

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 149 (Approved Self-administering Aviation Organisations) Amendment Manual of Standards (No. 2) 2022

Purpose

The purpose of the instrument is to provide for gyroplanes, that are intended to be regulated under Part 103 of the *Civil Aviation Safety Regulations 1998 (CASR)*, and are currently administered by sport aviation bodies that are not approved self-administering aviation organisations (*ASAOs*) under Part 149 of CASR, to come within the scope of the aviation administration functions prescribed by the Part 149 Manual of Standards (the **Part 149 MOS**). This would enable those sport aviation bodies or another person to apply for a Part 149 certificate to administer these aircraft under the regulations.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made CASR.

The Part 149 MOS is made under Part 149 of CASR. The Part 149 MOS prescribes matters in relation to ASAOs. The matters that the Part 149 MOS deals with include:

- the aviation administration functions that an ASAO may be authorised to perform under regulation 149.075 of CASR
- the kinds of aircraft that are Part 149 aircraft for the purposes of functions prescribed in the Part 149 MOS.

Under subsection 14(1) of the *Legislation Act 2003* (the *LA*), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the *LA*, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98(5D) of the *Act* provides that, despite section 14 of the *LA*, a legislative instrument made under the *Act* or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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.

Background

One of the main purposes of the Part 149 MOS is to prescribe aviation administration functions which an ASAO may be authorised to perform under regulation 149.075 of CASR. The functions are prescribed in relation to aircraft that have been defined in the Part 149 MOS as **Part 149 aircraft**. These include the sport and recreation aircraft that have historically been exempted from certain provisions of CASR under Part 200 of CASR, and from provisions of the *Civil Aviation Regulations 1988 (CAR)* under exemptions made by various Civil Aviation Orders known as the “95 series CAOs”. These aircraft are generally the subject of new Parts 103 and 131 of CASR, inserted into CASR by the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019 (the 3-pack regulations)* that commenced on 2 December 2021.

The making of the Manuals of Standards for Parts 103 and 131 was delayed in 2021 for further consultation with the established industry bodies. This necessitated transitional arrangements to be made to enable aircraft subject to, or intended to be covered by, Parts 103 and 131 of CASR to continue to be operated under the arrangements existing before the commencement of those regulations. It is intended that the gyroplanes covered by new section 12 will be subject to new Part 103 of CASR. Under paragraph 103.005(4)(v) of CASR, the Part 103 Manual of Standards can prescribe rotorcraft (being aircraft that are not registered) as **Part 103 aircraft** regulated under that Part.

There were consequential amendments made to the Part 149 MOS in 2021 which, amongst other things, removed outdated references to heavier-than-air aircraft, including gyroplanes, that were still being administered by sport aviation bodies which had not transitioned to becoming ASAOs. This was a temporary measure to be corrected by the time of the issue of a Part 103 Manual of Standards. The *Part 149 (Approved Self-administering Aviation Organisations) Amendment Manual of Standards 2022 (No. 1)* included amendments to reincorporate those sport and recreational aircraft into the scope of the Part 149 MOS, but unintentionally failed to fully include gyroplanes within the scope of the amendments.

The transitional arrangements for gyroplanes are dealt with in *Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2021* and *Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2021*. These interim arrangements support new Part 103 of CASR by extending the regime, existing before the commencement of the 3-pack regulations, for safe operation of gyroplanes.

The amending instrument makes the changes necessary to ensure the prescribed aviation administration functions cover gyroplanes, and to enable the sport aviation bodies that administer them to apply for a Part 149 certificate.

Overview of instrument

The amendments insert a definition that provides that gyroplanes that are the subject of the transitional arrangements provided for in the recent reissue of Civil Aviation Orders numbered 95.12 and 95.12.1 are a **Part 149 aircraft**. The amendments make the changes necessary to ensure the prescribed aviation administration functions cover these aircraft, and to enable the sport aviation bodies that administer them to apply for a Part 149 certificate.

The amendments also make typographical and other amendments as a consequence of the amendment mentioned above.

Documents incorporated by reference

Under paragraph 15J(2)(c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained. The instrument incorporates the instruments set out in the following table:

Document	Description	Manner of incorporation
<i>Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2021</i>	This legislative instrument enables, subject to conditions, the continuation of exemptions for operators of gyroplanes that do not exceed 250 kg, from certain requirements of CAR and enables the introductions of exemptions for those operators from certain requirements in CASR.	The instrument is incorporated as in force from time to time.
<i>Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2021</i>	This legislative instrument enables, subject to conditions, the continuation of exemptions for operators of LSA gyroplanes and ASRA-compliant gyroplanes, from certain requirements of CAR and enables the introductions of exemptions for those operators from certain requirements in CASR.	The instrument is incorporated as in force from time to time.

Each of the instruments is freely available on the Federal Register of Legislation.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences on the day after it is registered.

Section 3 provides that the instrument is made under CASR.

Section 4 provides that the Part 149 MOS is amended as set out in Schedule 1.

Schedule 1

Item [1] amends the definition of **Part 149 aircraft** in subsection 5(1) to include a reference to new definition in section 12 which provides that certain gyroplanes are **Part 149 aircraft**.

