

## Civil Aviation Safety Regulations 1998

### CASA 44/23 — Determination for the Part 149 (Approved Self-administering Aviation Organisations) Amendment Manual of Standards (No. 1) 2023

#### 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

The *Part 149 (Approved Self-administering Aviation Organisations) Manual Standards 2018* (the **Part 149 MOS**) was amended in 2021 such that it could operate effectively following the commencement of Parts 91, 103, 105 and 131 of CASR without the Manuals of Standards for Parts 103, 105 and 131 (the **3-pack regulations**) to support and fill in the framework of the respective Parts. During 2021, the making of Manuals of Standards for the 3-pack regulations was delayed, in each case, for further consultation with the established industry groups. For Part 105, this necessitated amendment of regulation 202.502 of CASR, as well as legislative instruments mentioned in that regulation, to enable parachuting operations to continue under transitional arrangements. Once the legislative framework for Part 105 (including the MOS) is in place, the transitional arrangements will no longer be required.

To facilitate the continuation of the transitional arrangements for parachuting in the absence of a Manual of Standards for Part 105, CASA reissued, amended or extended certain legislative instruments (CASA 263/02, CASA 36/19, CASA 11/17 and CASA 84/18) during 2021 that enable parachuting operations to be conducted under the exemption from Part 105 provided by regulation 202.502 of CASR. These instruments are only effective while

regulation 202.502, which self-repeals at the end of 1 December 2023, is in force. The *Part 105 (Parachuting from Aircraft) Manual of Standards 2023* (the **Part 105 MOS**) is intended to commence on 2 December 2023 upon the self-repeal of the transitional regulation.

The 2021 amendments to the Part 149 MOS ensured that the aviation administration functions prescribed by the MOS would properly capture the aircraft intended to be captured by Part 103, that were being administered by an ASAO, as well as balloons operated for the purposes of a Part 131 activity and the oversight of the airworthiness of emergency parachutes by a Part 149 ASAO that administers parachuting. Those amendments did not include any consequential changes relating directly to Part 105 of CASR for the reason that it was not necessary to deal with them in the Part 149 MOS immediately because Part 105 was disapplied under the transitional arrangements.

With the making of the Part 105 MOS, consequential amendments to the Part 149 MOS are necessary to align the aviation administration functions of the Part 149 MOS with the Part 105 activities (*parachuting activities*) to be administered under the Part 149 functions. Parachuting activities are defined in regulation 105.010 of CASR and further parachuting activities are prescribed under the Part 105 MOS. Further, the Part 105 MOS provides for authorisations that may be issued to persons to conduct parachuting activities. Under regulation 105.065 of CASR, parachuting activities are not permitted without authorisation by an ASAO. Issuing an authorisation falls within the scope of certain prescribed aviation administration functions. The amendments in the proposed instrument comprise the changes necessary to accomplish that alignment and give effect to the policy outcomes of the Part 105 MOS. The Part 105 MOS was publicly consulted between 8 December 2022 and 22 January 2023. For the reasons given above, these amendments are minor or machinery and do not substantially alter existing arrangements.

The amendments also make some typographical corrections.

The Explanatory Statement, which accompanies the proposed MOS amendment, will be published on the Federal Register of Legislation. The Explanatory Statement sets out detailed explanations of each amendment.

### **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 administrative requirements that will apply to a Part 105 ASAO once the Part 105 MOS commences.

### **Commencement and making**

The Determination commences on the date of signature.

The Determination has been made by the Director 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.