

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 2)

Purpose

Model aircraft

On 25 May 2023, the *Civil Aviation Legislation Amendment (2023 Measures No. 1) Regulations 2023* was registered. Its purpose was to amend the *Civil Aviation Safety Regulations 1998 (CASR)* and the *Civil Aviation (Unmanned Aircraft Levy) Regulations 2021*, primarily to repeal the scheme for model aircraft registration and model aircraft operator accreditation. The amendments were not controversial as they removed an operator burden following a change in government policy from the time when the scheme was originally consulted.

A model aircraft is defined in regulation 101.023 of CASR as an aircraft (other than a balloon or a kite) that does not carry a person, that is being operated for the purpose of sport or recreation, and has a gross weight of not more than 150 kg. A model aircraft also includes an aircraft that has a gross weight of not more than 7 kg and is being operated in connection with prescribed educational, training or research purposes. A model aircraft is not classified as a remotely piloted aircraft (an *RPA*).

The major practical and standard-setting elements of the model aircraft registration and model aircraft operator accreditation scheme were provided for in the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (as amended) (the *principal MOS*). However, there has been a change in government policy regarding model aircraft registration and accreditation, and the regulatory and transitional provisions for the scheme have been repealed. The main purpose of the *Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 2)* (the *MOS amendment*) is, therefore, to consequentially remove mentions of the scheme from the MOS through deletions or repeals as appropriate.

While some amendments may look substantive, they are merely redrafted forms of the original provisions with mentions of model aircraft removed where this was a more convenient way in which to make the change.

The now repealed scheme for model aircraft registration and model aircraft operator accreditation was due to take effect on and from 1 July 2023. In those circumstances, the MOS amendment to remove mentions of model aircraft from the principal MOS may commence on the day after the instrument is registered.

When compliance with training standards is “impossible, impracticable or unreasonable”

In order to appropriately apply the range of practical training standards and competency requirements in the principal MOS to unforeseen emerging new technology in the development, manufacture and deployment of medium RPA and large RPA, the *Part 101 Manual of Standards (Modified Licensing Standards for Advancing RPA Technology, and Other Matters) Amendment Instrument 2022 (No. 1)* provided CASA with a power to approve, for individual RPA training organisations,

modified training and testing competencies and standards that would safely accommodate such technological developments.

The advancing technological capabilities and design of some RPA is incompatible with the requirements of the training course syllabus prescribed in the principal MOS, making it impossible, without some such approval, to grant remote pilot licences, or upgrade existing licences, to cover these aircraft, even when it would be safe to do so.

Hence, the approvals would disapply some Part 101 MOS training standards, which it would otherwise be “impossible or impracticable” (including in the sense of being unsafe) for particular RPA to meet, and, instead, as part of the approval add or substitute other applicable training standards, where appropriate, to compensate.

The MOS amendment includes 4 amendments to better facilitate these interim legislative arrangements for dealing with pilot training of such aircraft. The 4 new amendments add to the mention of “impossible or impracticable” an additional criterion of “unreasonableness”. Related new Notes explain that if a feature of an RPA otherwise required an applicant for a RePL or RePL upgrade to repeat training previously successfully completed for an earlier RePL, CASA may, subject to considerations of aviation safety, consider that such repetition would be unreasonable.

It had been thought previously that the concept of impracticability would be wide enough to cover the kind of unreasonableness considered in the Notes. While this may be arguable, it is not beyond doubt and the 4 new amendments expressly clarify the matter.

Thus, mentions of “impossible or impracticable” have been amended to include “unreasonable” as an alternative criterion for CASA’s approval that modified standards are necessary for safety because of unique, unusual, or other characteristics in the system design or other features of the RPA.

The related Notes make it clear that the concept of unreasonableness will be predicated on allowing alternative substitute standards only where the other standard, although not impossible or necessarily impracticable to meet, would nevertheless contribute nothing to aviation safety and the alternative standard would contribute, or at least preserve, aviation safety.

Not every provision that mentions “impossible or impracticable” is modified with the addition of the “unreasonable” criterion, but only those specific provisions under which CASA may take a decision that, without adverse effect on aviation safety, modified training may be approved because conforming to prescribed requirements is impossible, impracticable or unreasonable. CASA is working to develop new, generic, outcome-based training standards for technologically advanced medium RPA and large RPA, with a view to eventually amending the principal MOS accordingly, making the approval process redundant.

Corrections

Three amendments update the definition of *documented practices and procedures*. Previously, this had referred to documents approved in writing by CASA. An operator's initial documented practices and procedures must be approved by CASA. However, thereafter only significant changes to the documented practices and procedures must be approved by CASA. The 3 amendments clarify this.

Amendments also remove the second of two subsections 2.20 (3) from the principal MOS. Subsection 2.20 (3) was replaced by amendment 38 in the *Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 1)* but without the then existing subsection 2.20 (3) being simultaneously repealed. A second amendment is consequential on this.

The errors were technical rather than substantive, and are unrelated to the other amendments in the MOS amendment.

AAT review rights

A decision to refuse to issue an approval is subject to merits review by the Administrative Appeals Tribunal under section 31 of the *Civil Aviation Act 1988* (the *Act*).

Aviation safety

It is not considered that any issues of aviation safety arise from the repeal of the model aircraft registration and model aircraft operator accreditation scheme.

Nor is not considered that any issues of aviation safety arise from the inclusion of the criterion of unreasonableness, alongside impossibility or impracticability, as a criterion for approving technology-driven modifications to training standards, given that exercise of the additional criterion is contextualised to aviation safety considerations only.

Legislation — the Act

Under subsection 98 (1) of 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 CASR deals with the operation of unmanned aircraft, rockets and fireworks.

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 principal MOS.

Under regulation 201.025 of CASR, for subsection 98 (5A) of the Act, CASA may issue instruments prescribing matters for definitions in the regulations relating to matters mentioned in the subsection (the subsection empowers regulations which in turn empower the issue of instruments for, in effect, aviation safety).

Under subsection 33 (3) of the *Acts Interpretation Act 1901* (in effect) where regulations empower the making of a MOS, the power includes a parallel power to amend the MOS. The MOS amendment is made under the same head of power, and on the same basis, as the MOS itself.

For convenience in this Explanatory Statement, unless a contrary intention appears, mention of a provision with the prefix “101.” is a reference to that provision in Part 101 of CASR.

MOS amendment

Explanations of the individual amendments in the MOS amendment are set out in Appendix 1.

Legislation Act 2003 (the LA)

Under subsection 8 (4) of the LA, an instrument is a legislative instrument if it is made under a power that is delegated by the Parliament, and any provision of the instrument 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 principal MOS satisfied these requirements and, consequentially, the MOS amendment does so also.

In addition, under paragraph 10 (1) (d) of the LA, an instrument that amends a legislative instrument is itself a legislative instrument.

Under paragraph 98 (5A) (a) of the Act, regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

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

The principal MOS was an instrument empowered by regulation 101.028 made by the amendment regulations “For subsection 98 (5A) of the Act”.

The standards set by the principal MOS apply, not to a particular remote pilot or a particular RPA but to the class of such pilots and aircraft. The principal MOS was, therefore, by virtue of subsection 98 (5AA), a legislative instrument and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Consequentially, the same provisions and conclusions apply to the MOS amendment.

Sunsetting

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). The instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. As such, the instrument is intended to have enduring operation and it would not be appropriate for it to be subject to sunset.

The exemption from the sunset provisions affects parliamentary oversight by not requiring the instrument to be remade at the end of the sunset period (remaking would have the effect that the whole instrument must be retabled and would become subject to disallowance in the Parliament under sections 38 and 42 of the LA). However, in the context of RPA aviation, it is likely that further MOS amendments will be made in 2023 and these, while not subject to sunset, will be subject to

tabling and disallowance in the Parliament in the normal way. Hence, the scope for parliamentary scrutiny of the principal MOS is not materially reduced.

Incorporation by reference

Under subsection 98 (5D) of the Act, the principal MOS may apply, adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act, in the terms as that non-legislative instrument exists or as it is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made).

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 minor and machinery amendments in the MOS amendment do not incorporate any new documents as such.

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.

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 actual draft finalised MOS. This requirement also applies to a MOS amendment.

However, under paragraph 11.275 (1) (d) of CASR, CASA is not obliged to consult if the Director of Aviation Safety 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.

CASA has issued such a determination (*CASA 38/23 — Determination for the Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 2)*) and statement of reasons, which are available on the CASA website, determining, and explaining why, the MOS amendment is of a minor or machinery nature.

For this reason, CASA did not consult on the MOS amendment which in any event is considered to be wholly beneficial or advantageous for those who might otherwise have been affected by the principal MOS before it was amended.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required because the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for amendments to Manuals of Standards (OIA id: 14507).

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.

Under the scheme for the registration and operator accreditation of model aircraft, the potential existed for a registration levy to be payable under the *Civil Aviation (Unmanned Aircraft Levy) Act 2020*, although the levy amount had, for the time being, been set at nil. With the repeal of the scheme, that potential for a levy to be imposed is now removed. Thus, in terms of economic and cost impacts for subsection 9A (3) of the Act, the MOS amendment will, in practice, remove a potential cost burden for model aircraft operators.

Rural and regional impacts

The Minister's Statement of Expectations for the CASA Board states: "I expect that CASA will: ... (b) fully consider the impact of new regulations on general aviation, with a particular focus on regional and remote Australia. All Explanatory Statements drafted by CASA for subordinate legislation should identify the impact on the various categories of operations as well as on communities in regional and remote Australia served by those operations and how these impacts have been considered."

There are no identified rural and regional impacts that differ in any material way from the general impact described above.

Environmental impact

Under subsection 9A (2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the MOS amendment, as compared to the principal MOS as in force before the MOS amendment. The MOS amendment is a minor or machinery change consequential on a regulation amendment and as such will have no specific negative effect on the environment.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Appendix 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The MOS amendment, as such, does not engage any of the applicable rights and freedoms and is, therefore, compatible with human rights, as it does not improperly infringe any human rights.

Commencement and making

The MOS amendment commences on the day after it is registered. It has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 2)

1 Name of instrument

This section names the instrument.

2 Commencement

Under this section, the instrument commences on the day after it is registered.

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*.

Schedule 1 Amendments

[1A] Subsection 1.04 (2), definition of *documented practices and procedures*

This amendment modifies the definition of *documented practices and procedures*. Previously, this had referred to documents approved in writing by CASA. An operator's initial documented practices and procedures must be approved by CASA. However, thereafter only significant changes, as defined, to the documented practices and procedures must be approved by CASA. This amendment, therefore, refers to documents that "to the extent required by [the principal MOS], have been approved in writing by CASA".

[1B] Subsection 1.04 (2), definition of *documented practices and procedures, the Note*

This amendment modifies the Note consequential on amendment 1A.

[1C] Paragraph 1.0 4(3) (c), the Note

This amendment modifies the Note consequential on amendment 1A.

[1] Paragraph 2.06A (2) (a)

Under existing subsection 2.06A (1), a practical training course for a particular medium RPA or large RPA may be comprised of modified practical competency units and standards. However, under existing subsection 2.06A (2), subsection (1) does not apply unless, for the relevant practical competency units and standards, CASA approves, among other things, that their completion is necessary for establishing the competency of a person to hold a RePL for the RPA because unique, unusual, or other characteristics in the system design or other features of the RPA make completion of the units of practical competency otherwise prescribed impossible or impracticable to meet. The effect of the amendment is to add unreasonable as an additional criterion. Under existing subsection 2.06A (3), the modification of training may only occur if it will not have any adverse effects on aviation safety.

[2] After paragraph 2.06A (2) (a)

This amendment inserts a Note to support and further contextualise the circumstances in which unreasonableness may be used as a criterion for modification. The Note states, by way of example, that if a feature of the relevant RPA otherwise required an applicant to repeat training previously successfully completed for an initial RePL, CASA may, subject to considerations of aviation safety, consider that such repetition would be unreasonable.

[3] Paragraph 2.18A (3) (a)

Under existing subsection 2.18A (1), to complete the RePL training course component for the operation of an RPA to which section 2.06A applies, the applicant must be assessed as competent in the relevant practical competency units and standards.

Under existing paragraph 2.18A (3) (a), to be assessed as competent, the applicant must, among other things, demonstrate all of the behaviours for the relevant practical competency units and standards, unless CASA approves in writing that the innovative RPA system design makes demonstration for a particular item impossible or impracticable. The effect of the amendment is to add unreasonable as an additional criterion. Under existing subsection 2.06A (3) (sic), the modification may only occur if it will not have any adverse effects on aviation safety.

[4] After paragraph 2.18A (3) (b)

This amendment inserts a Note to support and further contextualise the circumstances in which unreasonableness may be used as a criterion for modification of assessment. The Note states, by way of example, that if a feature of the relevant RPA otherwise required an applicant to repeat training previously successfully completed for an initial RePL, CASA may, subject to considerations of aviation safety, consider that such repetition would be unreasonable.

[5] Subsection 2.20 (3), second occurring

This amendment removes the second of two subsections 2.20 (3) which was replaced by amendment 38 in the *Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 1)* but without the then existing subsection 2.20 (3) being simultaneously repealed.

[6] Subsection 2.20 (4)

This amendment repeals subsection 2.20 (4). This repeal is consequential on the effect of the actual subsection 2.20 (3) which provides that an examiner is to conduct the training course flight test for an RPA.

[7] Section 10.18

This amendment repeals section 10.18 which was an information requirement in relation to model aircraft. The repeal is consequential on the repeal of the scheme for model aircraft registration and model aircraft operator accreditation.

[8] Division 11.1, the heading

This amendment removes mention of model aircraft, consequential on amendment 9.

- [9] **Section 11.01**
The amendment recasts section 11.01 to remove, in the context of flight testing unregistered aircraft, mention of model aircraft consequential on the repeal of the scheme for model aircraft registration and model aircraft operator accreditation. A related Note is also deleted.
- [10] **Subsection 11.02 (1), the chapeau**
This amendment is consequential on amendment 9.
- [11] **Subsection 11.02 (1)**
This amendment is consequential on amendment 9.
- [12] **Subsection 11.02 (2)**
This amendment is consequential on amendment 9.
- [13] **Division 11.2, the heading**
This amendment is consequential on amendment 9.
- [14] **Section 11.03**
This amendment is consequential on amendment 9.
- [15] **Chapter 12, the heading**
This amendment is consequential on amendment 17.
- [16] **Section 12.01, the heading**
This amendment is consequential on amendment 17.
- [17] **Subsection 12.01 (2)**
Existing section 12 prescribes requirements for the identification of aircraft required to be registered. The amendment removes mention of model aircraft from the definition of *unmanned aircraft to which this section applies*. This is consequential on the repeal of the scheme for model aircraft registration and model aircraft operator accreditation.
- [18] **Chapter 13, the heading**
This amendment is consequential on amendment 21.
- [19] **Section 13.01, the heading**
This amendment is consequential on amendment 21.
- [20] **Subsection 13.01 (2), definition of *model glider***
This amendment is consequential on amendment 21.
- [21] **Subsection 13.01 (2), definition of *unmanned aircraft to which this section applies***
Existing section 13 prescribes requirements for permissions to operate foreign registered aircraft. The amendment removes mention of model aircraft from the definition of *unmanned aircraft to which this section applies*. This is consequential on the repeal of the scheme for model aircraft registration and model aircraft operator accreditation.
- [22] **Section 13.02, the heading**
This amendment is consequential on amendment 21.

- [23] **Section 13.03, the heading**
This amendment is consequential on amendment 21.
- [24] **Paragraph 13.03 (1) (a)**
This amendment is consequential on amendment 21.
- [25] **Chapter 14, the heading**
This amendment is consequential on amendment 27.
- [26] **Section 14.01, the heading**
This amendment is consequential on amendment 27.
- [27] **Subsection 14.01 (2)**
Existing section 14.01 prescribes the requirement for making modifications to registered aircraft. The amendment removes mention of model aircraft from the definition of *unmanned aircraft to which this section applies*. This is consequential on the repeal of the scheme for model aircraft registration and model aircraft operator accreditation.

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 Revisions) Amendment Instrument 2023 (No. 2)

The *Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 2)* (the **MOS amendment**) 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

Model aircraft

On 25 May 2023, the *Civil Aviation Legislation Amendment (2023 Measures No. 1) Regulations 2023* was registered. Its purpose was to amend the *Civil Aviation Safety Regulations 1998* and the *Civil Aviation (Unmanned Aircraft Levy) Regulations 2021*, primarily to repeal the scheme for model aircraft registration and model aircraft operator accreditation. The amendments were not controversial as they removed an operator burden following a change in government policy from the time when the scheme was originally consulted.

The major practical and standard-setting elements of the model aircraft registration and model aircraft operator accreditation scheme were provided for in the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (as amended) (the **principal MOS**). However, there has been a change in government policy regarding model aircraft registration and accreditation, and the regulatory and transitional provisions for the scheme have been repealed. The main purpose of the *Part 101 Manual of Standards (Miscellaneous Revisions) Amendment Instrument 2023 (No. 2)* (the **MOS amendment**) is, therefore, to consequentially remove mentions of the scheme from the MOS through deletions or repeals as appropriate.

When compliance with training standards is “impossible, impracticable or unreasonable”

The *Part 101 Manual of Standards (Modified Licensing Standards for Advancing RPA Technology, and Other Matters) Amendment Instrument 2022 (No. 1)* provided CASA with a power to approve, for individual RPA training organisations, modified training and testing competencies and standards to safely accommodate unforeseen emerging new technology in the development, manufacture and deployment of medium RPA and large RPA. These aircraft would otherwise find it impossible or impracticable to be operated in conformity with the training and flight-testing requirements of the principal MOS. Without some such approval, it would otherwise be impossible to grant remote pilot licences, or upgrade existing licences, to cover these aircraft, even when it would be safe to do so.

The MOS amendment includes 4 amendments to better facilitate these interim legislative arrangements. The 4 new amendments enlarge the mention of “impossible or impracticable” to include a criterion of “unreasonableness”. Related new Notes

explain that if a feature of an RPA otherwise required an applicant for a RePL or RePL upgrade to repeat training previously successfully completed for an earlier RePL, CASA may, subject to considerations of aviation safety, consider that such repetition would be unreasonable.

The related Notes make it clear that the concept of unreasonableness will be predicated on allowing alternative substitute standards only where the other standard, although not impossible or necessarily impracticable to meet, would nevertheless contribute nothing to aviation safety and the alternative standard would contribute, or at least preserve, aviation safety.

CASA is working to develop new, generic, outcome-based training standards for technologically advanced medium RPA and large RPA, with a view to eventually amending the principal MOS accordingly, making the approval process redundant.

The MOS amendment also includes 5 amendments making technical and drafting corrections.

Human rights implications

The MOS amendment is a minor or machinery measure that contains no new legal requirements that would amount to increased legislative burdens or obligations on RPA operators.

Given the nature of the amendments, the MOS amendment in itself does not give rise to any human rights issues for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The MOS amendment is a legislative instrument that is compatible with human rights and does not in itself raise any human rights issues.

Civil Aviation Safety Authority