

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Part 149 (Approved Self-administering Aviation Organisations) Amendment Manual of Standards (No.1) 2023

##### Purpose

The purpose of the amendment instrument is to make amendments to the Part 149 Manual of Standards that are consequential on the making of Part 105 of the *Civil Aviation Safety Regulations 1998 (CASR)* and the *Part 105 (Parachuting from Aircraft) Manual of Standards 2023 (the Part 105 MOS)*. The amendments are necessary to align the aviation administration functions of the Part 149 Manual of Standards with Part 105 activities. Part 105 activities (*parachuting activities*) that can be administered by an approved self-administering aviation organisation (an *ASAO*) under Part 149 are prescribed under Part 105 of CASR and the Part 105 MOS.

Part 105 of CASR commenced on 2 December 2021, however, the making of a Part 105 Manual of Standards has been delayed since that time. Transitional regulation 202.502 of CASR has enabled the continued operation of parachuting sport aviation bodies, within the incomplete legislative framework, by providing for parachuting operations to continue to operate under pre-existing arrangements. The transitional period comes to an end on 2 December 2023. Therefore, the Part 105 MOS and the consequential amendments of the Part 149 Manual of Standards commence on that day.

##### 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.

Under regulation 149.010 of CASR, the Civil Aviation Safety Authority (*CASA*) may issue a Manual of Standards for Part 149 of CASR that prescribes matters required or permitted by that Part to be prescribed, or prescribe matters necessary or convenient to be prescribed, for carrying out or giving effect to Part 149. This power is complemented by other provisions, throughout Part 149, which empower CASA to prescribe specific matters in the Part 149 Manual of Standards.

The Part 149 Manual of Standards prescribes matters in relation to ASAOs. Relevantly, the Part 149 Manual of Standards prescribes the aviation administration functions that an ASAO may be authorised to perform under regulation 149.075 of CASR.

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. Under subsection 13(1) of the LA, subsection 33(3) applies to legislative instruments as if each provision of the instrument was a section of an Act.

### **Background**

The Part 149 Manual of Standards was amended in 2021 so that it could operate effectively following the commencement of Parts 91, 103, 105 and 131 of CASR, without the Manuals of Standards for Parts 103, 105 and 131 (the **3-pack regulations**), to support and fill in the framework of the respective Parts. During 2021, the making of Manuals of Standards for the 3-pack regulations was delayed, in each case, for further consultation with the established industry groups. For Part 105, this necessitated amendment of regulation 202.502 of CASR, as well as legislative instruments mentioned in that regulation, to enable parachuting operations to continue under transitional arrangements. Once the legislative framework for Part 105 (including the Part 105 MOS) are in place, the transitional arrangements will no longer be required.

To facilitate the continuation of the transitional arrangements for parachuting in the absence of the Part 105 MOS, CASA reissued, extended or amended certain legislative instruments (CASA 263/02, CASA 36/19, CASA 11/17 and CASA 84/18) during 2021 that enable parachuting operations to be conducted under the exemption from Part 105 provided by regulation 202.502 of CASR. These instruments are only effective while regulation 202.502, which self-repeals at the end of 1 December 2023, is in force. The Part 105 MOS is intended to commence on 2 December 2023 upon the self-repeal of the transitional regulation.

The 2021 amendments to the Part 149 Manual of Standards ensured that the aviation administration functions prescribed by that Manual of Standards would properly capture the aircraft intended to be captured by Part 103, that were being administered by an ASAO, as well as balloons operated for the purposes of a Part 131 activity and the oversight of the airworthiness of emergency parachutes by a Part 149 ASAO that administers parachuting. Those amendments did not include any consequential changes relating directly to Part 105 of CASR for the reason that it was not necessary to deal with them in the Part 149 Manual of Standards immediately because Part 105 was disappplied under the transitional arrangements.

### **Overview of instrument**

The instrument in large part amends the aviation administration functions (the **Part 149 parachuting functions**) that have been prescribed in Division 3 of Chapter 2 of the Part 149 Manual of Standards for parachuting activities. This is for the purpose of aligning the functions with the scheme established under Part 105 of CASR and the Part 105 MOS for how parachuting operations are to be regulated by ASAOs under Part 149.

The Part 149 parachuting functions were initially drafted before Part 105 of CASR was made. The amendments reflect Part 105 concepts of activities defined to be a **parachuting activity** under the definition of that term in regulation 105.010, as well as the concepts: **tandem parachutist**, **trainee parachutist**, and requirements for the training of pilots operating aircraft to facilitate parachute descents. The Part 105 MOS establishes requirements for a drop zone safety officer (who supervises parachute descents), adds activities of “ground control” (about radiocommunications from the ground) and “compatibility assessments” (being an assessment of the compatibility of a main parachute with the parachute container of a reserve parachute assembly) to the defined category **parachuting activity**. The amendments in the instrument reflect these changes.

The issue of an authorisation to a person to allow them to conduct a parachuting activity is a core function of a Part 105 ASAO and key to the legislative framework established under Part 149 and the other sport and recreation aviation Parts of CASR (Parts 103 and 131). For Part 105, regulation 105.065 requires that a person must not undertake a parachuting activity if the person does not hold an authorisation from a Part 105 ASAO that authorises the activity. Contravention of the requirement, or a related requirement to comply with the terms of the authorisation, is a strict liability offence. The authorisations established under Part 105 and the Part 105 MOS include those for a **ground control assistant**, a **student parachutist certificate**, a **tandem parachutist certificate**, an authorisation permitting a person to be a drop zone safety officer, and an authorisation permitting a person to carry out a compatibility assessment of a main parachute and the parachute container of a reserve parachute assembly. The aviation administration functions prescribed under the Part 149 Manual of Standards detail the authorisations, issue of which is included within the function that administers the activity, and these are updated in the instrument where necessary.

CASA has assessed the impact on aviation safety in its development of the Part 149 Manual of Standards and the consequential amendments of the Part 149 Manual of Standards.

The amendments in the instrument are made in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

### **Documents incorporated by reference**

Under subsection 98(5D) of the Act, the instrument 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, as that non-legislative instrument exists or 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 amendments in the instrument incorporate the defined terms of a list of definitions from the Part 105 MOS, as in force from time to time. This is because the concepts are part of the same legislative scheme and parachuting concepts are more properly dealt with in the Manual of Standards made for Part 105.

The Part 105 MOS fills out the details of the scheme in Part 105 of CASR that regulates parachute descents from aircraft, the airworthiness of reserve parachutes and emergency parachutes, and includes operational rules additional to those in Part 105.

The Part 105 MOS is legislative and is incorporated as in force from time to time, in accordance with paragraph 10(a) of the *Acts Interpretation Act 1901* as applied to the instrument under paragraph 13(1)(a) of the LA. The Part 105 MOS is freely available from 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 commencement of the *Part 105 (Parachuting from Aircraft) Manual of Standards 2023*.

Section 3 provides that the instrument is made under CASR.

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

### Schedule 1

Item [1] makes a typographical correction to the citation provision in subsection 1(2).

Item [2] corrects a numbering error in section 5.

Items [3] to [10] amend subsection 5(1) which is the general definitions section of the Part 149 Manual of Standards, to insert a range of terms that are defined in the Part 105 MOS, and whose meaning is cross-referenced to the meaning the term has in the Part 105 MOS. Item [5] also includes a signpost definition for the term ***jump pilot training*** which is defined, for the purposes of the Part 149 Manual of Standards, in paragraph 26(2)(a).

Items [11] and [12] amend subsection 23(2) so that the aviation administration function of administering a parachute descent includes developing requirements for the training of tandem parachutists. This reflects the definition of ***parachuting training*** in section 1.04 of the Part 105 MOS, which includes, for tandem descents, training that is required (by the Part 105 ASAO that administers the descent) for the issue of a tandem parachutist certificate to a person to undertake the descent as a tandem parachutist.

Item [13] amends subsection 23(3) to reflect that the persons who are assessed for the issue of a parachutist certificate to undertake a parachute descent, or a rating or endorsement, are trainee parachutists. Under subsection 1.04(6) of the Part 105 MOS, a trainee parachutist is defined to be a person who is undertaking training for the issue of a parachutist certificate or rating or endorsement on the certificate.

Items [14] and [15] amend subsection 23(3) to include “ground control” and “supervising a parachute descent” as parachute descent activities.

Item [16] clarifies the intent of subparagraph 23(5)(b)(i).

Items [17] and [18] add authorisations to the list of authorisations in subsection 23(5). These include:

- an endorsement on a parachutist certificate authorising the holder, in a parachute training operation, to control a parachute descent in which a tandem parachutist is carried
- a student parachutist certificate that authorises a trainee parachutist who is receiving training for the issue of a parachutist certificate to undertake parachute descents

- an authorisation to a person authorising the person to undertake a parachute descent as a tandem parachutist
- authorising a person as a ground control assistant
- authorising a person as a drop zone safety officer.

