

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### Part 139 Manual of Standards Amendment Instrument 2024 (No. 1)

##### Purpose

The *Part 139 (Aerodromes) Manual of Standards 2019* (the **Part 139 MOS**) sets out the standards for the construction, maintenance and operation of certified aerodromes, and for the radiocommunications facilities required at aerodromes.

The *Part 139 Manual of Standards (Global Reporting Format and Miscellaneous Amendments) Instrument (No. 1) 2024* (the **Part 139 MOS amendment**), registered on 9 February 2024, amended the Part 139 MOS to establish the new global reporting system for assessing and reporting runway surface conditions (the Global Reporting Format or GRF).

The *Part 139 Manual of Standards Amendment Instrument 2024 (No. 1)* (the **minor amendment instrument**) corrects some minor errors in the Part 139 MOS amendment.

The Part 139 MOS amendment contained a cross-referencing error in the citation of a provision, a consequentially erroneous Note, and a consequential omission of related words from a provision. The opportunity is also taken to correct an unrelated typographical error in subsection 6.66 (2) of the Part 139 MOS.

##### Background

The Part 139 MOS amendment inserted section 18.03 into the Part 138 MOS to provide that if pooling or ponding of water, “or poor drainage” is observed on a runway in the course of an aerodrome serviceability inspection “under paragraph 12.01 (1) (a)” of the MOS, the aerodrome operator must ensure that remedial maintenance is undertaken as soon as possible.

A supporting Note 1 for section 18.03 stated that “under paragraph 12.01 (1) (a)”, the operator of a certified aerodrome must carry out an aerodrome serviceability inspection if there has been a severe wind event, a severe storm, or a period of heavy rainfall.

However, under section 12.01 as a whole, serviceability inspections must also be carried out in other circumstances, for example, if a hazard to aircraft may be present on the manoeuvring area, when requested in writing by CASA, when requested by ATC, and, with differing prescribed frequencies, if there are or are not, scheduled air transport operations.

Under subsection 12.03 (3), every serviceability inspection must check for the presence of water pooling or ponding on the movement area, but mention of “poor drainage” had been overlooked.

It was, therefore, the intention of the Part 139 MOS amendment that if pooling or ponding of water, or poor drainage was observed on a runway in the course of any of these aerodrome serviceability inspections – and not merely during one under paragraph 12.01 (1) (a) after a severe wind event, a severe storm, or a period of heavy rainfall – the aerodrome operator must ensure that remedial maintenance would be undertaken as soon as possible.

The minor amendment instrument, therefore, has the effect of modifying section 18.03 so that it references all of the potential aerodrome serviceability inspections. It now reads:

If pooling or ponding of water, or poor drainage is observed on a runway in the course of an aerodrome serviceability inspection *under section 12.01*, the aerodrome operator must ensure that remedial maintenance is undertaken as soon as possible.

The related Note 1 now explains that “under section 12.01”, the operator of a certified aerodrome must carry out certain prescribed aerodrome serviceability inspections. Under subsection 12.03 (3), a serviceability inspection must check for the presence of pooling or ponding of water, “or poor drainage” on the movement area.

It remains the case, as originally provided for under section 18.03, that if a serviceability inspection finds pooling or ponding of water, or poor drainage specifically on a runway, then the aerodrome operator must ensure that remedial maintenance is undertaken as soon as possible.

The final amendment is merely the correction of a self-evident typographical error in section 6.66 of the Part 139 MOS.

### **Legislation**

Under regulation 139.005 of CASR, CASA may issue a Manual of Standards (a **MOS**) for Part 139 of CASR that prescribes matters required or permitted by that Part to be prescribed, or necessary or convenient for carrying out or giving effect to Part 139 regulations.

### **Legislation — *Acts Interpretation Act 1901***

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 (like a MOS), 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.

### **Details of the minor amendment instrument**

The details of the minor amendment instrument are set out in Appendix 1.

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

Under paragraph 10 (1) (d) of the LA, an instrument that amends a legislative instrument is itself a legislative instrument. The Part 139 MOS was a legislative instrument. Therefore, the minor amendment instrument is a legislative instrument and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

### **Sunsetting**

Like the Part 139 MOS amendment, the minor amendment instrument relates to aviation safety and, therefore, Part 4 of Chapter 3 of the LA (the sunseting 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*: “An instrument relating to aviation safety made under the *Civil Aviation Act 1988*, the *Civil Aviation Regulations 1988* or the *Civil Aviation Safety Regulations 1998*”).

The Part 139 MOS deals with aviation safety matters that, once identified, require a risk response or treatment plan that is intended to have enduring operation and it would not be appropriate for it to be subject to sunseting. The same principle applies to any amending instrument.

It is likely that further Part 139 MOS amendments will be made in the foreseeable future and these, while not subject to sunseting, will be subject to tabling and disallowance in the Parliament in the normal way. CASA would also be responsive to any major concerns expressed by the Parliament about the propriety of the Part 139 MOS or amendments to it. Hence, the scope for ongoing parliamentary scrutiny of the Part 139 MOS is not materially reduced.

