



## PART 131 MOS ASAP TECHNICAL WORKING GROUP TASKING INSTRUCTIONS and **FOURTH** REPORT

27 June 2023

The Part 131 Manual of Standards (MOS) Technical Working Group (TWG) is established to operate and report to the Aviation Safety Advisory Panel (ASAP) in accordance with the Terms of Reference of the ASAP dated November 2021 (or as amended).

### BACKGROUND/CONTEXT

Civil Aviation Safety Regulation (CASR) Part 131 was made in December 2019 and commenced on 2 December 2021. The Civil Aviation Safety Authority (CASA) formed a working group to discuss the policies to be articulated in the Part 131 Manual of Standards (MOS) who first met in February 2020. CASA proposes shifting this industry working group into an ASAP TWG to remain in line with current consultation processes. For consistency, CASA also proposes the appointment of the same industry members for the ASAP TWG. (See 'Membership' below).

Since February 2020, CASA has been progressively developing a draft Manual of Standards (MOS) that can be consulted with industry representatives prior to conducting a public consultation activity.

It is intended that the TWG reviews the draft MOS in 2-3 tranches for convenience, however the draft MOS is intended to be publicly consulted as an entire document.

### PURPOSE

In conducting this activity, the TWG is to utilise relevant technical expertise and industry sector insight for the analysis, development and review of legislation in accordance with agreed policy principles.

The TWG will:

- Provide industry sector insight and understanding of current needs and challenges.
- Provide current, relevant technical expertise for the development, analysis and review of legislative and non-legislative solutions to the identified issues.
- Assist with the development of policies, regulations, advisory materials and transition strategies.
- Provide endorsement and or conditional endorsement of policies, regulations, advisory materials and transition strategies for consideration by the ASAP and CASA.

### SPECIFIC OBJECTIVES

1. The TWG is to evaluate whether the draft Part 131 MOS will:
  - a) Achieve the policy intent/identified key proposals
  - b) Be implementable by the Australian aviation industry
2. The TWG is to provide a concise summary to the ASAP recommending either:
  - a) That the ASAP endorse the Part 131 MOS.
  - b) That the ASAP endorse the Part 131 MOS provided certain issues are resolved.
  - c) That the ASAP does not endorse the Part 131 MOS due to underlying policy inconsistencies.

### KEY POLICY PROPOSALS

**Key proposal 1:** Consolidate the operational standards for lighter-than-air aircraft engaged in the following activities:

- Balloon transport operations

- Specialised balloon operations
- Recreational balloon operations
- Tethered gas balloon operations

*Note. The definition of what constitutes a standard visual signal, the requirement for an intercepted aircraft to comply with ICAO Annex 2 and the placarding requirements for experimental aircraft (including Part 131 experimental aircraft) are contained in the Part 91 MOS.*

**Key proposal 2:** Define balloon flying training to mean two kinds of activity:

- Balloon flying training for the authorisation granted by a Part 131 ASAO
- Balloon flying training conducted as a prescribed activity under regulation 206 of CAR in accordance with Part 5 of CAR

**Key proposal 3:** Apply, where possible, outcome-based rules for safe flight and encourage operators to identify hazards and risk mitigation strategies.

**Key proposal 4:** Apply additional operational requirements for balloon transport operators.

**Key proposal 5:** The Part 131 MOS will include delayed start dates for requirements introducing change unable to be reasonably complied by 2 December 2021.