Item [19] removes the definition of *parachuting training* in subsection 23(6) that is now in the Part 105 MOS.

Items [20] and [21] make the amendments necessary to insert a 2<sup>nd</sup> note at the foot of section 24 to draw attention to section 5.25 of the Part 105 MOS which provides for procedures for safe conduct to be included in an ASAO's exposition. Section 24 of the Part 149 Manual of Standards provides that establishing procedures for the safe conduct of parachute descents in accordance with any provision of the civil aviation legislation is an aviation administration function. The note points to the existence of section 5.25 of the Part 105 MOS which makes it a requirement that certain kinds of parachute descents must have safe procedures.

Item [22] amends paragraph 26(1)(b) so that it more closely reflects the concepts of Part 105 of CASR in relation to trainee or tandem parachutists.

Item [23] clarifies the intent of paragraph 26(2)(b) that (jump pilot) training includes assessment.

Item [24] amends paragraph 26(2)(a) similarly to item [22].

Item [25] amends subsection 26(2) to add the ASAO's requirements for the issue of an authorisation to a person to assess the ongoing competency of the holder of a jump pilot authorisation to the function in section 26 (about administering the operation of an aircraft to facilitate a parachute descent). This reflects the requirement in Division 2 of Chapter 3 of the Part 105 MOS for jump pilots to have a valid 6 month or 12 month "competency review", and for persons who assess a pilot's ongoing competency to be authorised to do so by the ASAO.

Item [26] removes the notion that an ASAO would develop "experience requirements" as these are prescribed in Part 105 of CASR.

Item [27] inserts a note at the foot of subsection 26(2) to draw attention to section 5.23 of the Part 105 MOS which sets out standards for pilot training.

Items [28], [29] and [30] more closely align the language in section 26 with the concepts in Part 105 that deal with trainee and tandem parachutists.

Item [31] removes definitions in subsection 26(5) that are now dealt with in the Part 105 MOS.

Item [32] amends the function in subsection 27(1) to allow that a parachuting training organisation (administered by an ASAO under this function) may be an organisation that conducts jump pilot training. A parachuting training organisation could be an organisation that conducts parachuting training or jump pilot training, or both. The amendment also inserts

a note below subsection 27(1) to point to the provisions in the Part 105 MOS that deal with pilot training requirements, or the standards for pilot training.

Items [33] to [36] make amendments to section 27 that are necessary to support the amendments made by item [32].

Items [37] and [38] provide, in the airworthiness function, that the function includes developing and publishing requirements about the airworthiness of a reserve parachute assembly. This is to reflect paragraph 2.04(4)(b) of the Part 105 MOS which incorporates by reference requirements that the administering ASAO may develop as airworthiness requirements for a reserve parachute assembly for paragraph 105.055(3)(a) of Part 105. These would be in addition to the requirements of the manufacturer of the assembly.

The items also provide that the function could include the ASAO assuming the provision of airworthiness support for a reserve parachute assembly, and publishing airworthiness requirements for that purpose, in the case that the manufacturer no longer provides airworthiness support for the assembly. This amendment supports the provisions in the Part 105 MOS that would enable an ASAO to provide continuing airworthiness support, where it chooses to do so.

The notes to subsection 28(2) identify the relevant provisions of the Part 105 MOS.

Item [39] amends subsection 28(3) to reflect language about parachuting activities concerning airworthiness that is used in Part 105.

Item [40] amends section 28 to include, within the airworthiness function, the airworthiness activity of assessing the compatibility of a main parachute and the parachute container of the reserve parachute, including issuing an authorisation to a person to conduct the assessment. The function also includes developing competency standards and units of competency for training that must be done to qualify for an authorisation.

Item [41] removes the definition of *emergency parachute* from section 28, as it is now dealt with in the Part 105 MOS.

Item [42] corrects a cross-referencing error in subsection 31(3).

Items [43] and [44] amend section 37 of the Part 149 Manual of Standards which prescribe additional matters that must be included in the exposition. Item [44] inserts paragraph (s) to include any matter required to be included in the exposition by the Part 103 Manual of Standards or the Part 105 MOS. For the Part 105 MOS, this amendment is necessary to enforce the requirements of paragraph 149.340(k) of CASR. The Part 105 MOS includes various provisions requiring an ASAO to include matters in its exposition. The amendment anticipates this requirement for the Part 103 Manual of Standards.

### ***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 Manual of Standards 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**

Consultation under section 17 of the LA has not been undertaken in this case. The instrument makes necessary amendments to the Part 149 Manual of Standards that are consequential on the making of Part 105 of CASR and the Part 105 MOS. Part 105 of CASR was subject to public consultation from 4 September to 19 September 2019 and the Part 105 MOS was subject to public consultation from 8 December 2022 to 22 January 2023. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

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

### **Impact on categories of operations**

The instrument is likely to have a beneficial effect on parachuting operations and related businesses by promoting the safe conduct of parachuting operations that may encourage the uptake of parachuting activities by the recreational and tourism sectors and the use of parachuting equipment and aircraft provided by those businesses.

### **Impact on regional and remote communities**

The instrument is likely to have a beneficial effect on the regional community in which parachuting activities are conducted because it will lead participants in, and spectators of, the events to visit that community.

### **Office of Impact Analysis (OIA)**

A Regulation Impact Statement (RIS) was prepared for Part 149 of CASR and assessed as adequate by the Office of Best Practice Regulation (now the Office of Impact Analysis) under

OBPR id: 21149. The amendments to the Part 149 Manual of Standards made by this instrument are mechanical changes consequential on the making of the Part 105 MOS, for which the OIA has made the assessment that the impacts of the Part 105 MOS are likely to be minor and that no further analysis in the form of an Impact Analysis (*IA*) was required (OIA23-05332). An IA is not required in this case, as the exemption is covered by a standing agreement between CASA and OIA under which an IA is not required for amendments to a Manual of Standards (OIA 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 of Aviation Safety, on behalf of CASA, in accordance with subsection 73(2) of the Act.

The instrument commences on the commencement of the Part 105 MOS 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*

### Part 149 (Approved Self-administering Aviation Organisations) Amendment Manual of Standards (No. 1) 2023

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 amendment instrument is to make necessary amendments to the Part 149 Manual of Standards that are consequential on the making of Part 105 of the *Civil Aviation Safety Regulations 1998 (CASR)* and the *Part 105 (Parachuting from Aircraft) Manual of Standards 2023* (the **Part 105 MOS**). The amendments are necessary to align the aviation administration functions of the Part 149 Manual of Standards with Part 105 activities. Part 105 activities (**parachuting activities**) that can be administered by an approved self-administering aviation organisation (an **ASAO**) under Part 149 are prescribed under Part 105 of CASR and the Part 105 MOS.

The instrument in large part amends the aviation administration functions (the **Part 149 parachuting functions**) that have been prescribed in Division 3 of Chapter 2 of the Part 149 Manual of Standards for parachuting activities. This is for the purpose of aligning the functions with the scheme established under Part 105 of CASR and the Part 105 MOS for how parachuting operations are to be regulated by ASAOs under Part 149.

The Part 149 parachuting functions were initially drafted before Part 105 of CASR was made. The amendments reflect Part 105 concepts of activities defined to be a **parachuting activity** under the definition of that term in regulation 105.010, as well as the concepts: **tandem parachutist**, **trainee parachutist**, and requirements for the training of pilots operating aircraft to facilitate parachute descents. The Part 105 MOS establishes requirements for a drop zone safety officer (who supervises parachute descents), adds activities of “ground control” (about radiocommunications from the ground) and “compatibility assessments” (being an assessment of the compatibility of a main parachute with the parachute container of a reserve parachute assembly) to the defined category **parachuting activity**. The amendments in the instrument reflect these changes.

The issue of an authorisation to a person to allow them to conduct a parachuting activity is a core function of a Part 105 ASAO and key to the legislative framework established under Part 149 and the other sport and recreation aviation Parts of CASR (Parts 103 and 131). The authorisations established under Part 105 and the Part 105 MOS include those for a **ground control assistant**, a **student parachutist certificate**, a **tandem parachutist certificate**, an authorisation permitting a person to be a drop zone safety officer, and an authorisation permitting a person to carry out a compatibility assessment of a main parachute and the parachute container of a reserve parachute assembly. The aviation administration functions

prescribed under the Part 149 Manual of Standards detail the authorisations, issue of which is included within the function that administers the activity, and these are updated in the instrument where necessary.

**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**