

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 101 Manual of Standards (Miscellaneous Fixes) Amendment Instrument 2024

Purpose

The principal purpose of the *Part 101 Manual of Standards (Miscellaneous Fixes) Amendment Instrument 2024* (the **MOS amendment**) is to amend the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (the **MOS**) to clarify for readers the date of effect of certain provisions contained in the *Part 101 Manual of Standards (Chief Remote Pilot Licence Instructor and Other Matters) Amendment Instrument 2024* (the **first MOS amendment**) and now compiled into the MOS.

This is considered to be a minor or machinery amendment. The opportunity is also being taken to make some other minor or machinery amendments to the MOS.

Legislation — the *Civil Aviation Act 1988* (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 the *Civil Aviation Safety Regulations 1998* (**CASR**) deals with the operation of unmanned aircraft, rockets and fireworks.

Legislation — Part 101 of CASR

Under regulation 101.028, CASA may issue a Manual of Standards 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 Manual of Standards.

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 Manual of Standards, the power includes a parallel power to amend the Manual of Standards. 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.

Background

The first MOS amendment required organisations training individuals to operate remotely piloted aircraft (**RePL training organisations**) to have a Chief Remote Pilot Licence Instructor (a **Chief RePL Instructor** or **CRI**) to safely manage the conduct of remote pilot licence (**RePL**) training courses run by the organisation.

The amendments were expressed to commence on the day after they were registered (6 April 2024) but to only take legal effect on and from 10 July 2024. However,

compiled in the MOS as amended, this delayed effect was not immediately clear to readers who would otherwise have to refer to Notes at the back of the compilation.

The MOS amendment, therefore, amends the relevant provisions to expressly state that they take effect on and from 10 July 2024.

Other minor or machinery amendments

The opportunity is also being taken to make some other minor or machinery amendments to the MOS, to rectify a miscitation of an amendment in the first MOS amendment, and to correct some typographical errors in the interests of stylist consistency in the MOS.

The 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 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 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 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 MOS apply, not to a particular remote pilot or a particular RPA, but to the class of such pilots and such aircraft. The 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 ***sunsetting 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 amendments in

the instrument are intended to have enduring operation and it would not be appropriate for them to be subject to sunseting.

The exemption from the sunseting provisions affects parliamentary oversight by not requiring the instrument to be remade at the end of the sunseting 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 2024 and these, while not subject to sunseting, will be subject to tabling and disallowance in the Parliament in the normal way. In this particular case, the MOS amendment is automatically repealed in accordance with the time frame under section 48A of the LA which is designed to facilitate parliamentary scrutiny of the instrument. Hence, the scope for parliamentary scrutiny of the MOS is not materially reduced by the non-application of the sunseting provisions.

Incorporation by reference

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

Reference is made to the *Part 101 Manual of Standards (Chief Remote Pilot Licence Instructor and Other Matters) Amendment Instrument 2024*, which is a legislative instrument available for free on the Federal Register of Legislation.

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 Manual of Standards, CASA must, in effect, engage in public consultation on the actual draft finalised MOS. This requirement also applies to a Manual of Standards 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 Manual of Standards 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 24/24 — Determination for the Part 101 Manual of Standards (Miscellaneous Fixes) Amendment Instrument 2024*) and a statement of reasons, which are available on the CASA website, determining, and explaining why, the MOS amendment is self-evidently of a minor or machinery nature. For this reason, CASA did not formally consult on the MOS amendment.

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.

The MOS amendment, which applies exclusively to RePL training organisations, is a clarifying and corrective instrument and as such has no economic or cost impact.

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, when compared to the MOS as in force before the MOS amendment 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 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.

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

DETAILS OF:**Part 101 Manual of Standards (Miscellaneous Fixes) Amendment Instrument 2024**

- 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 of the instrument amends the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019*.

Schedule 1 Amendments

- [1] After subsection 1.04 (4)**
The first MOS amendment replaced references to the chief remote pilot (*CRP*) with references to the new Chief Remote Pilot Licence Instructor (*CRI*). However, legally under that amendment, this change only takes effect on and from 10 July 2024, but this would not be immediately apparent to a reader. Therefore, under this amendment, until 10 July 2024, reference in each definition of *examiner* to the CRI (subsection 1.04 (2)) is a reference to the chief remote pilot.
- [2] Subsection 2.29 (1), the chapeau**
Under this amendment, a RePL training organisation must give each student who successfully completes a RePL training course, a certificate of course completion, signed and dated:
 - (a) until 10 July 2024 — by the chief remote pilot of the organisation; and
 - (b) on and from 10 July 2024 — by the CRI.
 The need for this consequential amendment to the MOS was overlooked when the first MOS amendment was prepared.
- [3] Before subsection 2.29A (1)**
Section 2.29A provides that, for the purpose of conducting a RePL training course for a type of RPA, a RePL training organisation must at all times have a CRI. This amendment inserts a new subsection (1AA) to provide that the section only takes effect on and from 10 July 2024. This is already legally the case, but would not otherwise be immediately clear to a reader.
- [4] Section 2.29B**
Section 2.29B provides that, for the purpose of conducting a RePL training course for a type of RPA, a RePL training organisation must ensure that its CRI performs and discharges the prescribed duties and responsibilities. This amendment inserts a new subsection (1AA) to provide that the section only takes effect on and from 10 July 2024. This is already legally the case, but would not otherwise be immediately clear to a reader.

- [5] **Before subsection 2.29C (1)**
Section 2.29C provides that a person is deemed to be the CRI of a RePL training organisation if, on 10 July 2024, the person is the organisation’s chief remote pilot (*CRP*) and has all of the applicable qualifications for a CRI by not later than 10 January 2025. This amendment inserts a new subsection (1AA) to provide that the section only takes effect on and from 10 July 2024. This is already legally the case under the first MOS amendment, but would not otherwise be immediately clear to a reader.
- [6] **After subsection 2.30A (2)**
Section 2.30A moves the RePL training-related duties of a RePL training organisation’s CRP to the newly-created CRI position. Legally, under the first MOS amendment, this takes effect only on and from 10 July 2024, but this would not be immediately clear to a reader. This amendment, therefore, provides that, until 10 July 2024, reference to a CRI is reference to the CRP.
- [7] **Subsection 4.03 (6), first occurring**
This amendment repeals subsection 4.03 (6) which was inadvertently left unrepealed when the first MOS amendment inserted a new subsection 4.03 (6) to replace it.
- [8] **After subsection 4.03 (6)**
A typographical error in the first MOS amendment had the effect of inadvertently repealing subsection 4.03 (7) which permits a person to fly a defined unmanned aircraft in the no-fly zone of a controlled aerodrome. This amendment restores subsection (7) with effect from the commencement of this instrument.
- [9] **Subsection 9.01 (1)**
This amendment corrects an existing typographical error in the MOS.
- [10] **Section 9.02, paragraph (b) of definition of *no-fly zone of an HLS***
This amendment corrects an existing typographical error in the MOS.
- [11] **Subparagraph 9.05 (3) (d) (ii)**
This amendment corrects an existing stylistic error in the MOS.
- [12] **Subsection 9.06 (4)**
This amendment corrects an existing stylistic error in the MOS.
- [13] **Section 10.01, definition of *small excluded RPA***
This amendment corrects an existing punctuation error in the MOS.
- [14] **After subsection 10.03A (2)**
Under section 10.03A, the CRI replaces the CRP as the person who must keep certain RePL training course records. Legally, under the first MOS amendment, this CRI obligation arises on and from 10 July 2024, but this is not immediately apparent to a reader. This amendment, therefore, provides that until 10 July 2024, a reference in the section to the CRI is a reference to the CRP.
- [15] **Section 13.02**
This amendment corrects an existing stylistic error in the MOS.
- [16] **Section 13.02**
This amendment corrects an existing stylistic error in the MOS.

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 Fixes) Amendment Instrument 2024

The 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 principal purpose of the *Part 101 Manual of Standards (Miscellaneous Fixes) Amendment Instrument 2024* (the **MOS amendment**) is to amend the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (the **MOS**) to clarify for readers the date of effect of certain provisions contained in the *Part 101 Manual of Standards (Chief Remote Pilot Licence Instructor and Other Matters) Amendment Instrument 2024* (the **first MOS amendment**) and now compiled into the MOS.

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The amendments were expressed to commence on the day after they were registered (6 April 2024) but to only take legal effect on and from 10 July 2024. However, compiled in the MOS as amended, this delayed effect was not immediately clear to readers who would otherwise have to refer to Notes at the back of the compilation.

The MOS amendment, therefore, amends the relevant provisions to expressly state that they take effect on and from 10 July 2024. This is considered to be a minor or machinery amendment.

Other minor or machinery amendments

The opportunity is also being taken to make some other minor or machinery amendments to the MOS, to rectify a miscitation of an amendment in the first MOS amendment, and to correct some typographical errors in the interests of stylist consistency in the MOS.

Human rights engaged

The legislative instrument is designed to clarify the existing date of effect of the CRI provisions in the first MOS amendment, and make minor typographical corrections.

As such, it does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Human rights implications

There are no human rights implication arising from the instrument as such.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority