

Civil Aviation Safety Regulations 1998

CASA 108/21 — Determination for Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards Amendment 2021

Statement of Reasons for making the Determination

Legislation

Subsection 9 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that CASA has the function of conducting the safety regulation, in accordance with the Act and the regulations, of civil air operations in Australian territory and of the operation of Australian aircraft outside Australian territory. Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under regulation 11.280 in Subpart 11.J of the *Civil Aviation Safety Regulations 1998* (*CASR*), if CASA intends to issue a Manual of Standards (a *MOS*) CASA must publish a notice of its intention to do so on the internet. This requirement also applies to an amendment of a MOS.

The purpose of such publication is to facilitate consultation with, and seek comments from, interested parties. The notice must describe the draft MOS or MOS amendment, how it may be obtained, how comments on it may be made and lodged, and the time frame within which such comments may be lodged (to be not less than 28 days from posting on the internet unless subregulation 11.280 (4) of CASR applies). Under regulation 11.290 of CASR, before issuing the final MOS, CASA must consider any comments received, and may consult with any person on issues arising from those comments. Under subregulation 11.295 (1) of CASR, a failure to comply with the procedures in Subpart 11.J of CASR does not affect the validity of the MOS in question.

However, under paragraph 11.275 (1) (d) of CASR, CASA is not obliged to comply with the publication requirements of regulation 11.280 before issuing a MOS or a MOS amendment if the Director of Aviation Safety (the *Director*) determines that the MOS is of a minor or machinery nature that does not substantially alter existing arrangements.

Under subregulation 11.275 (2) of CASR, if the Director does make such a Determination (the *Determination*), CASA must publish the Determination, and a statement of reasons for it, on the internet within 28 days after making the Determination.

Why the proposed MOS amendment is of a minor or machinery nature

Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018 (the *Part 149 MOS*) prescribes matters in relation to an approved self-administering aviation organisation (*ASAO*). The Part 149 MOS also prescribes various types of sports and recreational aircraft, that can be administered by an ASAO, as *Part 149 aircraft* for the purpose of the Part 149 MOS.

The *Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards Amendment 2021* (the *instrument*) amends the Part 149 MOS. Its purpose is to make a range of amendments that are consequential upon the commencement of the following on 2 December 2021:

- *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* (the *Part 103, 105 and 131 Amendments*)

- *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*
- remakes of *Civil Aviation Orders 95.10, 95.32 and 95.55*.

Under the Part 103, 105 and 131 Amendments, certain types of aircraft, that are currently defined as **Part 149 aircraft**, will be defined as **Part 103 aircraft** or **Part 131 aircraft** for the purpose of Part 103 or 131 of CASR. The Part 103 and Part 131 Manuals of Standards have not yet been made. Until that time, *Civil Aviation Orders 95.4, 95.4.1, 95.8, 95.12, 95.12.1 and 95.54* provide transitional arrangements for the operation of Part 103 or Part 131 aircraft.

Civil Aviation Orders 95.10, 95.32, 95.54 and 95.55 will continue to apply to Part 149 aircraft. As a consequence, it is necessary to amend the definition of **Part 149 aircraft** in the Part 149 MOS to refer to various aircraft to which *Civil Aviation Orders 95.10, 95.32, 95.54 and 95.55* apply. *Civil Aviation Orders 95.10, 95.32 and 95.55* are being remade for 2 December 2021. Further amendments to the Part 149 MOS are required to ensure consistency of definitions and wording with the remade Orders.

The function set out in section 25 of the Part 149 MOS, which relates to the administration of parachute operators that provide services and equipment, is no longer needed. It has not been, and is unlikely to be, taken up by parachuting ASAOs for the purposes of the Part 149 MOS.

The proposed MOS amendment does not substantially alter the existing arrangements, whether as provided for by the Part 149 MOS, or as provided for by *Civil Aviation Orders 95.10, 95.32, 9.54 and 95.55*, and Part 103 or Part 131 of CASR with effect on and from 2 December 2021. It is determined, therefore, that the proposed MOS amendment is of a minor or machinery nature for the purposes of paragraph 11.275 (1) (d) of CASR.

Appendix 1 sets out detailed explanations of each amendment and demonstrates how it is of a minor or machinery nature in the context of the Part 149 MOS.

Determination

The Determination, therefore, is a determination by the Director that the proposed MOS amendment is of a minor or machinery nature that does not substantially alter existing arrangements.

Legislative Instruments Act 2003

The Determination is not a legislative instrument.

Consultation

In view of the minor or machinery nature of the proposed MOS amendment, consultation is not required. There has, nevertheless, been considerable consultation, both formal (through the relevant Technical Working Groups) and informal (with industry stakeholders) in the consideration of the amendments to the various Civil Aviation Orders, the Part 103 MOS, Part 105 MOS and the Part 131 MOS that resulted in the consequential need for these Part 149 MOS amendments. The amendment that removes section 25 of the Part 149 MOS arose from feedback received by CASA during consideration of a Part 149 certificate application that the function would remain unused because it included oversight of activities not properly within the remit of an ASAO.

Commencement and making

The Determination commences on the date of signature.

The Determination has been made by the Director of Aviation Safety in accordance with paragraph 11.275 (1) (d) of CASR.

The Determination and this Statement of Reasons for making the Determination are published on the CASA website within 28 days after the Determination is made in accordance with subregulation 11.275 (2) of CASR.

Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards Amendment 2021

Explanation of Schedule 1 Amendments and reasons why they are minor or machinery

Amendment number of the MOS amendment	Provision referenced	Brief description of amendment	Minor or machinery reasoning
1	Subsection 5(1), definitions of <i>aerial application operation, aerial mustering and applicable CAO</i>	Omitting the definitions	<u>Minor change</u> Definition is used in a section of the Part 149 MOS that is being repealed.
2	Subsection 5(1), definitions of <i>Civil Aviation Order 95.10</i> <i>Civil Aviation Order 95.32</i> <i>Civil Aviation Order 95.54</i> <i>Civil Aviation Order 95.55</i> <i>light sport aircraft (experimental)</i> <i>light sport aircraft (production)</i> <i>ultralight aeroplane</i> <i>Part 131 aircraft</i> <i>Part 131 recreational activity</i> <i>private operations</i> <i>single-place aircraft</i> <i>specialised balloon operation</i> <i>two-place aircraft</i>	New definitions of terms defined in CASR, <i>Civil Aviation Order 95.10, Civil Aviation Order 95.32</i> and <i>Civil Aviation Order 95.5</i> Updated definitions of <i>Civil Aviation Order 95.10, Civil Aviation Order 95.32, Civil Aviation Order 95.54</i> and <i>Civil Aviation Order 95.55</i>	<u>Minor change</u> Definitions updated to refer to the 2021 remake of <i>Civil Aviation Order 95.10, Civil Aviation Order 95.32</i> and <i>Civil Aviation Order 95.55</i> Further definitions inserted are signposts to definitions in CASR, <i>Civil Aviation Order 95.10, Civil Aviation Order 95.32</i> and <i>Civil Aviation Order 95.55</i>

3	Subsection 5(1), definition of <i>empty weight</i>	Changed definition of <i>empty weight</i>	<u>Minor change</u> Definition changed to align with the term as defined in <i>Civil Aviation Order 100.7</i>
4	Subsection 5(1), definition of <i>flight training</i>	Changed to <i>flying training</i> otherwise definition is the same	<u>Minor change</u> <i>flying training</i> is consistent with wording used in the Part 149 MOS and <i>Civil Aviation Orders 95.10, 95.32</i> and <i>95.55</i> . <i>Flight training</i> is also used in Part 61 of CASR and the new defined term avoids conflict with that term.
5	Subsection 5(1)	New definition of <i>microlight aeroplane</i>	<u>Minor change</u> Consequential upon item [6] Definition added to align with the term as defined in <i>Civil Aviation Order 95.10</i> .
6	Subsection 5(1), definition of <i>Part 149 aircraft</i>	New definition inserted	<u>Minor change</u> The new definition of <i>Part 149 aircraft</i> inserts references to aircraft to which <i>Civil Aviation Orders 95.10, 95.32, 95.54</i> and <i>95.55</i> apply
7, 8 and 9	Definitions of <i>powered parachute, tandem parachute, weight-shift-controlled aeroplane</i>	New definitions of <i>powered parachute, tandem parachutist, weight-shift-controlled aeroplane</i> inserted	<u>Minor change</u> The definitions are signposts to other definitions in CASR
10	Subsection 5(2), including the table	Removes references to various aircraft from the definition of <i>Part 149 aircraft</i>	<u>Minor change</u> Consequential upon item [6] The aircraft referred to in subsection 5(2) and the table will become Part 103 or Part 131 aircraft under Parts 103 or Part 131 of CASR upon commencement

			of the <i>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019</i> on 2 December 2021
11	Section 7	Omitted	<p><u>Minor change</u></p> <p>Consequential upon item [6]</p> <p>The aircraft to which section 7 applies will become Part 103 aircraft under Part 103 of the CASR upon commencement of the <i>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019</i> on 2 December 2021</p>
12, 13, 14 and 15	Sections 8, 9, 10 and 11	Changes and new sections prescribe that various aircraft to which <i>Civil Aviation Orders 95.10, 95.32, 95.54 and 95.55</i> apply are <i>Part 149 aircraft</i>	<p><u>Minor change</u></p> <p>Consequential upon item [6]</p> <p>The aircraft to which <i>Civil Aviation Orders 95.10, 95.32, 95.54 and 95.55</i> apply will remain Part 149 aircraft after the commencement of the <i>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019</i> on 2 December 2021</p>
16 and 17	Sections 11, 12 and 13	Changes made to refer to Part 131 aircraft Section 12 omitted	<p><u>Minor change</u></p> <p>Consequential upon item [6]</p> <p>The aircraft to which sections 11 and 13 apply will also become Part 131 aircraft under Part 131 of CASR upon commencement of the <i>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019</i> on 2 December 2021</p> <p>The aircraft to which section 12 applies will</p>

			become Part 103 aircraft under Part 103 of CASR upon commencement of the <i>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019</i> on 2 December 2021 and covered by <i>Civil Aviation Orders 95.12 and 95.12.1</i>
18, 19 and 20	Subsections 14(1) and (2)	Omitted subsection (1) and renumbered Changed section 14 to apply to Part 149 aircraft	<u>Minor change</u> Consequential upon item [6] The aircraft to which subsection 14(1) applies will become Part 103 aircraft under Part 103 of CASR upon commencement of the <i>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019</i> on 2 December 2021. The changes reapply section 14 to Part 149 aircraft
21	Subsection 15(1), note	New note removes references to <i>Civil Aviation Order 95.12.1</i>	<u>Minor change</u> Consequential upon item [6] The aircraft to which <i>Civil Aviation Order 95.12.1</i> applies will become Part 103 aircraft under Part 103 of CASR upon commencement of the <i>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019</i> on 2 December 2021
22, 23	Subsections 15(2), (3)	Redrafted to remove reference to regulation 200.002 of CASR	<u>Minor change</u> CASR 200.002 will be repealed by the <i>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions)</i>

			<i>Regulations 2021</i> on 2 December 2021
24	Subsection 15(5), examples 1 to 5	Omitted	<p><u>Minor change</u></p> <p>Consequential upon item [6]</p> <p>The aircraft referred to in the examples will become Part 103 aircraft under Part 103 of CASR upon commencement of the <i>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021</i> on 2 December 2021</p>
25	Section 19	New section relocates the definition of <i>applicable CAO</i> , amended to refer to <i>Civil Aviation Orders 95.10, 95.32 and 95.55</i>	<p><u>Minor change</u></p> <p>Consequential upon items [1] and [6].</p> <p>The aircraft to which <i>Civil Aviation Orders 95.10, 95.32, 95.54 and 95.55</i> apply will remain <i>Part 149 aircraft</i> under the Part 149 MOS after the commencement of the <i>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021</i> on 2 December 2021</p>
26, 27	Section 19, notes 1 and 2	Omitted note 1 and renumbered note 2	<p><u>Minor change</u></p> <p>Consequential upon item [6]</p> <p>The aircraft referred to in note 1 will become Part 103 aircraft under Part 103 of CASR upon commencement of the <i>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments</i></p>

			<i>and Transitional Provisions) Regulations 2021 on 2 December 2021</i>
28 - 38	<p>Paragraphs 20(2)(b) and (d), (3)(b) and (5)(c)</p> <p>Subparagraph 20(6)(b)(i)</p> <p>Section 21, heading</p> <p>Subsection 21(1)</p> <p>Paragraphs 21(2)(a) and (d)</p> <p>Subsection 21(3) , Paragraphs 21(3)(a) and (c)</p> <p>Subsection 21(4), note</p>	<p>Changed references from <i>flight</i> to <i>flying</i> or <i>flight training</i> to <i>flying training</i></p>	<p><u>Minor change</u></p> <p>Consequential upon item [4]</p> <p>The changed references align with new defined term <i>flying training</i></p>
39	Section 24, note 1	Omitted, removes reference to regulation 152 of CAR	<p><u>Minor change</u></p> <p>Consequential upon item [6]</p> <p>CAR 152 will be repealed by the <i>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 on 2 December 2021</i></p>
40	Section 25	Omitted	<p><u>Minor change</u></p> <p>This function is no longer needed</p>
41, 42 and 43	Subsection 26(5), definition of <i>tandem parachutist</i>	Redrafted to apply definitions to section 26 and omit <i>tandem parachutist</i>	<p><u>Minor change</u></p> <p>Consequential upon item [8] the new definition of <i>tandem parachutist</i> will replace the definition of <i>tandem parachutist</i> in section 26(5)</p>
44	Paragraph 31(2)(c)	omitted to remove reference to section 25	<p><u>Minor change</u></p> <p>Consequential upon item [40]</p> <p>Removes reference to</p>

			repealed section 25
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