

EXPLANATORY STATEMENT

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

Civil Aviation Act 1988

*Civil Aviation Safety Amendment (Flight Operations - Parts 119 and 138)
Regulations 2022*

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.

Subsection 98(1) also provides that the Governor-General may make regulations for the purpose of carrying out and giving effect to the provisions of the *Convention on International Civil Aviation* (the Chicago Convention) relating to aviation safety, and in relation to the safety of air navigation, being regulations with respect to any other matters about which the Parliament has power to make laws.

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

The *Civil Aviation Safety Regulations 1998* (CASR) are made under the Act. Relevantly, CASR Part 119 governs the certification and management of persons conducting air transport operations, which cover commercial passenger and cargo operations, and CASR Part 138 governs the conduct of aerial work operations, which cover task-specific operations such as aerial surveying.

CASR Part 119 includes a power for CASA to prescribe that a specified kind of operation is an air transport operation but does not include a power to prescribe that a specified kind of operation is not an air transport operation. CASR Part 138 includes a power for CASA to prescribe that a specified kind of operation is not an aerial work operation but does not include a power to prescribe that a specified kind of operation is an aerial work operation. These inadvertent omissions limit CASA's power to provide regulatory certainty in relation to operations that do not fit neatly into the statutory definitions for these kinds of operations.

The *Civil Aviation Safety Amendment (Parts 119 and 138) Regulations 2022* (the proposed Regulations) corrects these omissions, based on the original policy intentions for Parts 119 and 138. These amendments are necessary to provide a legal mechanism to give full effect to that policy.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, CASA developed Parts 119 and Part 138 of CASR in consultation with aviation community and the public over an extended period. The consultation covered the policy to be achieved by the proposed Regulations although no specific feedback on this matter was received.

Any proposed changes to the MOS utilising the administrative power to include or exclude operations in relation to the definitions of Australian air transport operation and aerial work operation will be subject of industry consultation with the aviation community, in accordance with the requirements of Subpart 11.J of CASR. CASA will also take account of the impact of any MOS change on general aviation, and regional and remote Australia.

Regulation Impact Statement

The Office of Best Practice Regulation made the assessment that the amendment is likely to have no more than a minor impact and that a Regulation Impact Statement is not required (OBPR22-02857). The creation of the new powers does not impact general aviation, or regional and remote Australia.

Statement of Compatibility with Human Rights

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

Commencement and making

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Regulations are set out at [Attachment B](#).

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The provisions of the *Civil Aviation Safety Amendment (Parts 119 and 138) Regulations 2022* commence on the day after registration, as they do not impose any obligations on regulated entities.

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

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Civil Aviation Safety Amendment (Parts 119 and 138) Regulations 2022

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

Overview of the Disallowable Legislative Instrument

The *Civil Aviation Safety Regulations 1998* (CASR) are made under the Civil Aviation Act 1988 (the Act). Relevantly, CASR Part 119 governs the certification and management of persons conducting air transport operations, which cover commercial passenger and cargo operations, and CASR Part 138 governs the conduct of aerial work operations, which cover task-specific operations such as aerial surveying.

CASR Part 119 includes a power for CASA to prescribe that a specified kind of operation is an air transport operation but does not include a power to prescribe that a specified kind of operation is not an air transport operation. CASR Part 138 includes a power for CASA to prescribe that a specified kind of operation is not an aerial work operation but does not include a power to prescribe that a specified kind of operation is an aerial work operation. These inadvertent omissions limit CASA's power to provide regulatory certainty in relation to operations that do not fit neatly into the statutory definitions for these kinds of operations.

The *Civil Aviation Safety Amendment (Parts 119 and 138) Regulations 2022* (the proposed Regulations) corrects these omissions, based on the original policy intentions for Parts 119 and 138. These amendments are necessary to provide a legal mechanism to give full effect to that policy.

Human rights implications

The Regulations do not engage with any human rights.

Conclusion

The Regulations are compatible with human rights because they do not affect the protection of human rights in any way different to the existing regulations.

Details of the proposed *Civil Aviation Safety Amendment (Parts 119 and 138) Regulations 2022*

Section 1 - Name of Regulations

This section provides that the title of this instrument is the *Civil Aviation Safety Amendment (Parts 119 and 138) Regulations 2022*.

Section 2 - Commencement

This section provides for the Regulations to commence on the day after registration on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the *Civil Aviation Safety Amendment (Parts 119 and 138) Regulations 2022* is made under the *Civil Aviation Act 1988* (the Act).

Section 4 - Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 - Amendments

Civil Aviation Safety Regulations 1998 (CASR)

Item 1 – After paragraph 119.010(2)(c)

This item inserts new subparagraph 119.010(2)(d) to provide that the Part 119 Manual of Standards may prescribe an operation using an aeroplane or rotorcraft as not being an Australian air transport operation.

CASR Part 119 includes the ability to prescribe certain operations as air transport operations in the Manual of Standards. However, during the regulatory development process the ability to exclude particular operations from air transport operations was overlooked. The addition of an exclusionary provision, to mirror the inclusionary provision in paragraph 119.010(1)(e), enables the definition of Australian air transport operation to be adjusted in appropriate cases without undue delay. This provides flexibility for adjustments to acceptable aviation safety risk levels that are likely to change from time to time, and also provides regulatory certainty to persons conducting operations under Part 119.

Item 2 – At the end of subregulation 138.010(1)

This item adds a new subparagraph 138.010(1)(d) to provide that the *Part 138 Manual of Standards* may prescribe an operation as being a kind of aerial work operation.

CASR Part 138 allows for the ability to prescribe certain operations as not being aerial work operations in the Manual of Standards. However, during the regulatory development process the ability to include particular operations as aerial work operations was overlooked. The addition of an inclusionary flexibility provision, to mirror the exclusionary provision in paragraph 138.010(5)(g), enables the definition of aerial work operation to be adjusted without undue delay. This provides flexibility for adjustments to acceptable aviation safety risk levels that are likely to change from time to time, and also provides regulatory certainty to persons conducting operations under Part 138.