for radiocommunications facilities at all aerodromes. As a result of amendments made to the new Part 139 regulations by the *Civil Aviation Legislation Amendment (Part 139) Aerodromes — Transitional Provisions and Consequential Amendments) Regulations 2020* (the **new Part 139 amendment regulations**), the new Part 139 regulations commence on 13 August 2020, as does the new MOS. The new MOS replaces the Manual of Standards (MOS) – Part 139 Aerodromes (the **old MOS**) which is consequentially repealed on 13 August 2020 by virtue of the repeal of its original empowering provision by the new Part 139 regulations. (That original empowering provision was in regulation 139.015 of the previous Part 139 of CASR (the **old Part 139 regulations**).)

For the purposes of this commencement, transitional provisions are required to delay or modify the application of a small number of provisions to certain matters in order to allow more time for implementation by aerodrome operators. That is the purpose of the new MOS amendment. The relevant matters are the standards applying to certain inspection programs, validation reports, various management plans and safety management systems.

The new MOS amendment also provides for grandfathering of aerodrome infrastructure developments and redevelopments that had either commenced or reached a prescribed stage of planning maturity. These aerodrome facility developments may continue to adhere to the relevant standards in the old MOS for aerodrome facilities although processes and systems are not aerodrome facilities (as defined) and, subject to any transitional provisions, the standards for these in the new MOS apply to the operators of all new aerodrome facilities from the completion of construction of the facility until the facility is replaced or upgraded.

The new MOS amendment also clarifies the operation of a provision of the new MOS that protects the position of other grandfathered aerodrome operators. These are a category of pre-existing operators who may continue to comply with the physical infrastructure standards prescribed under the old MOS that is otherwise repealed. The new MOS amendment also corrects some description and typographical errors in the MOS.

#### Human rights implications

The new MOS which is being amended was the subject of an extensive Statement of Compatibility at pages 11 to 14 of the Explanatory Statement for the new MOS in September 2019 (<https://www.legislation.gov.au/Details/F2019L01146/Download>).



Some provisions of the new MOS which were covered by that earlier Statement are being amended but not in a way that affects rights in the context of the application of the previous Statement to the new MOS or, by extension, to the MOS amendment.

However, directly as a result of the ongoing and longitudinal impact of the COVID-19 pandemic on the availability of trained personnel and their ability to go about specific planning and other tasks, a number of transitional completion dates have been extended by 3 months beyond dates originally nominated. These include extensions for completion of operations manuals and safety plans (including technical inspection programs, wildlife hazard management plans, aerodrome emergency plans, safety management systems, and risk management plans), as well as the completion of grandfathered new aerodrome developments.

As a result, the MOS amendment may engage the following human rights:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the *ICCPR*)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the *ICESCR*)
- the right to work under Article 6 (1) of the *ICESCR*.

***Right to life under the ICCPR***

***Right to safe and healthy working conditions under the ICESCR***

***Right to work under the ICESCR***

The COVID-19 pandemic has given rise to the need to observe Australian Government social distancing rules to prevent people contracting or spreading the virus. These rules apply to all, including to protect the life, health and safety of personnel engaged by aerodrome operators in activities like planning and construction. At the same time, aviation safety at aerodromes requires aerodrome operators to adhere to certain regulatory requirements in relation to such planning and construction.

It follows that if essential aviation services at aerodromes are to be safely continued, a careful and calculated balance has had to be struck between these competing objectives. CASA's decision to extend by 3 months the transitional dates for the matters described above is considered to achieve an appropriate balance. Easing time limits in this modest way will contribute to protecting the right to life of some personnel who might otherwise have been obliged to expose themselves to COVID-19 because of the time pressures to complete relevant work.

A consequential effect of the careful balance described above is to protect the right to work of various categories of aerodrome personnel who might otherwise have lost that right, for example, by choosing not to risk exposure to the virus sooner than would otherwise be reasonable.

**Human rights implications**

The MOS amendment instrument is, therefore, 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*. To the extent that the instrument engages certain of these rights, it does so in a way that is reasonable, necessary and proportionate to ensure the safety of relevant aerodrome personnel during the COVID-19 pandemic, but also in a calculated and balanced way that does not undermine aerodrome safety.

**Conclusion**

This MOS amendment is compatible with human rights, and to the extent that it engages certain rights it does so in a way that, in the context of the COVID-19 pandemic, as far as practicable, promotes rather than limits those rights.