

## Civil Aviation Safety Regulations 1998

### CASA 42/25 – Determination – Non-compliance with CASR Subpart 11.J Requirements – MOS Part 139H Amendment Instrument 2025

#### Statement of the reasons for the Determination

##### Legislation

Subsection 9(1) of the *Civil Aviation Act 1988* (the *Act*) provides that the Civil Aviation Safety Authority (*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 in the interests of the safety of air navigation. The relevant regulations are the *Civil Aviation Safety Regulations 1998* (*CASR*).

Subpart 11.J of CASR sets out the procedures for consultation before CASA issues a Manual of Standards (a *MOS*). Under regulation 11.267 of CASR, the procedures stated in Subpart 11.J apply to the amendment of a MOS in the same way as the procedures apply to the issue of a MOS.

Under regulation 11.280 of CASR, if CASA intends to issue a MOS, it must publish a notice of its intention to do so on the internet. The purpose of the notice is to facilitate consultation with, and to seek comments from, persons in relation to the draft MOS. The notice must include the following information about the draft MOS:

1. its title and a description of its contents;
2. how to obtain a copy of it;
3. the period during which comments on it may be lodged;
4. how the comments are to be made and lodged.

Under regulation 11.285 of CASR, a person may comment on a draft MOS in the way set out in the notice published, under regulation 11.280, in relation to the MOS.

Under regulation 11.290 of CASR, before issuing a MOS, CASA must consider any comments received on the draft MOS and may consult with any person on issues arising out of the comments.

Under subregulation 11.295(1) of CASR, a failure to comply with the procedures stated in Subpart 11.J, in relation to a MOS, does not affect the validity of the MOS.

Under paragraph 11.275(1)(d) of CASR, CASA is not required to comply with the procedures stated in Subpart 11.J before issuing a MOS if the Director of Aviation Safety (the *Director*) determines the MOS is of a minor or machinery nature that does not substantially alter existing arrangements.

Under subregulation 11.275(2), if the Director makes such a determination, CASA must publish it, and a statement of the reasons for it, on the internet within 28 days after the determination is made.

Under subregulation 11.295(2), if CASA issues a MOS (other than on the basis of a determination under paragraph 11.275(1)(a)) without complying with the procedures stated in Subpart 11.J, CASA must, within 28 days after issuing the MOS, publish a notice of consultation

in relation to the MOS as if it were a notice of intention published under regulation 11.280. Under subregulation 11.295(3), regulations 11.285 and 11.290 apply in relation to such a MOS as if it were a draft MOS.

## Background

Under paragraph 98(5A)(a) of the Act, the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft. For subsection 98(5A), regulation 139.712 of CASR empowers CASA to issue a MOS for Subpart 139.H of CASR that provides for various matters. CASA has made *MOS Part 139H—Standards Applicable to the Provision of Aerodrome Rescue and Fire Fighting Services* (the **MOS Part 139H**). The matters mentioned in subregulation 139.712(1) include:

1. standards for facilities and equipment used to provide an aerodrome rescue and fire-fighting service (an **ARFFS**) (paragraph 139.712(1)(c)); and
2. any matter required or permitted by the Regulations to be provided for by the MOS Part 139H (paragraph 139.712(1)(e)).

As far as is relevant, under subregulation 139.772(1) of CASR, the ARFFS provider for an aerodrome to which subregulation 139.755(2) of CASR applies must ensure that the necessary buildings and facilities for the ARFFS are at the aerodrome. This includes training facilities. Under subregulation 139.772(2), the ARFFS provider must ensure that those buildings and facilities comply with any applicable requirements (including requirements as to location) stated in the MOS Part 139H.

## Issues

CASA is making the *MOS Part 139H Amendment Instrument 2025* (the **instrument**) without complying with the procedures stated in Subpart 11.J in relation to one of the amendments of the MOS Part 139H, for the reasons set out below.

Subpart 139.H and the MOS Part 139H set out the standards for the provision of an ARFFS, which gives effect to Australia’s commitment to the International Civil Aviation Organization (**ICAO**) Standards and Recommended Practices; in particular, those stated in ICAO Annex 14, Chapter 9.2.

CASA is reviewing the ARFFS standards in the development of a new standalone Part 176 of CASR, to replace Subpart 139.H. On 13 July 2023, CASA published the “Proposed changes to aerodrome rescue and firefighting services legislation (creation of new Part 176 of CASR) – (PP 2101AS)” for consultation. One of the policy proposals consulted on was a proposed amendment of paragraph 22.1.6.1 of the MOS Part 139H, under which, in certain circumstances, an ARFFS training facility mentioned in paragraph 22.1.6.1 may be located other than at an aerodrome where the ARFFS is provided.

Aspects of the proposed amendment are the subject of a current exemption granted by CASA, under regulation 11.160 of CASR, to Norfolk Island Regional Council under *CASA EX72/22 – ARFFS Training Facilities (Training Grounds, Hot Fires, Tactical Positioning and Application of Extinguishing Agents – Norfolk Island Regional Council) Exemption 2022*. Norfolk Island Regional Council is the ARFFS provider for Norfolk Island International Airport (YSNF).

Also, aspects of the proposed amendment are the subject of a current exemption granted by CASA, under regulation 11.160, to Airservices Australia under *CASA EX40/25 – ARFFS Training Facilities (Airservices Australia) Exemption 2025*. Airservices Australia is the

ARFFS provider for each aerodrome located on the Australian mainland to which subregulation 139.755(2) applies.

Item [10] of Schedule 1 to the instrument effects the proposed amendment. But the item was not included in a draft of the instrument that was consulted on by CASA under Subpart 11.J.

The Director has made a determination under paragraph 11.275(1)(d) in relation to item [10], on the basis that the amendment is of a minor or machinery nature that does not substantially alter existing arrangements. Accordingly, consultation under regulation 11.280 in relation to the amendment is not considered necessary by CASA.

The determination is named *CASA 42/25 – Determination – Non-compliance with CASR Subpart 11.J Requirements – MOS Part 139H Amendment Instrument 2025* (the **Determination**).

The instrument commences on the day after it is registered on the Federal Register of Legislation (the **FRL**).

***Legislation Act 2003 (the LA)***

The Determination does not alter the law and, therefore, is not a legislative instrument under the LA.

**Commencement, and making, of the Determination**

The Determination commences on the date of signature, and is repealed on the day after the instrument is registered on the FRL.

The Determination is made by the Director under paragraph 11.275(1)(d).