Item [2] omits paragraphs (c) and (d) from the note below section 7. This corrects an error in which Civil Aviation Orders numbered 95.12 and 95.12.1 were explained in the note to section 7 as being relevant to the aircraft mentioned in section 7. The Civil Aviation Orders are, instead, relevant to gyroplanes provided for in section 12.

Item [3] inserts a new section 12 which includes a definition of **Part 149 aircraft**, providing that a gyroplane to which Civil Aviation Order 95.12 or 95.12.1 applies, and that is operated for a purpose mentioned in the Civil Aviation Order, is a Part 149 aircraft. This brings gyroplanes within the scope of the aviation administration functions prescribed in

Subdivision B of Division 2. The Civil Aviation Orders are incorporated as in force from time to time.

Item [4] substitutes the definition of *applicable CAO* in section 19. This corrects the error, in paragraph (2)(c) in which Civil Aviation Orders 95.12 and 95.12.1 are assumed to be relevant to the aircraft mentioned in section 7. The definition now reflects the situation that those Civil Aviation Orders are relevant to gyroplanes mentioned in section 12.

The definition of applicable CAO incorporates by reference Civil Aviation Orders numbered 95.4, 95.8, 95.10, 95.12, 95.12.1, 95.32, 95.54 and 95.55. Each of these Civil Aviation Orders have been incorporated as in force from time to time and is freely available on the FRL. The manner of incorporation is provided for in subsection 5(1) in the definitions of the following terms:

- *Civil Aviation Order 95.4*
- *Civil Aviation Order 95.8*
- *Civil Aviation Order 95.10*
- *Civil Aviation Order 95.12*
- *Civil Aviation Order 95.12.1*
- *Civil Aviation Order 95.32*
- *Civil Aviation Order 95.54*
- *Civil Aviation Order 95.55.*

Legislation Act 2003

Paragraph 10(1)(d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument amends the Part 149 MOS that was registered as a legislative instrument and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, this instrument will be repealed in accordance with section 48A of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

Under regulation 11.280 in Subpart 11.J of CASR, if CASA intends to issue a MOS, CASA must, in effect, engage in public consultation on the draft MOS. This requirement also applies to a MOS amendment.

However, under paragraph 11.275(1)(d), CASA is not obliged to consult if the Director of Aviation Safety (the *Director*) determines that the MOS is of a minor or machinery nature that does not substantially alter existing arrangements. In such circumstances, under subregulation 11.275(2), CASA must publish the determination, and a statement of reasons for it, on the internet within 28 days after making the determination. The Director has made such a determination because the purpose of the instrument is to make a range of corrections and updates to the Part 149 MOS, and to include sport and recreation aircraft that are already under the old form of sport aviation organisation administration, with equivalent safety outcomes.

There has, nevertheless, been considerable consultation, both formal (through the relevant Technical Working Groups) and informal (with industry stakeholders) in the consideration of the administrative requirements that will apply to a Part 103 ASAO once the Manual of Standards for the relevant Part commences.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

The issue of Part 149 ASAO certificates is a regulatory service task under the *Civil Aviation (Fees) Regulations 1995* that would normally attract a fee for issuing the ASAO authorisation. For the purposes of section 6 of those regulations, a fee waiver decision has been made by the Director that is valid until 2 December 2022. The instrument, therefore, enables significant cost savings to be made by an ASAO certificate applicant who submits an application before the end of the fee free period.

Otherwise, the instrument makes minor or machinery changes to an existing instrument and there will be no change to the economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The amendments will ensure that sport aviation bodies can apply for an ASAO certificate prior to the end of the fee-free period, removing significant costs for these organisations.

Impact on regional and remote communities

The amendments provide a pathway for sport and recreational aircraft that are presently operated in regional and remote communities under the oversight of a sport aviation body to continue to operate in those communities once the body becomes an ASAO.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

The instrument has been made by the Director, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after it is registered and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

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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 purpose of the instrument is to provide for gyroplanes, that are intended to be regulated under Part 103 of the *Civil Aviation Safety Regulations 1998 (CASR)*, and that are currently administered by sport aviation bodies that are not approved self-administering aviation organisations (*ASAOs*) under Part 149 of CASR, to come within the scope of the aviation administration functions prescribed by the Part 149 Manual of Standards (the **Part 149 MOS**). It is intended that the aircraft will be subject to new Part 103, inserted into CASR by the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019 (the 3-pack regulations)* that commenced on 2 December 2021. Under paragraph 103.005(4)(v), the Part 103 Manual of Standards can prescribe rotorcraft (being aircraft that are not registered) as **Part 103 aircraft** regulated under that Part.

The making of a Manual of Standards for Part 103 was delayed in 2021 for further consultation with the established industry bodies. This necessitated transitional arrangements to be made to enable aircraft subject to, or intended to be covered by, the 3-pack regulations to continue to be operated under the arrangements existing before the commencement of those regulations.

The amendments insert a new definition of **Part 149 aircraft** to include, within the scope of the Part 149 MOS, gyroplanes that are the subject of the transitional arrangements provided for in the recent reissue of Civil Aviation Orders numbered 95.12 and 95.12.1, being aircraft not currently under ASAO administration. The amendments make the changes necessary to ensure the prescribed aviation administration functions cover gyroplanes, and to enable the sport aviation bodies that administer them to apply for a Part 149 certificate.

The amendments also make other minor amendments consequential to the new definition.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority