

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Part 101 Manual of Standards (Miscellaneous Amendments) Instrument 2020 (No. 1)

##### Purpose

The *Part 101 Manual of Standards (Miscellaneous Amendments) Instrument 2020 (No. 1)* (the **MOS amendment**) is intended to make a number of minor or machinery amendments to the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (as amended) (the **Part 101 MOS**).

The MOS amendments include a particular “take effect” date deferral, transitional arrangements, and administrative procedures consequential upon the commencement (on 30 September 2020) of the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 2019*, as amended by the No. 2 Regulations of the same name (the **amendment regulations**).

The MOS amendments do the following:

- modify a take effect date relating to new requirements for a person to qualify as a remote pilot licence (**RePL**) training instructor
- make transitional arrangements for the recognition of remotely piloted aircraft (**RPA**) training commenced before 10 October 2020, that is, before the new set of RPA training course standards under the Part 101 MOS, commences on 10 October 2020
- modify the requirements placed on certain RPA operators, first, to notify CASA before the first operation of the RPA and, secondly, to update CASA on changes to information previously given to CASA
- prescribe certain arrangements consequential upon new regulations contained in the amendment regulations in relation to various administrative procedures.

##### Legislation — the Act

Under subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**), the Governor-General may, among other things, make regulations prescribing matters required, permitted, necessary or convenient for the Act and in the interests of the safety of air navigation. Part 101 of the *Civil Aviation Safety Regulations 1998* (**CASR**) deals with the operation of unmanned aircraft, rockets and fireworks. (Throughout this Explanatory Statement, references to provisions with the numerical prefix “101.” are to Part 101 of CASR.)

##### Legislation — Part 101 of CASR

Under regulation 101.028, CASA may issue a MOS prescribing matters required or permitted by the Regulations to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to Part 101. This power is complemented by other provisions in Part 101 which empower CASA to prescribe specific matters in the Part 101 MOS. The amendment regulations added 4 new specific prescribing powers.

##### Background

The Part 101 MOS was the first issue of a MOS in relation to unmanned aircraft and rockets (including kites, fireworks, unmanned tethered and free balloons). It prescribed matters in relation to the safety of RPA, including training and competency standards

for RePLs, and certain kinds of operations near aerodromes and beyond visual line of sight.

The Part 101 MOS formally commenced on registration on 9 April 2019 and most of its provisions took effect on that date or, following a previous amendment, on 10 April 2020. However, the effect of various other provisions was delayed so that Chapter 2 (RePL training courses) was to take effect on 10 October 2020, as was Chapter 10, Divisions 10.2 and 10.3 (about record keeping and giving information to CASA).

### **COVID-19 related deferral**

Most of Chapter 2 about RePL training courses and syllabi will take effect on 10 October 2020. However, the take effect date for new requirements for a person to qualify as an RePL training instructor is deferred until 10 April 2022. This is due to the impact of the COVID-19 pandemic on the ability of persons to obtain the relevant qualifications in the face of border closures, lockdowns, movement restrictions, and social and physical distancing rules designed to deal with the pandemic. This is further explained in Appendix 1 (amendment 1).

### **Transitional provision**

New standards for the RePL training courses and syllabi take effect on 10 October 2020. However, it is necessary to provide a transition period in order to recognise the incomplete training of people who were only part-way through training courses under preceding standards applicable before 10 October 2020. A transitional provision provides this recognition for persons who commenced such training on or after 3 April 2020 (when COVID-19 impacts started to become severe) but before 10 October 2020 (the take effect date for Chapter 2), and who complete it not later than 30 April 2021. This is further explained in Appendix 1 (amendment 3).

### **Information**

Commencing on 30 September 2020, the amendment regulations modify regulations 101.371 and 101.372 in relation to the requirements imposed on the registration holder of very small, small, or medium excluded RPA to notify CASA before the first operation of the aircraft. Excluded RPA are, essentially, those that are not used commercially (including by public authorities) by certificated RPA operators. Under the MOS amendment, the registration of the RPA is deemed to be the requisite notification. This is further explained in Appendix 1 (amendment 6).

Under existing paragraphs 101.272 (1) (b) and 101.373 (1) (b), if a person has used their myCASA registration account to give CASA any personal or commercial identification, or contact details, or any other information, which later changes, the person must use the same means to update the information within 21 days. This is further explained in Appendix 1 (amendment 6).

Use by a person of their online myCASA account to transmit or change information is deemed to be the requisite form and manner approved by CASA for such communications. This is further explained in Appendix 1 (amendment 6).

### **New prescribing powers**

Commencing on 30 September 2020, the amendment regulations empower the Part 101 MOS to prescribe additional matters as follows:

- requirements relating to the identification of RPA and model aircraft — new regulation 101.098

- requirements relating to the operation of, or the conduct of operations using, RPA or model aircraft registered under a law of a foreign country — new regulation 101.099
- requirements relating the modification of a registered RPA or a model aircraft — new regulation 101.099A
- requirements in relation to online training courses and examinations (and associated probity requirements) for accreditation to operate certain RPA and model aircraft.

The MOS amendment contains various prescriptions for these purposes as further explained in Appendix 1 (amendment 8).

### ***Acts Interpretation Act 1901***

The new regulations mentioned above, containing the new MOS empowerments, commence on 30 September 2020. The MOS amendment also commences on 30 September 2020. However, the relevant provisions of the MOS amendment using the new prescribing powers are “made” through signature, and registered, before the 30 September 2020 commencement date and in anticipation of it. To this extent, the relevant MOS provisions rely on the anticipatory empowerment provided for legislative instruments under subsections 4 (1) and (2) of the *Acts Interpretation Act 1901* (through the agency of section 13 of the *Legislation Act 2003*).

### **The MOS amendment**

The MOS amendments are described in detail in Appendix 1.

### **Incorporation by reference**

The MOS amendment does not introduce any new applied, adopted or incorporated documents.

### ***Legislation Act 2003 (the LA)***

Under paragraph 98 (5A) (a) of the Act, regulations may empower CASA to issue instruments in relation to: (a) matters affecting the safe navigation and operation of aircraft; and (b) the airworthiness of, or design standards for, aircraft.

The MOS amendment is an instrument empowered by regulation 101.028 of CASR which, as a regulation empowering the issue of a MOS, was a regulation made under subsection 98 (5A) of the Act.

Under subsection 98 (5AA) of the Act, an instrument (like a MOS) issued under paragraph 98 (5A) (a) is a legislative instrument if it is expressed to apply in relation to a class of persons or aircraft or aeronautical products. Under paragraph 98 (5B) (c) of the Act, an instrument (like a MOS) issued under paragraph 98 (5A) (b) is a legislative instrument if it is, or relates to, a design standard.

The safety standards set by the MOS amendment apply, not to a particular remote pilot or a particular RPA or model aircraft but to the class of such pilots and aircraft. Some safety standards are also set by the MOS amendment in relation to design standards for RPA modifications. Therefore, under subsections 98 (5AA) and (5B), a MOS is a legislative instrument. It is subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

## **Consultation**

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable, in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

Subpart 11.J of CASR sets out the procedures for consultation before CASA issues a MOS or a MOS amendment. Under regulation 11.280 of CASR, CASA must publish a notice of its intention on the Internet and provide a period of at least 28 days for comments. However, the consultation period may be reduced to at least 14 days for MOS amendments that are minor or machinery in nature.

The amendments in the MOS amendment are regarded as minor or machinery in nature, being a date deferral, transitional arrangements, and largely administrative procedures consequential upon the commencement of the amendment regulations on 30 September 2020.

CASA engaged, therefore, in public consultation during a 14-day period which was between 9 September 2020 and the end of 23 September 2020.

During this period, CASA received 56 responses from individual and organisational respondents. While not everyone agreed with the proposals, approximately 60% agreed that the MOS amendments reflected CASA's previously announced policy and will work without unintended consequences. CASA considered all responses and evaluated them for the purpose of finalising the MOS amendments.

As a result of the consultation, CASA changed the cut-off date for completion of RePL training under the transitional arrangements from the end of 31 January 2021 to the end of 30 April 2021.

This extended date will provide additional time for students completing grandfathered RePL training under the auspices of a school or a similar institution. The original 31 January 2021 date was within school holidays when tuition would be suspended. The 30 April 2021 date will provide students with additional time during term 1 of 2021 to complete a relevant course that was commenced before 10 October 2020.

CASA is satisfied that the nature, extent, and duration of the consultation it carried out was appropriate and that no further consultation would be appropriate or practicable in these circumstances.

## **Office of Best Practice Regulation (OBPR)**

A RIS was prepared for the amendment regulations which introduced the RPA and model aircraft registration and operator accreditation scheme (OBPR id: 24246). The MOS amendments for administration of the scheme are minor or machinery in nature and do not significantly alter the requirements that were outlined in that earlier RIS. Hence, OBPR assessed that amendments to the original RIS were not required. In addition, a RIS is not required by virtue of the standing agreement between CASA

and OBPR under which a RIS is not required for MOS amendments that are minor or machinery in nature (OBPR id: 14507).

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

The Statement of Compatibility with Human Rights at Appendix 2 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The legislative instrument indirectly engages some of the applicable rights and freedoms but, in the context of aviation safety, does so in a reasonable, necessary and proportionate way to ensure and promote aviation safety and is, therefore, compatible with human rights, as it does not improperly infringe any human rights.

### **Commencement and making**

The MOS amendment has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act. The MOS amendment commences on 30 September 2020, having been registered on the Federal Register of Legislation. However, some provisions modified by the MOS amendment take effect in accordance with the commencement provision in section 1.03 of the Part 101 MOS as amended by the MOS amendment.

## **Details of the Part 101 Manual of Standards (Miscellaneous Amendments) Instrument 2020 (No. 1)**

### **Section 1 Name of instrument**

Under this section, the instrument is named as the *Part 101 Manual of Standards (Miscellaneous Amendments) Instrument 2020 (No. 1)*.

### **Section 2 Commencement**

Under this section, the instrument commences on 30 September 2020.

### **Section 3 Amendment of the Part 101 Manual of Standards**

Under this section, Schedule 1 amends the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (the Part 101 MOS, herein referred to simply as the *MOS*).

### **Schedule 1 Amendments**

Schedule 1 comprises various amendments as follows:

#### **[1] Section 1.03, the Table, Item 1**

This is a COVID-19 related amendment. The amendment provides a new take effect date for the various qualification requirements that an RePL training instructor must meet in order to conduct an RePL training course. Under subparagraphs in paragraph 2.30 (2) (c) of the MOS, an RePL training instructor must have one or more of the following:

- (i) a pilot instructor rating issued under Part 61 of CASR;
- (ii) a Certificate IV in Training and Assessment issued by an approved educational institution;
- (iii) a tertiary level qualification in teaching that is recognised as such by a State or Territory government;
- (iv) a certificate of successful completion of a training program in the principles of instruction issued by a person approved in writing by CASA.

Various State and Territory border closures, lockdowns, movement restrictions and social and physical distancing rules, for the purposes of responding to the COVID-19 pandemic have, or may have, made it impossible or impracticable for RePL training instructors to meet these requirements and this problem is likely to continue into the foreseeable future. Previously, the paragraph 2.30 (2) (c) requirements were to take effect on and from 10 October 2020. Bearing in mind future uncertainty and the time it may take from a relevant course enrolment to successful completion of the requirement, the amendment alters this take effect date to 10 April 2022.

#### **[2] Subsection 1.04 (2), Definitions**

This section provides some useful definitions.

#### **[3] After section 2.02**

This section is designed to provide a transitional credit mechanism for students engaged in RePL training under pre-10 October 2020 standards acceptable to CASA. Thus, RPL training commenced by the person on or after 3 April 2020 but before 10 October 2020, and which is successfully completed

by the person not later than 30 April 2021 is deemed to be training that complies with the standards and requirements prescribed by the MOS. The 3 April 2020 start date was chosen as it is the date of the first COVID-19 pandemic-related extension of time amendment to the Part 101 MOS.

**[4] Subsection 10.13 (1)**

This amendment is related to amendments 5 and 6 by inserting in section 10.13, which is a “Purpose” provision for Chapter 10, mention of subregulation 101.372 (1), a revised notice requirement arising from the amendment regulations. Thus, Chapter 10 is also for the purposes of subregulation 101.372 (1), which provides that, before the first operation of an RPA, the registration holder must notify CASA “in a form and manner approved by CASA”.

