

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 139 Manual of Standards Amendment Instrument 2024 (No. 2)

Purpose

The *Part 139 (Aerodromes) Manual of Standards 2019* (the **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 Amendment Instrument 2024 (No. 2)* (the **MOS amendment**) adds a new section to the MOS to protect the fly-over area of a runway strip from the intrusion of airside vehicles, related objects and personnel (generally referred to as mobile objects) that are not prescribed to be there, and that fail to comply with certain safety conditions.

Legislation — CASR

Under regulation 139.005 of the *Civil Aviation Safety Regulations 1998 (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.

Under subsection 6.21 (3) of the MOS, no object or structure on the fly-over area of a runway strip, may project through a plane that starts along each outer side of the graded area and has an upward slope away from the graded area of 5%. However, under subsection 6.21 (4), navigational aids for the guidance of aircraft or vehicles may project through that plane if approved in writing by CASA under subsection 7.02 (1).

Under subsection 7 (1) of the MOS, objects or structures, other than approved visual and navigational aids, must not be constructed or erected within the obstacle restriction area of an aerodrome without the written approval of CASA.

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.

General safety obligation

Consistently with section 3A of the *Civil Aviation Act 1988* (the **Act**), the main object of a MOS or its amendment is to maintain, enhance and promote the safety of relevant civil aviation, with particular emphasis on preventing aviation accidents and incidents.

To this end, under subsection 9A (1) of the Act, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Background

CASA considers that it is an unnecessary requirement for maintenance and servicing vehicles and related personnel, at every certified aerodrome, to obtain individual approvals or exemptions when engaged in maintenance and servicing activities,

provided safety conditions are met. This was an unintended effect of relevant provisions under the MOS.

The MOS amendment, therefore, adds new section 6.21A to the MOS to provide that at a certified aerodrome, a prescribed thing that is used for a prescribed purpose may project through the plane described in subsection 6.21 (3), but only if, when, and for as long as, the conditions under subsection 6.21A (3) are complied with.

Under paragraph 6.21A (2) (a), a ***prescribed thing*** is any of the following on the fly-over area of a runway strip (the ***relevant area***):

- an airside vehicle, including anything that is part of the vehicle, and any mobile or moveable object, machine or equipment carried in, attached to, resting on, or for use with, the vehicle (***ancillary things***)
- relevant personnel who:
 - accompany, use, or are transported on, or in, an airside vehicle; or
 - alight from the vehicle, whether or not they carry or transfer ancillary things; or
 - arrive by foot on the relevant area, and are present and move about on foot, whether or not they carry or transfer anything relevant to their presence.

Under paragraph 6.21A (2) (b), a ***prescribed purpose*** is one or more of the following activities conducted on the fly-over area of a runway strip:

- a serviceability inspection or an aerodrome technical inspection
- the removal of foreign object debris
- wildlife hazard management, monitoring, dispersal or culling
- time-limited works
- emergency or time-critical remediation or similar activity essential to maintain aerodrome safety.

Under subsection 6.21A (3), a wide range of detailed safety conditions apply.

Details of the minor amendment instrument

The MOS amendment, particularly in its safety conditions, is forensically detailed in order to achieve the safe outcomes that are its purpose. Those details of the MOS amendment 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 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*: “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.

Letters of agreement

Among the safety conditions for both controlled and uncontrolled aerodromes is a requirement that an airside driver, or relevant personnel, seeking to access the fly-over area of a runway strip at the aerodrome must comply with the applicable requirements of any letter of agreement between the aerodrome operator and the ATC provider.

Such letters would be specific to circumstances and apply according to their terms, either as of an existing date or from time to time. Subsection 98 (5D) of the Act gives CASA expanded powers to so incorporate non-legislative instruments into a legislative instrument in force from time to time.

Such letters of agreement are not public documents but are specific operational documents as agreed. They would not, therefore, be generally available to the public.

However, CASA would, as far as practicable, make arrangements with any relevant operator to make a suitably redacted copy of the letter of agreement available for requested inspection by appointment at a relevant CASA office.

Operations manuals

Among the safety conditions for both controlled and uncontrolled aerodromes is a requirement that aerodrome operators' operations manuals, as in force from time to time, contain procedures to implement the requirements of the new section 6.21A.

An operations manual of an operator is a document, or suite of documents, that specifies the scope of the operations and activities conducted by the operator and sets out the plans, processes, procedures, programs and systems implemented by the operator to comply with the civil aviation legislation.

An operations manual, for an operator, generally means the manual as changed from time to time. Subsection 98 (5D) of the Act gives CASA expanded powers to so incorporate non-legislative instruments into a legislative instrument as in force from time to time.

An operations manual is not publicly or freely available. It is proprietary to the operator who creates it and owns its intellectual property, and it will generally include commercial in confidence information about the operator's business.

The incorporated requirements of manuals are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligations to make the manual available to its personnel who have obligations under the document.

However, CASA has previously undertaken that it will, as far as practicable, make arrangements with any relevant operator to make a suitably redacted copy of the manual available for requested inspection by appointment at a relevant CASA office.

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. Consultation was undertaken as follows.

Prior to consultation, several areas of concern had been identified and communicated to CASA about the effect of the MOS on activities within the obstacle restricted area (**ORA**) of an aerodrome, in particular concerning essential runway safety and maintenance activities that need to occur frequently within the ORA, particularly on the runway strip. The MOS unintentionally restricts these activities by requiring written approval by CASA. The issues identified caused consequential administrative and economic burden to certified aerodromes with an instrument runway.

Consultation documents posted online by CASA from 5 to 19 September 2024, including a consultation survey, asked industry respondents whether they had concerns with, or agreed to, the proposed variations to the MOS for operations within the ORA. In the event, the amendment was widely supported by industry respondents.

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.

Provided the safety conditions are met, the MOS amendment enables aerodrome operators' relevant authorised personnel to be on the fly-over area of a runway strip to perform essential runway servicing and maintenance without the expense or delay that may be involved in obtaining particular approvals from CASA.

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 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 MOS amendment is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life.

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. 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 139 (Aerodromes) Manual of Standards 2019

Under this section, Schedule 1 amends the *Part 139 (Aerodromes) Manual of Standards 2019*.

Schedule 1 Amendments**[1] Subsection 6.21 (3)**

This amendment is consequential on amendment 2.

[2] After section 6.21 — New section 6.21A

This amendment inserts new section 6.21A

- (1) Under this subsection, at a certified aerodrome, a prescribed thing (as defined) that is used for a prescribed purpose (as defined) may project through the plane described in subsection 6.21 (3), but only if, when, and for as long as, the conditions under subsection (3) of this section are complied with.
- (2) Under this subsection, key terms are defined as follows:
 - (a) a ***prescribed thing*** is any of the following on the fly-over area of a runway strip (the ***relevant area***):
 - (i) an airside vehicle, including anything that is part of the vehicle, and any mobile or moveable object, machine or equipment carried in, attached to, resting on, or for use with, the vehicle (***ancillary things***);
 - (ii) relevant personnel who:
 - (A) accompany, use, or are transported on, or in, an airside vehicle; or
 - (B) alight from the vehicle, whether or not they carry or transfer ancillary things; or
 - (C) arrive by foot on the relevant area, and are present and move about on foot, whether or not they carry or transfer anything relevant to their presence; and
 - (b) a ***prescribed purpose*** is one or more of the following activities conducted on the fly-over area of a runway strip:
 - (i) a serviceability inspection or an aerodrome technical inspection;

A Note references Chapter 12 for serviceability inspections and aerodrome technical inspections.
 - (ii) the removal of foreign object debris;

A Note references *that the expression ***foreign object debris*** is defined in subsection 3.01 (2).*

- (iii) wildlife hazard management, monitoring, dispersal or culling;
- (iv) time-limited works;

A Note indicates that examples of some common time-limited works include grass maintenance, line marking, drain clearing.

- (v) emergency or time-critical remediation or similar activity essential to maintain aerodrome safety.

(3) Under this subsection, the safety conditions are the following:

(a) the certified aerodrome operator must ensure that:

- (i) all requirements of this section are complied with; and
- (ii) the aerodrome manual contains procedures to provide that all requirements of this section are complied with;

(b) the certified aerodrome operator must ensure that all applicable requirements under Chapter 14 are complied with;

A Note references that Chapter 14 deals with Control of Airside Access and Vehicle Control.

(c) for a controlled aerodrome when air traffic control (*ATC*) is in attendance — an airside driver, or relevant personnel, seeking to access the fly-over area of a runway strip at the aerodrome must:

- (i) comply with the applicable requirements of any letter of agreement between the aerodrome operator and the ATC provider; and
- (ii) remain outside the graded runway strip until expressly cleared for entry by ATC; and
- (iii) during periods of low visibility, remain outside the fly-over area of the runway strip until expressly cleared for entry by ATC; and
- (iv) comply with any instructions issued by ATC;

(d) for both:

- (i) an uncontrolled aerodrome (including one with an aerodrome flight information service (an *AFIS*), a CA/GRS or a UNICOM); and
- (ii) a controlled aerodrome when ATC is not available;

an airside driver or relevant personnel (as applicable), seeking to access the fly-over area of a runway strip at the aerodrome (the *relevant area*), must:

- (iii) comply with the applicable requirements of any letters of agreement (*LOA*) between the aerodrome operator and ATC, or between the aerodrome operator and the AFIS, CA/GRS or UNICOM service providers; and
- (iv) if there are no such LOA — broadcast their intentions (as applicable) to operate within the relevant area; and
- (v) remain outside the graded runway strip when an aircraft is taxiing, or positioning for departure, on the runway — unless:
 - (A) two-way radio contact is established, and maintained between an authorised airside driver or other relevant personnel (as applicable), and the pilot in command of the aircraft; and
 - (B) the pilot expressly agrees that the airside vehicle or relevant personnel may enter onto the graded runway strip or, if applicable, onto the runway surface;

- (e) when an aircraft (a ***relevant aircraft***) is in the process of taking off, landing, or approaching to land, no prescribed thing may be on any part of the runway surface or graded runway strip except:
 - (i) for a relevant aircraft that is in the process of taking off but has not yet done so and is still stationary — a member of the crew of the aircraft; or
 - (ii) a person mentioned in sub-subparagraph (2)(a)(ii)(C), but only if:
 - (A) for a controlled aerodrome — the person has the express agreement of ATC; or
 - (B) for an uncontrolled aerodrome — the person has the express agreement of the pilot in command of the relevant aircraft.
- (f) without affecting the exceptions under paragraph (e), all prescribed things must immediately move, or be moved, off the runway surface and outside of the graded runway strip in the event of:
 - (i) an aircraft emergency; or
 - (ii) an abnormal aircraft operation; or
 - (iii) a request from the pilot in command of an aircraft that is about to take off or land.
- (4) Under this subsection, For sub-subparagraph (3)(d)(v)(A):
authorised means that the applicable airside driver or other relevant personnel:
 - (a) holds an aeronautical radio operator certificate under Part 64 of CASR; and
 - (b) is authorised by the certified aerodrome operator to undertake airside driving activities.

Statement of Compatibility with Human Rights

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

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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 **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 Amendment Instrument 2024 (No. 2)* adds a new section to the MOS to protect the fly-over area of a runway strip from the intrusion of airside vehicles, related objects and personnel that are not prescribed and compliant with certain safety conditions.

Human rights implications

The legislative instrument engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the **ICCPR**).

Right to life under the ICCPR

This engagement is in the context of CASA's statutory purpose which includes safety relevantly in the air and on the ground. The aim of CASA and its regulatory framework is to uphold aviation safety by regulating the conduct of individuals and organisations involved in civil aviation operations, including operations at aerodromes. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety.

Human rights implications

The exemption amendment instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority