

Explanatory Statement

Acts Interpretation Act 1901

Civil Aviation Safety Regulations 1998

Part 91 MOS Amendment Instrument 2025 (No. 1)

Purpose

The *Part 91 MOS Amendment Instrument 2025 (No. 1)* (the **MOS amendment**) amends the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020* (the **MOS**).

The MOS, which commenced on 2 December 2021, sets out the standards for “the rules of the air” for all pilots, and the general operating rules for pilots who are not operating under an Air Operator’s Certificate or other certificate. The MOS is a foundational ruleset for the safety of all aviation operations. It consolidates the existing rules of the air, contains some new rules to enhance operational flexibility and improve aviation safety, and it brings Australian requirements more in line with the Standards and Recommended Practices of the International Civil Aviation Organization (**ICAO**).

The MOS amendment is comprised of 30 amendments making:

- 28 minor corrections
- provision for Danger Areas and Military Operating Areas (**MOAs**)
- substantial corrections to landing minima.

The 28 minor corrections amend the MOS to accurately reflect intended outcomes but do not change intended or current practices.

The corrections to Danger Areas and MOAs help to ensure that the pilot in command of an aircraft is aware of the introduction of MOAs.

The more important corrections to landing minima remove errors by:

- arranging instrument approach procedures into Precision Approaches (PAs), Approaches with Vertical Guidance (APVs) and Non-precision Approaches (NPAs)
- grouping corrections to visibility according to whether or not the final approach track is within the “visible approach lighting splay”
- correctly relating the visibility corrections to the instrument approach procedure (**IAP**) design requirements for runways with full (FALS), intermediate (IALS), basic (BALS) or nil (NALS) approach lighting systems.

While CASA considers that all of the 28 minor amendments are of an editorial or machinery nature which do not alter the existing arrangements, the corrections for MOAs may result in changes to current practice, and the corrections to landing minima will result in changes to current practice.

The MOS amendment is further explained in Appendix 1.

Legislation

The *Civil Aviation Act 1988* (the **Act**) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Subsection 98 (1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be

prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The *Civil Aviation Safety Regulations 1998 (CASR)* were made under the Act.

Under regulation 91.040 of CASR, the Civil Aviation Safety Authority (*CASA*) may issue a Manual of Standards for Part 91 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 91. This power is complemented by other provisions throughout Part 91 which empower CASA to prescribe specific matters in the MOS.

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 regulation 91.040 of CASR and on the same basis as the initial MOS itself.

For convenience in this Explanatory Statement, unless a contrary intention appears, mention of a provision with the prefix “91.” is a reference to that provision in Part 91 of CASR.

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 delegated by the Parliament, and any provision 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.

Under paragraph 10 (1) (d) of the LA, for subsection 8 (5), an instrument that amends a legislative instrument is also itself a legislative instrument. Consequently, the MOS amendment is a legislative instrument.

Under paragraphs 98 (5A) (a) and (5AA) (a) of the Act, an instrument made under regulations is a legislative instrument if it is issued in relation to matters affecting the safe navigation and operation of aircraft, and is expressed to apply to classes of persons.

The MOS is a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA. Consequentially, the same conclusions apply to the MOS amendment.

Sunsetting

As the MOS amendment 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 MOS amendment is, *prima facie*, intended to have enduring operation and it would not be appropriate for it to be subject to sunseting.

The exemption from the sunseting provisions affects parliamentary oversight by not requiring the MOS amendment 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, amendment instruments are generally spent as soon as the amendments they contain take effect it. Also, it is likely that, before the end of the nominal sunseting time, the MOS will be further amended and such instruments will be subject to tabling and disallowance in the Parliament in the normal way. The sunseting exclusion, therefore, causes no practical diminution of parliamentary oversight.

Incorporations 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, 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. A Table was included in the Explanatory Statement for the MOS and earlier amendments listing and explaining the various incorporated documents for the MOS. These Tables remain applicable also for this MOS amendment.

Amendment 11 incorporates CASA's *Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instruments* as in force from time to time. These periodic legislative instruments, available on the Federal Register of Legislation, are made every 6 months to prescribe Prohibited, Restricted and Danger Areas, and the aviation rules applicable to such areas. A military operating area is a form of danger area.

Consultation

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 draft Manual of Standards. Under regulation 11.267, this requirement also applies to a Manual of Standards amendment instrument.

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

The purpose of the MOS amendment is to make 30 corrections to the MOS, 28 of which do not substantially alter the existing arrangements as in place or understood, but also 2 other more substantive corrections (MOAs and landing minima) that may or do alter existing arrangements.

Hence, CASA conducted public and industry consultation, between 13 August 2024 and 27 August 2024.

Comments and responses helped to hone some of the language used in the MOS amendment. CASA also considered some technical commentary elucidating the distinction between the application of the Part 173 MOS design rules and the practical pilot in command calculations for landing. However, any divergence was not considered material enough to impact aviation safety and there were no objections to CASA proceeding to make the MOS amendment.

Office of Impact Analysis (OIA)

A Regulation Impact Statement (**RIS**) was prepared by CASA for the new Part 91 and this RIS also covers the MOS and consequential corrective Manual of Standards amendment instruments which the regulations empowered. The RIS was assessed by the OIA's predecessor, the Office of Best Practice Regulation (**OBPR**) as compliant with the Best Practice Regulation requirements and contained a level of analysis commensurate with the likely impacts (OBPR id: 23625). A copy of the RIS was included in the Explanatory Statement for the new Part 91 regulations <<https://www.legislation.gov.au/Details/F2018L01783/Download>>.

Sector risk, economic and cost impact

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.

In terms of economic and cost impacts for subsection 9A (3) of the Act, by making corrections and clarifications, the MOS amendment removes confusion and distraction, and brings the MOS more closely into alignment with its purpose and intent, and with the agreed expectations of relevant sectors of the aviation industry whose participants were consulted before it was made.

Thus, the MOS amendment will not have the effect of increasing any cost burdens and is likely to have the effect of lowering some costs for industry that might otherwise have arisen, for example, by clarifying rules. One particular provision in the MOS amendment, regarding landing minima, corrects pre-2 December 2021 errors and unintended errors included in the MOS on 2 December 2021, and now aligns correctly with the IAP design requirements for runways with approach lighting systems under the Part 173 Manual of Standards, thus restoring the original intent.

Sector risk

The MOS amendment does not increase any particular sector risks over or above what had been the previous, acceptable safety standards.

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 specific negative environmental impacts as a result of the MOS amendment as compared to the baseline that existed on 1 December 2021, since the instrument is designed to correct and clarify rules in line with its original purpose, intent and expectations.

Aviation safety

In determining whether to make the MOS amendment, CASA has regard to the safety of air navigation as the most important consideration. Given the nature of the amendments, CASA is satisfied that an acceptable level of aviation safety will be preserved, and the safety of air navigation thereby maintained.

Because of oversights prior to December 2021 and during the drafting of the Part 91 MOS, the existing landing minima determined by the MOS resulted in inappropriate values for corrected visibility requirements in the event of approach lighting system (*ALS*) partial or complete failure. The amendment to landing minima corrects this and provides corrections for industry to determine appropriate and realistic visibility requirements in the event of any ALS failures, thus re-establishing the originally intended level of aviation safety.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Appendix 2. The MOS amendment is a legislative instrument but it contains essentially minor or procedural amendments as explained above, and these do not, of themselves, directly engage human rights, nor do they increase any engagement with human rights already recorded in the Explanatory Statement for the MOS. The amendment instrument is, in itself, therefore, compatible with human rights.

Commencement and making

The MOS amendment commences on 1 March 2025.

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

Details of the Part 91 MOS Amendment Instrument 2025 (No. 1)

1 Name of instrument

This section 1 provides for the naming of the *Part 91 MOS Amendment Instrument 2025 (No. 1)* (the *MOS amendment*).

2 Commencement

This section provides for the MOS amendment to commence on 1 March 2025.

3 Amendment of the Part 91 Manual of Standards

This section provides that Schedule 1 amends the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020* (the *MOS*).

Schedule 1 Amendments

[1] Subsection 1.07 (6), Definitions

This amendment adds definitions for AFIS, approach procedure with vertical guidance, Type A and Type B, which are now used in the MOS.

[2] Subsection 1.07 (6), definition of *non-precision approach*

This amendment repeals the definition of *non-precision approach* and substitutes a more accurate definition.

[3] Subsection 1.07 (6), definition of *precision approach procedure*

This amendment repeals the existing incomplete definition of *precision approach procedure* and substitutes a more accurate definition.

[4] Section 2.07, Table 2.07 (3), Item 2B, Column 5

This amendment clarifies the requirement to be clear of cloud for the use of NVIS, which removes any ambiguity for industry.

[5] Section 6.02

This amendment removes the earlier error of classifying multiple gliders in a thermal as a formation flight. Section 6.02 is now Reserved as a place holder.

[6] Subsection 8.02 (2)

This amendment removes mention of ICAO landing forecast in connection with the use of probabilities for weather because an ICAO landing forecast, by definition, does not contain probabilities (PROB). As a result, the paragraph is restructured to aid readability.

[7] Paragraph 10.02 (a)

This amendment clarifies that an aerodrome that a pilot intends to use should be not only available, but also suitable and safe.

[8] Section 11.22

This amendment specifically separates out MOAs from danger areas so as to clarify that MOAs are a special form of danger area where military activities are conducted with risk levels more commonly associated with restricted areas.

[9] Section 15.02, Definitions

This amendment adds definitions for APV, NPA, PA, and visible approach lighting splay.

[10] Section 15.03

This amendment adds a note to link take-off minima implications to additional fuel requirements of section 19.04, when the departure aerodrome weather is below landing minima, thus becoming the critical point for the flight due to one engine inoperative (OEI) considerations.

[11] Section 15.10

This amendment removes errors in the implementation of landing minima requirements, specifically for visibility corrections to be made by a pilot in the event of ALS failures. There is now alignment with the IAP design requirements for runways with ALSs as specified in subsection 8.1.6 of the Part 173 Manual of Standards, which was the original intent.

[12] Subparagraph 15.11 (1) (d) (i), the chapeau

This amendment is consequential on amendment 10, by using the same terminology introduced in amendment 10, being APV and PA.

[13] Subparagraph 15.11 (1) (d) (ii), the chapeau

This amendment is consequential on amendment 10, by using the same terminology introduced in amendment 10, being NPA.

[14] Subparagraph 15.11 (2) (b) (i)

This amendment specifically links the flight visibility as required by the landing minima in section 15.10 to the requirement for a missed approach.

[15] Subparagraph 15.11 (2) (b) (ii), the Note

This amendment removes the acronym NPA and replaces it with the words non-precision approach procedures, for clarity.

[16] Before section 20.01

This amendment creates a link to subsection 1.07 (5) for clarity.

[17] Before section 20.02

This amendment creates a link to subsection 1.07 (5) for clarity and is identical to amendment 16.

[18] Section 21.03

This amendment adjusts the structure of the section to allow for amendment 19.

[19] Section 21.03, after the Note

This amendment clarifies current understanding by specifically listing datalink, ADS-C, CPDLC, or SATCOM voice communication.

[20] Paragraph 21.05 (1) (d)

This amendment adds reference to subsection (1C) to allow for amendment 21.

[21] After subsection 21.05 (1B)

This amendment aligns the section with current practice by clarifying that air traffic control will automatically cancel SARWATCH when a flight arrives at a controlled aerodrome.

[22] After subsection 21.06 (2A)

This amendment aligns this section with current practice by clarifying that air traffic service will automatically cancel SARWATCH when a flight arrives at a non-controlled aerodrome with an AFIS, during AFIS hours.

[23] Division 26.4, the Title

This amendment is editorial, replacing the Division title to mirror the structure of existing Division titles in Chapter 26.

[24] Division 26.5, the Title

This amendment is editorial, replacing the Division title to mirror the structure of existing Division titles in Chapter 26.

[25] Paragraph 26.48 (3A) (b), second occurring

This amendment is editorial, correcting the use of a second (b) paragraph.

[26] After subsection 26.48 (6)

This amendment clarifies best practice by adding a Note.

[27] Paragraph 26.49 (b)

This amendment clarifies that these requirements do not apply to any additional (that is not mandated) ELTs on board an aircraft.

[28] Paragraph 26.49 (c)

This amendment clarifies that these requirements do not apply to any additional ELTs on board an aircraft and is identical to amendment 27.

[29] Subsection 26.60 (2), the chapeau

This amendment clarifies the reference point (from land) which the distance over water should be measured from.

[30] Paragraph 26.60 (2) (b), the chapeau

This amendment corrects the unintended omission of the words multi-engine, and at the same time adjusts the order of the aeroplane description to be consistent with other uses in the ruleset.

Statement of Compatibility with Human Rights

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

Part 91 MOS Amendment Instrument 2025 (No. 1)

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

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The MOS amendment is comprised of 30 amendments making:

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- substantial corrections to landing minima.

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The corrections to Danger Areas and MOAs help to ensure that the pilot in command of an aircraft is aware of the introduction of MOAs.

The more important corrections to landing minima remove errors by:

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While CASA considers that all of the 28 minor amendments are of an editorial or machinery nature which do not alter the existing arrangements, the corrections for MOAs may result in

changes to current practice, and the corrections to landing minima will result in changes to current practice.

Human rights implications

When the MOS was made, the Explanatory Statement for the MOS explained that, of their very nature in addressing aviation safety issues, its provisions may engage the following human rights:

- the right to life under Article 6 and the right to privacy and reputation under Article 17 of the International Covenant on Civil and Political Rights
- the right to work under Article 6 (1) and the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights.

That earlier Explanatory Statement concluded that the MOS was a legislative instrument that was compatible with human rights and, to the extent that it may also limit human rights, the limitations were reasonable, necessary and proportionate to ensure the safety and the integrity of the aviation safety system upon which all aviation operations rely.

The MOS amendment is also a legislative instrument but it contains essentially minor or procedural amendments as explained above, and these do not, of themselves, directly engage human rights, nor do they increase any engagement with human rights already recorded in the Explanatory Statement for the MOS. The amendment instrument is, in itself, therefore, compatible with human rights.

Conclusion

The MOS amendment is a legislative instrument that is compatible with human rights.

Civil Aviation Safety Authority