## TWG MEETINGS

- 30 March 2021
- 20 April 2021
- 10 August 2021: First TWG report provided to ASAP
- 4 November 2021
- 12 November 2021: Second TWG report provided to ASAP
- 20 September 2022: Third TWG report provided to ASAP
- 28 March 2023
- 27 June 2023: Fourth TWG report provided to ASAP

## ROLES AND RESPONSIBILITIES

CASA	TWG Members
<ul style="list-style-type: none"> <li>• Organise meetings and workshops, and produce agendas, papers and supporting materials</li> <li>• Facilitate meetings and workshops</li> <li>• Record insights and findings</li> <li>• Communicate openly and consistently with TWG members about project status and issues</li> <li>• Respect the time of all TWG members by minimising work required to achieve outcomes</li> </ul>	<ul style="list-style-type: none"> <li>• Commit to supporting the project objectives and timeline</li> <li>• Engage and collaborate constructively at all times</li> <li>• Prepare for working group activities by reviewing agendas, papers and supporting materials</li> <li>• Provide timely and considered advice in meetings, and between meetings as required</li> <li>• Respond to requests for feedback on draft materials within agreed timeframes</li> </ul>

## CONSENSUS

A key aim of the TWG is that a consensus be reached, wherever possible, in the finalisation and preparation of advice for the ASAP.

The TWG will be guided by the ASAP Terms of Reference (Section 6 - attached) with respect to determining and documenting consensus.

## MEMBERSHIP

Members of the TWG have been appointed by the ASAP Chair, following ASAP processes.

The Part 131 MOS TWG consists of the following members:

- Clayton Priddle
- Damian Crock
- Graeme Day
- Jacky Jansse
- Jay Schesser
- John Wallington
- Martin Tregale
- Steve Buckley
- Steve Griffin
- Sean Kavanagh

CASA was represented by:

- Brenda Cattle
- Damien Fing
- Alan Shore
- Ann Redmond

The ASAP Secretariat was represented by Chace Eldridge and James O'Rourke

## MEETING SUMMARY – 27 June 2023

- The aim of the meeting was to:
  - ensure the Part 131 MOS is fit for public consultation
  - discuss potential unintended interactions between Parts 131 and 91 so that they can be better understood
  - ensure the Ballooning and Hot Air Airships Guide (Guide) is fit for purpose.
- The TWG expressed some concerns about how the regulatory development process had been conducted. The TWG felt that a formal commitment from CASA is required to complete the remaining regulatory work packages, and that incomplete regulatory development would present significant challenges for industry.
- The TWG noted that although additional resources may help expedite the required regulatory work packages, there are challenges in finding suitable technical expertise for a small industry sector and committed to assisting CASA where possible.
- There are two remaining regulatory development work packages – continuing airworthiness and licensing. There is also the additional regulatory work associated with the repatriation of the Australian Ballooning Federation (ABF).
- Overall, the TWG members had only minor issues with the MOS (worked through below). Their primary concern was with some of the Part 131 regulations and their interactions with Part 91. CASA acknowledged the concerns and reiterated that short-term solutions, such as directions and exemptions, would provide an effective and timely outcome for issues identified by specific operators or for specific operational requirements. CASA committed to continue to work through issues progressively, with outcomes clearly documented, in the agreed issues register.
- Items that the TWG members requested clarification on, primarily in the issues register (attached), will be included in the Guide.
- The TWG members expressed concerns about the MOS commencing before the completion of the regulations. This was due to certain sections of the MOS being unresolved and uncertainty as to how these rules would be applied by CASA's inspectorate. The members suggested that flying operations inspectors (FOIs) sometimes applied rules inconsistently or inappropriately for ballooning operators. They felt this was usually due to a lack of FOI understanding about ballooning operations. CASA noted this issue and will ensure that effective training for all relevant FOIs will be undertaken, and an

appropriate quality assurance program will be in place as part of implementation.

- The TWG members felt that certain sections of the MOS could be clearer. Specifically, some provisions from Part 91 are mentioned in the Part 131 MOS and the TWG felt that all relevant provisions should be included. The TWG noted that the language throughout the MOS could be simplified; however, accepted that this is usually due to legal terminology required in legislation. Moreover, they recommended that certain MOS equipment requirements should positively identify what operators need to carry, rather than excluding certain items. Ultimately, it was resolved that the MOS would be reviewed and simplified where possible, but that the Guide would also outline all requirements in plain English.
- The TWG and CASA worked to resolve concerns with the Part 131 MOS:
  - Minimum flying height over populous areas – the TWG members felt strongly that the current 1000 feet above ground level (AGL) requirement is not relevant to balloons and has a negative impact on safety. They noted that current industry practice is for flight below this height, despite rules that only permit flight below 1000 feet in certain phases of flight. CASA noted that this matter would be publicly consulted, requesting clear justification for any change, given it would be a deviation from international standards and other aviation sectors.
  - Flight over water - CASA has adopted an outcomes-based approach for acceptance into an operator's exposition. CASA will provide a template to assist applicants with this process (this will be a living document and is yet to be developed) and to ensure consistency in CASA's assessment of these applications. The TWG queried whether a more prescriptive rule would assist with enforcement. CASA committed to include guidance to support the intended interpretation in the Guide, particularly regarding requirements for extended flights overwater. The TWG also had a related concern about life jackets. CASA confirmed some training in the use of jackets when ditching will be required.
  - Some TWG members felt Global Positioning System (GPS) units, and other new technologies, should be considered as a primary method of navigation when visual conditions are not suitable.
  - Clarification that a change of ground crew will not be considered a major change.
  - Incorporation of specific/relevant fatigue management rules (Civil Aviation Order 48.1) within the Part 131 MOS. CASA said these provisions will be considered in future TWG meetings.
  - Further work may be needed related to transponder requirements, noting the need for information to be written clearly.
- CASA outlined the process and timeline for public consultation, highlighting the opportunities industry will have to access to CASA subject matter experts in relation to the rule making process and for technical assistance in understanding any specific MOS provisions.
- Moreover, time was allocated to discuss outstanding and specific issues with the Part 131 regulations:
  - The TWG members sought clarity on when a change in area of operation constituted a significant change. A significant change should only occur when the main base of operations is changed, additional work will be done to provide this clarity. Several of the TWG's concerns were related to defining what was a significant change, such as leasing of aircraft and change of registration. A future regulatory amendment may be required.

- The TWG members also requested that the regulations be detailed enough to avoid doubt in their interpretation, reiterating that a Guide was not legally binding.
- The Guide was reviewed. It will incorporate all relevant information from all relevant regulatory resources. The TWG members felt the Guide would greatly assist industry in understanding and interpreting all the relevant rules. They noted it would be worthwhile including the draft Guide in public consultation, as a supporting document, so industry understand the intent of the provisions. CASA agreed to this but did not feel the draft was mature enough to be formally consulted; however, they recognised the value in providing this to industry. CASA is also facilitating online information sessions throughout the consultation process.
- Several senior CASA executives joined the meeting briefly to emphasise and encourage the need for open communication channels and transparency. CASA understands there have been challenges historically and they would like to rebuild and consolidate relationships with local contacts and key stakeholders. CASA also committed to comprehensive FOI internal training to achieve more effective resourcing and consistency, as well as including the future regulatory work packages in CASA's forward workplan.
- Next steps:
  - CASA and the TWG will develop a high-level plan that includes the completion of the MOS and the continued development and implementation of the remaining work packages. CASA will also share its updated regulatory pipeline when it becomes available.
  - The TWG members committed to provide CASA with safety cases where they feel a policy change would be appropriate. Since the meeting, the TWG members have provided CASA with a safety case regarding the request to remove the 1000 feet AGL height requirement over populous areas. CASA has committed to working with industry to explore this further.
  - The issues register will be updated and maintained for transparency and to assist in issue resolution.
  - CASA will continue engaging with the TWG as it develops the Guide to ensure all required points of clarification are included.
  - The TWG will reconvene following public consultation to review any feedback received.

## PROCESS FOR ACHIEVING CONSENSUS

As required by the ASAP (& TWG) Terms of reference, there must be agreement by all participants on the method used for obtaining consensus.

To obtain consensus, the TWG will discuss their views on the provided material during the meeting then address the below Outcomes.

The CASA Lead has also provided commentary of the effectiveness of the TWG and whether it is believed that the recorded outcomes are a fair representation of the TWG from a CASA perspective.

## SUMMARY OF OUTCOMES – Fourth TWG Report, 27 June 2023

**Topic 1 – Does the TWG endorse the MOS for public consultation after changes are incorporated following this meeting?**

FULL CONSENSUS / **GENERAL CONSENSUS** / DISSENT

Comments:

The TWG members were in general consensus in supporting the Part 131 MOS progressing to public consultation, subject to the agreed changes from this meeting being incorporated into the MOS. Some members expressed firmly that the removal of the 1000 feet minimum height in flight over populous areas requirement for balloons should be explored further during the consultation period.

## Topic 2 – Reprioritisation of future work to facilitate regulatory changes as soon as practicable

**FULL CONSENSUS** / GENERAL CONSENSUS / DISSENT

Comments:

The TWG members unanimously agreed that CASA should reprioritise its forward workplan to facilitate developing the required regulatory changes for Part 131 as soon as practicable.

### CASA Lead Summary

**Brenda Cattle**

Comment:

CASA thanks the TWG members for their ongoing efforts to progress this work. We acknowledge the concerns raised by the TWG members and will continue to work with the TWG to progress the Part 131 MOS to ensure it achieves the policy intent and provides safe and practical outcomes for the industry. We do not intend to make minor changes to the MOS before consultation – we would instead prefer to make any amendments all together after consultation. Additional explanatory comments have also been added to the documents accompanying the consultation draft of the MOS for clarity.

CASA intends to continue to engage with the TWG on tranches 2 and 3 of the Part 131 Standards Development Project and to proactively manage the current issues register.

## Appendices

1. Extract from ASAP Terms of Reference

## Appendix 1

### ASAP and TWG Terms of Reference regarding Consensus (Extract)

- 6.1 A key aim of the ASAP is that a consensus be reached, wherever possible, in the finalisation and preparation of advice to the CEO/DAS.
- 6.2 For present purposes, 'consensus' is understood to mean agreement by all parties that a specific course of action is acceptable.
- 6.3 Achieving consensus may require debate and deliberation between divergent segments of the aviation community and individual members of the ASAP or its Technical Working Groups.
- 6.4 Consensus does not mean that the 'majority rules'. Consensus can be unanimous or near unanimous. Consensual outcomes include:
  - 6.4.1 **Full consensus**, where all members agree fully in context and principle and fully support the specific course of action.
  - 6.4.2 **General consensus**, where there may well be disagreement, but the group has heard, recognised, acknowledged and reconciled the concerns or objections to the general acceptance of the group. Although not every member may fully agree in context and principle, all members support the overall position and agree not to object to the proposed recommendation.
  - 6.4.3 **Dissent**, where differing in opinions about the specific course of action are maintained. There may be times when one, some, or all members do not agree with the recommendation or cannot reach agreement on a recommendation.

### Determining and Documenting Consensus

- 6.5 The ASAP (and Technical Working Groups) should establish a process by which it determines if consensus has been reached. The way in which the level of consensus is to be measured should be determined before substantive matters are considered. This may be by way of voting or by polling members. Consensus is desirable, but where it is not possible, it is important that information and analysis that supports differing perspectives is presented.
- 6.6 Where there is full consensus, the report, recommendation or advice should expressly state that every member of the ASAP (or Technical Working Group) was in full agreement with the advice.
- 6.7 Where there is general consensus, the nature and reasons for any concern by members that do not fully agree with the majority recommendation should be included with the advice.
- 6.8 Where there is dissent, the advice should explain the issues and concerns and why an agreement was not reached. If a member does not concur with one or more of the recommendations, that person's dissenting
- 6.9 If there is an opportunity to do so, the ASAP (or Technical Working Group) should reconsider the report or advice, along with any dissenting views, to see if there might be scope for further reconciliation, on which basis some, if not all, disagreements may be resolved by compromise.