**[5] Subsection 10.13 (1)**

This amendment is related to amendments 4 and 6 so that Chapter 10 is not only about the information to be given to CASA but also about the notice of first operation as mentioned in amendment 4.

**[6] Sections 10.14, 10.15 and 10.16**

This amendment repeals previous sections about giving information to CASA, and inserts 2 substitute provisions revising the notification and information requirements for RPA operators. These are driven, in part, by the creation of the CASA online RPA and model aircraft registration processes and individualised myCASA accounts which allow for more convenient automated communications between CASA and registration holders.

**10.14 Very small, small, and medium excluded RPA — notification before first operation**

This section applies for certain very small, small and medium excluded RPA mentioned in subregulation 101.371 (1) and provides that a person’s use of their myCASA account and the CASA RPA online registration process to register the excluded RPA constitutes “the form and manner approved by CASA” for notification of the first operation of the excluded RPA. In other words, registration of the excluded RPA is taken to be such notification.

**10.15 Micro, very small, small, and medium registered RPA — other information**

This section is for paragraphs 101.272 (1) (b) and 101.373 (1) (b) and requires that a person who has used their myCASA account to give CASA any personal or commercial identification, or contact details, or any other information, which later changes, must use the myCASA account to update the details and information not more than 21 days after the change. A person must also, as soon as practicable, give CASA specified operational information about the registered RPA, if CASA considers that the information is necessary for the purposes of aviation safety, requests the information in writing, and explains in the request why the information is necessary for aviation safety.

**[7] Chapter 11**

This amendment is consequential on new section 10.15 in amendment 6.

**[8] After Chapter 11**

This amendment inserts several new Chapters and sections as a result of new provisions contained in the amendment regulations.

**CHAPTER 12 IDENTIFICATION OF RPA AND MODEL AIRCRAFT****12.01 Identification of RPA and model aircraft required to be registered**

This amendment is for new subregulation 101.098 (1) contained in the amendment regulations which provides for the Part 101 MOS to prescribe requirements for the identification of RPA and model aircraft.

Under new section 12.01, a registrable RPA or model aircraft must at all times when it is operating legibly display the manufacturer's serial number, or if there is none, the mark allocated by CASA on registration. Also, the aircraft must use the electronic identification of the aircraft allocated by the manufacturer in such a way that it is not changed, masked or interfered with without CASA's written permission.

**CHAPTER 13 OPERATION OF FOREIGN REGISTERED RPA AND MODEL AIRCRAFT****13.01 Permission to operate foreign registered RPA or model aircraft**

This amendment is for new subregulation 101.099 (1) contained in the amendment regulations which provides for the Part 101 MOS to prescribe requirements for operations using RPA or model aircraft that are registered under a law of a foreign country. Such aircraft are not required to be registered in Australia. The section applies to an RPA, or a model aircraft with a gross weight greater than 250 g on take-off except when flown at an approved site.

A person must not operate the foreign aircraft unless the person has applied for and holds an unexpired CASA permission for the purpose. Any operations must be in accordance with the conditions (if any) in the permission, and must otherwise comply with Australian civil aviation legislation. When operating the aircraft, the person must produce the permission, along with photographic identification, on request by an officer of CASA, or of an Australian police service, acting in the course of their official duties.

An aircraft with a subsequent unacceptable modification must not be operated unless a new permission is granted for the aircraft in its modified form.

If an unmanned aircraft is the subject of a permission and is subsequently modified in a way that is *not* an unacceptable modification, then the permission is taken to apply to the aircraft as modified and ceases to apply to any other aircraft. This is to ensure that a permission with respect to an aircraft only ever applies to a single version of the aircraft at any time.

**13.02 Renewal of permission to operate foreign registered RPA or model aircraft**

Under this new section, a permission granted under section 13.01 may be renewed, or re-issued in an amended form, before or after the permission has expired, if the person who holds or last held the permission applies for the renewal or re-issue as if section 13.01 applied to the application for the renewal or re-issue.

### 13.03 Revocation of permission to operate foreign registered RPA or model aircraft

Under this new section, CASA may, by written notice, revoke a permission, and must revoke the permission if CASA considers that revocation is necessary in the interests of aviation safety. Reasons for revocation are:

- where CASA considers that operations under the permission present an unreasonable risk to aviation
- where CASA considers that the aircraft has been flown in contravention of permission conditions or Australian civil aviation legislation
- where CASA considers that after the permission was granted, the aircraft was unacceptably modified
- where, before a permission expires, the person requests that it be revoked
- where, before a permission expires, CASA has received an application for permission to operate the aircraft from a person other than the person who holds the permission to operate the aircraft — provided the application is accompanied by a written statement of agreement to the new permission from the old permission holder.

A decision to revoke a permission is reviewable by the Administrative Review Tribunal under regulation 201.004 of CASR.

## CHAPTER 14 PERMISSIBLE MODIFICATIONS TO REGISTERED RPA AND MODEL AIRCRAFT

### 14.01 Modifications to registered RPA and model aircraft

This amendment is for new subregulation 101.099A (1) contained in the amendment regulations which provides for the Part 101 MOS to prescribe when the modification of a registered RPA or a model aircraft is such that the aircraft is considered to be no longer the registered aircraft. The section contains rules about modifications to RPA and model aircraft that are not foreign registered. If, after it has been registered, the aircraft is the subject of an unacceptable modification, the aircraft, as modified, must not be operated unless it is registered again in its modified form.

An *unacceptable modification* is defined (under amendment 2) as a modification to the aircraft that, as compared with the aircraft when it was first registered under Division 47.C.2 of CASR, or first granted a permission under section 13.01 (as the case may be), changes the category of the aircraft; or changes upwards the classification of the aircraft; or increases the gross weight on take-off of the aircraft by more than 20%; or does not contain parts and components from the permit version of the aircraft that are critical to the flight of the aircraft; or fails to retain the manufacturer's serial number, if there is no manufacturer's serial number — the allocated CASA serial number, and any electronic identification of the aircraft.

For a modification that is not an unacceptable modification, the aircraft's registration is taken to apply to the aircraft as modified, and ceases to apply to any other aircraft. This is to ensure that an aircraft registration only ever applies to a single version of the aircraft at any time.

## CHAPTER 15 CONDUCT OF ONLINE TRAINING AND EXAMINATIONS FOR ACCREDITATION

This amendment is for new regulation 101.374F contained in the amendment regulations which provides for the Part 101 MOS to prescribe requirements in relation to completing online training and examinations. Under new regulation 101.374E, successful completion of an online training course and examination is the avenue to obtaining a required accreditation to fly an excluded or micro RPA or a model aircraft. Under regulation 101.374F, the Part 101 MOS may prescribe requirements in relation to completing an online training course.

### 15.03 Completion of online training courses

Under this section, an online training course and examination are not completed unless the probity requirements of sections 15.04 and 15.05, respectively, are complied with.

### 15.04 Integrity of online training courses

Under this section, the applicant must:

- personally successfully complete the entirety of the online training for the particular kind of accreditation that is applied for
- personally complete the declaration for the training to the effect that the applicant is the person who:
  - applies for the accreditation
  - completes all of the training for the accreditation
- personally submit the declaration to CASA in the approved manner.

The *approved manner*, for an applicant's submission of a declaration to CASA, means to personally submit the declaration to CASA:

- through the unmanned aircraft accreditation portal on the CASA website; or
- if CASA, in writing, approves another form and manner of submission — in accordance with that form and manner.

### 15.05 Integrity of online examination

Under this section, the applicant must:

- personally complete the online examination for the particular kind of accreditation that is applied for, without any assistance, oral, manual, electronic or in writing, from another person
- achieve the pass mark specified in the online examination for the accreditation
- personally complete the declaration for the online examination to the effect that the applicant:
  - is the person who applies for the accreditation
  - is the person who completes all of the online examination
  - solemnly undertakes that he or she has not, and will not without a court order, or CASA's written permission which may be given for the purposes of any formal process of dispute resolution, disclose to any person the questions that were asked in the online examination
- personally submit the declaration to CASA in the approved manner (as described above).

## Statement of Compatibility with Human Rights

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

### **Part 101 Manual of Standards (Miscellaneous Amendments) Instrument 2020 (No. 1)**

The *Part 101 Manual of Standards (Miscellaneous Amendments) Instrument 2020 (No. 1)* (the **MOS amendment**) is a legislative instrument that 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 MOS amendment is intended to make a number of minor or machinery amendments to the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (as amended) (the **Part 101 MOS**).

The MOS amendments include a particular “take effect” date deferral, transitional arrangements, and administrative procedures consequential upon the commencement (on 30 September 2020) of the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 2019*, as amended by the No. 2 Regulations of the same name (the **amendment regulations**).

#### **COVID-19 related deferral**

Most of Chapter 2 about RePL training courses and syllabi will take effect on 10 October 2020. However, the take effect date for new requirements for a person to qualify as an RePL training instructor is deferred until 10 April 2022. This is due to the impact of the COVID-19 pandemic on the ability of persons to obtain the relevant qualifications in the face of border closures, lockdowns, movement restrictions, and social and physical distancing rules designed to deal with the pandemic. This is further explained in Appendix 1 (amendment 1).

#### **Transitional provision**

New standards for the RePL training courses and syllabi take effect on 10 October 2020. However, it is necessary to provide a transition period in order to recognise the incomplete training of people who were only part-way through training courses under preceding standards applicable before 10 October 2020. A transitional provision provides this recognition for persons who commenced such training on or after 3 April 2020 (when COVID-19 impacts started to become severe) but before 10 October 2020 (the take effect date for Chapter 2), and who complete it not later than 30 April 2021. This is further explained in Appendix 1 (amendment 3).

#### **Information**

Commencing on 30 September 2020, the amendment regulations modify regulations 101.371 and 101.372 in relation to the requirements imposed on the registration holder of very small, small, or medium excluded RPA to notify CASA before the first operation of the aircraft. Excluded RPA are, essentially, those that are not used commercially (including by public authorities) by certificated RPA operators.

Under the MOS amendment, the registration of the RPA is deemed to be the requisite notification. This is further explained in Appendix 1 (amendment 6).

Under existing paragraphs 101.272 (1) (b) and 101.373 (1) (b), if a person has used their myCASA registration account to give CASA any personal or commercial identification, or contact details, or any other information, which later changes, the person must use the same means to update the information within 21 days. This is further explained in Appendix 1 (amendment 6).

Use by a person of their online myCASA account to transmit or change information is deemed to be the requisite form and manner approved by CASA for such communications. This is further explained in Appendix 1 (amendment 6).

### **New prescribing powers**

Commencing on 30 September 2020, the amendment regulations empower the Part 101 MOS to prescribe additional matters as follows:

- requirements relating to the identification of RPA and model aircraft — new regulation 101.098
- requirements relating to the operation of, or the conduct of operations using, RPA or model aircraft registered under a law of a foreign country — new regulation 101.099
- requirements relating the modification of a registered RPA or a model aircraft — new regulation 101.099A
- requirements in relation to online training courses and examinations (and associated probity requirements) for accreditation to operate certain RPA and model aircraft.

The MOS amendment contains various prescriptions for these purposes.

### **Human rights implications**

#### **Right to life under Article 6 of the *International Covenant on Civil and Political Rights* (the ICCPR)**

The MOS amendment may engage the right to life under Article 6 of the ICCPR in a positive way. This engagement is in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework, including Part 101 of CASR and its related MOS, is to uphold aviation safety by prescribing the conduct of individuals and organisations involved in civil aviation operations, including the operation of RPA and model aircraft. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote or enhance aviation safety.

Insofar as the MOS amendments are crafted and intended, as far as practicable, to promote and enhance aviation safety standards in the use of RPA and model aircraft, they promote the right to life under Article 6. In particular, the deferral of the take effect date for new, enhanced, requirements for a person to qualify as an RePL training instructor, as mentioned above, is protective of the individuals concerned in the COVID-19 context. These individuals already satisfy a somewhat lesser, but nevertheless safe, threshold level of competence in training disciplines which will be unaffected by the deferral.

**Right to work and to the opportunity to gain a living by work which is freely chosen or accepted, under Article 6 (1) of the *International Covenant on Economic, Social and Cultural Rights (the ICESCR)***

The MOS amendment may engage the right to work under Article 6 (1) of the ICESCR in a positive way through the transitional provisions mentioned above. These provisions recognise ongoing training under previous standards which, when successfully completed, may qualify a person for employment in RPA piloting roles. Without these transitional provisions, such persons' part-progress in obtaining requisite qualifications would be nullified.

The MOS amendment may engage the right to work under Article 6 (1) in a negative way, under new section 13.01, by requiring persons intending to operate foreign registered RPA or model aircraft in Australia to first obtain CASA permission. Permission may be revoked if conditions or Australian civil aviation legislation are not complied with. This is a necessary aviation safety measure in relation to unknown foreign aircraft. It is not realistic to permit anonymous aircraft operations in Australian airspace.

The MOS amendment may engage the right to work under Article 6 (1) in a negative way, under new section 14.01, by preventing an already registered RPA or a model aircraft from being operated if it has been subjected to an unacceptable modification. Not every modification is unacceptable. But unacceptable modifications, as defined in the MOS amendment, result in what may be regarded as an essentially different aircraft, with different characteristics, compared with the aircraft that was registered. To permit the continued registered operations of such radically altered aircraft would result in a falsification of the aircraft register unless the modified aircraft were registered anew.

The MOS amendment may engage the right to work under Article 6 (1) in a negative way, under new sections 15.03, 15.04 and 15.05 which address the integrity and probity requirements of the online training and examinations required to obtain the necessary accreditation to operate an excluded or micro RPA or a model aircraft. In particular declarations (through the online accreditation portal) are required from the applicant that it is the applicant personally who is engaged in the online training and examination. However, such requirements are essential concomitants of a training and examination system that is conducted online without the possibility of contemporaneous invigilation, and that must rely on individual integrity and CASA's after-the-event audit and surveillance activities.

**Right to the protections against arbitrary and unlawful interferences with privacy, including that no-one shall be subjected to arbitrary or unlawful interference with their privacy, under Article 17 of the ICCPR**

The MOS amendment may engage the right to privacy when personal information is collected, used and stored. New section 10.14 reformulates the obligation to notify CASA before an excluded (non-commercial) RPA engages it its first operation consequent on formal aircraft registration. The obligatory registration of the RPA under CASR using the online myCASA portal is deemed to be such notification so that the MOS amendment does not impose any greater or additional obligation than is already the case by virtue of obligations under the Regulations that RPA must be registered.

Similarly, new section 10.15 is largely a reformulation of existing obligations under CASR to update, using the relevant myCASA registration account, and within

21 days, personal or commercial identification or contact details, or any other information, already supplied to CASA and which has changed. This requirement is a necessary concomitant of a formal aircraft registration process under which the register of aircraft must be kept up to date in order to identify aircraft and operators in the event of incidents or accidents, as well as surveillance and audits. The requirement to provide specified operational information about a registered RPA, on written request from CASA which sets out the relevance of the information to aviation safety, is intended, for example, to allow registration information to be checked or confirmed, or to assist CASA in ensuring that a registered RPA has not been unacceptably modified to make it in effect a different aircraft.

To the extent that the information provisions under the MOS amendment limit the rights protected under Article 17 of the ICCPR, the limitations support CASA's ability to monitor aviation activity in the interest of aviation safety.

This is necessary because of the rapidly growing use of RPA and the aviation dangers these operations and their prolific expansion may create for other aircraft and for people and property on the ground. Thus, the limitations imposed on the Article 17 rights are reasonable and proportionate to ensure the proper administration and enforcement of Australia's aviation safety system.

In addition, the protections afforded by the *Privacy Act 1988* continue to apply to all of the notifications and information required under these provisions of the MOS. CASA is satisfied that, under the current law, the Privacy Act protects the information to the standard that is the prevailing standard acceptable to the Australian Parliament.

Insofar as the international right to privacy is limited by the Privacy Act, CASA considers that, in the specific context of the collection and use of the relevant information, any such limitation is reasonably proportionate to the aviation risks, dangers, and goals to be achieved. The risks and dangers are to life, both in the air and on the ground, from RPA and model aircraft that fail, or whose controllers fail, to comply with Part 101 of CASR and the Part 101 MOS.

### **Conclusion**

The MOS amendment is a legislative instrument that is compatible with human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to promote the right to life and to work, and to ensure the safety and integrity of the aviation safety system.