### **Incorporation by reference**

Under subsection 98 (5D) of the Act, a 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).

References to provisions of legislation or other legislative instruments are taken to be as they are in force from time to time by virtue of paragraph 13 (1) (c) of the LA. CASR and MOSs are freely available online on the Federal Register of Legislation.

Under subsection 14 (1) of the LA, a legislative instrument may incorporate provisions from another legislative instrument as in force at a particular time, or as in force from time to time.

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.

There are no incorporations under the minor amendment instrument.

### **Consultation**

Under regulation 11.280 of CASR, if CASA intends to issue a MOS, it must, in effect, engage in public consultation on the draft MOS for at least 28 days. This requirement also applies to an instrument that amends a MOS.

### **No consultation required for minor or machinery amendments to a MOS**

However, under paragraph 11.275 (1) (d) of CASR, CASA is not required to consult on provisions of a MOS if the Director of Aviation Safety (the *Director*) determines that they are of a minor or machinery nature that do 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.

For the provisions in the minor amendment instrument, the Director has made such a determination under *CASA 16/24 — Determination for Part 139 Manual of Standards Amendment Instrument 2024 (No. 1)*, as the amendments are clearly minor or machinery in nature that do not substantially alter existing arrangements.

### **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 MOSs (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.

It was always intended for the Part 139 MOS amendment that if pooling or ponding of water, or poor drainage were to be observed on a runway in the course of any aerodrome serviceability inspection under section 12.01, the aerodrome operator must ensure that remedial maintenance is undertaken as soon as possible because of the risk that such circumstances may present to aviation safety.

This remediation obligation may give rise to a cost impact for the aerodrome operator to address the pooling or ponding of water, or poor drainage.

However, this is not a new obligation. Serviceability inspections must already check for “subsurface leaks or pressure, including broken water mains or inadequate or defective drainage” (paragraph 12.03 (3) (f)).

It is a matter of critical aviation safety for aircraft landing or taking off that pooling or ponding of water, or poor drainage that has been identified on a runway during any serviceability inspection, and not only after an inspection arising from a rain event must not be ignored, and must trigger maintenance action as soon as possible.

An existing Note 2 for section 18.03 remains unchanged. It explains that it is not generally the case that runways or parts of runway surfaces need to be overlaid, resurfaced or replaced, but maintenance action is to be taken to address the formation of depressions or surface irregularities that allow water to pool, pond, or not drain.

### **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 minor amendment instrument as compared to the baseline that existed in February 2019 before the Part 139 MOS was made.

**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 minor amendment instrument does not engage any of the rights.

**Commencement and making**

The minor amendment instrument commences on the day after it is registered.

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

**Detailed explanation of:****Part 139 Manual of Standards Amendment Instrument 2024 (No. 1)**

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- 1 Name of instrument**  
This section names the minor amendment instrument.
- 2 Commencement**  
Under this section, the instrument commences on the day after it is registered.
- 3 Amendment of the *Part 139 (Aerodromes) Manual of Standards 2019***  
Under this section, Schedule 1 amends the Part 139 MOS.

**Schedule 1 Amendments**

- [1] Subsection 6.66 (2), the chapeau**  
Under this amendment, subsection 6.66 (2) is amended to correct a typographical error.
- [2] Subsection 12.03 (3), the heading, Note 2**  
This amendment corrects a Note, consequentially on amendment 3.
- [3] Paragraph 12.03 (3) (c)**  
Under this amendment, the missing reference to “poor drainage” is corrected, creating consistency with section 18.03.
- [4] Section 18.03**  
Under this amendment, the citation error in section 18.03 is corrected so that if pooling or ponding of water, or poor drainage is observed on a runway in the course of any aerodrome serviceability inspection under section 12.01, the aerodrome operator must ensure that remedial maintenance is undertaken as soon as possible.
- [5] Section 18.03, Note 1**  
Under this amendment, Note 1, which is consequential on amendment 4, provides a more accurate explanation for the corrected section 18.03.

## Statement of Compatibility with Human Rights

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

### Part 139 Manual of Standards Amendment Instrument 2024 (No. 1)

The legislative instruments are 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 instruments

The *Part 139 (Aerodromes) Manual of Standards 2019* (the **Part 139 MOS**) sets out the standards for the construction, maintenance and operation of certified aerodromes, and for the radiocommunications facilities required at aerodromes.

The *Part 139 Manual of Standards (Global Reporting Format and Miscellaneous Amendments) Instrument (No. 1) 2024* (the **Part 139 MOS amendment**), registered on 9 February 2024, amended the Part 139 MOS to establish the new global reporting system for assessing and reporting runway surface conditions (the Global Reporting Format or GRF).

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#### Human rights implications

The minor amendment instrument does not give rise to any human rights issues.

#### Conclusion

The minor amendment 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*.

**Civil Aviation Safety Authority**