Civil Aviation Safety Regulations 1998


Statement of reasons for making the Determination

Introduction
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). 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, 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 new MOS amendment is of a minor or machinery nature

For the purposes of this commencement, transitional provisions are required to delay or modify the application of a small number of provisions in order to allow more time for implementation by aerodrome operators, in the main, operators who immediately before 13 August 2020 operated registered aerodromes. The purpose of the new MOS amendment is to create the requisite transitional arrangements for this. The relevant matters are the standards applying to the following: technical inspection programs, aerodrome manual validations and reports, wildlife hazard management plans, aerodrome emergency plans, safety management systems (for both certified aerodromes and registered aerodromes), and risk management plans. The application of the relevant requirements to the aerodromes is dependent on triggering mechanisms based on the volume of activity at the aerodrome during a financial year. For transitioning former registered aerodrome operators additional time is needed in these areas of volumetric triggering to which they have never previously been subject.
The new MOS amendment also provides for grandfathering of new aerodrome infrastructure construction and development that had either commenced, or reached a prescribed stage of planning or funding maturity by 6 September 2019, the date of registration, and hence of publication, of the standards in the new MOS.

The grandfathering will apply to a new aerodrome facility, for an existing aerodrome (other than an aerodrome that is already compliant with the standards in this MOS for aerodrome facilities). A new aerodrome facility is defined as an aerodrome facility that did not exist at the aerodrome before 6 September 2019, and which meets the other defined criteria. The aerodrome facility must also be one for which the process of bringing it into existence (the development process) was started before 6 September 2019, and whose construction is completed:

- for an aerodrome facility under construction before 6 September 2019 — before 13 November 2021
- for an aerodrome facility not under construction before 6 September 2019 — before 13 November 2022.

Under the transitional provisions, these aerodrome facility developments may continue to adhere to the relevant standards in the old MOS for aerodrome facilities, for construction of the facility, and from the completion of construction of the facility until the facility is replaced or upgraded. Processes and systems are not aerodrome facilities and, subject to any transitional provisions, the standards for these in the new MOS apply to the operators of all new aerodrome facilities from 13 August 2020.

The new MOS amendment also clarifies the operation of a provision of the new MOS that protects the position of other grandfathered aerodrome operators. These are a category of pre-existing operators who may continue to comply with the physical infrastructure standards prescribed under the old MOS that is otherwise repealed. The new MOS amendment also corrects some description and typographical errors in the new MOS.

In the context of the application of the new MOS, the transitional arrangements to be made by the MOS amendment do not substantially alter the overall existing arrangements under the new MOS but only makes transitional arrangements with respect to matters which, in the main, it would be difficult, if not impossible, for former registered aerodrome operators transitioning to become certified aerodrome operators, to comply with under the normal commencement and taking effect date of 13 August 2020.

The proposed new MOS amendment may, therefore, reasonably be said to be of a minor or machinery nature in the overall scheme of the new MOS.

**Determination**

The Determination, therefore, provides that the proposed new MOS amendment, which amends the new MOS, is of a minor or machinery nature that does not substantially alter existing arrangements under the new MOS.

The effect of this to relieve CASA of the obligation under Subpart 11.J of CASR to consult again, for a further 4 weeks, on the new MOS amendment as a specific document. A copy of the Determination and these Reasons are on the CASA website (see below).

**Consultation**

In any event, CASA has engaged in quite extensive consultation on the actual content of the transitional proposals, if not on the actual drafted new MOS amendment which captures this content in the requisite legal way.
In 2017, CASA conducted a post-implementation review of the old regulations and the old MOS. This ultimately led to the new Part 139 regulations being made in February 2019, and the new MOS being made and registered in September 2019.

A transition strategy for implementation of the new Part 139 regulations and the new MOS is complex and technically detailed but it is, nevertheless, a technical and machinery matter. Despite that, CASA decided to engage in public and industry consultation from 3 February to 2 March 2020. Included among the implementation policy proposals in this consultation were the matters that are the subject of the new MOS amendment and its transitional provisions.

There were 16 responses from 322 certified and registered aerodrome operators to this consultation and these indicated general support for the transitional provisions. It should be noted that the transitional provisions provide industry with additional time to comply with new requirements and the number of registered aerodromes affected by the new provisions is very small.

Half of the 16 respondents objected to CASA bringing forward the commencement date for the new MOS amendment from 22 August 2020 to 13 August 2020. CASA considered these concerns but regarded 13 August 2020 as, nevertheless, the more appropriate commencement date because it aligns with the publication date of the AIP-ERSA which, as a result, will be able to reflect that all current registered aerodromes will be deemed to be certified aerodromes. If CASA had adhered to the later date, the August 2020 issue of the AIP-ERSA would have been rendered out-of-date within 2 weeks of its publication.

Some respondents commented on the two-year deferral for the requirement to have an SMS and risk management plans, aerodrome emergency plan and exercises, and wildlife hazard management plan, suggesting that these should be included in the aerodrome manual and thus made subject to the same completion timeframe provided for under subregulation 202.702 of CASR for submitting a new aerodrome manual to CASA. CASA considered these comments but noted that, under subregulations 202.702 (5) and (6), the new aerodrome manual for registered aerodromes is required to be submitted any time up until 13 May 2022, whereas under the MOS amendment, such things as SMS, risk management plans, aerodrome emergency plans and exercises are required to be established any time up until 13 November 2022. This means that the aerodrome manual could be prepared well in advance of the time actually being allowed to develop SMS and risk management plans. It is appropriate to allow this extra time to develop and document these new procedures.

Some respondents commented on the two-year deferral for a first aerodrome technical inspection (an ATI) that is provided for registered aerodromes that currently meet the applicable passenger or aircraft volume trigger numbers for this inspection. CASA considered these comments but noted that conducting an ATI is not a current requirement for these aerodromes and, therefore, the deferral does not create any additional safety risk. In addition, a registered aerodrome with a number of air transport operations, and which, as a result, had conducted a safety inspection in the year prior to commencement of the new MOS amendment is required to conduct the ATI within 1 year of commencement of the new MOS.

Following the public consultation, Australia, and indeed the rest of the world, has had to deal with the COVID-19 pandemic. Where it was safe to do so, CASA has provided pilots and operators with temporary alleviation from some regulatory requirements, for example, in relation to the validity and recency of pilot licences and air traffic control licenses. On 15 April 2020, the Australian Airports Association wrote to CASA requesting that commencement of the new MOS amendment be postponed for 12 months due to difficulties some registered aerodrome operators
faced in finding aerodrome technical inspectors and aerodrome consultants, particularly for preparation of new aerodrome manuals.

In considering this request, CASA noted that some aerodrome operators were likely already to be in the process of adopting the new standards in the design and construction of new aerodrome facilities and a 12-month deferral would unduly prejudice them. As a more appropriate mitigating alternative, CASA decided to retain the 13 August 2020 commencement date for the new MOS amendment while adding an additional 3 months to the required completion dates for the transitional arrangements and their requirements.

Despite this facilitative consultation, CASA remains of the view that the new MOS amendment is essentially a machinery instrument for the purposes of paragraph 11.275 (1) (d) of CASR, and it does not substantially alter arrangements under the new MOS.

**Legislation Act 2003**
The Determination is not a legislative instrument.

**Consultation on the actual new MOS amendment document**
In view of the minor or machinery nature of the old MOS amendments noted above, consultation on the actual new MOS amendment document is not warranted. No adverse effect on the level of aviation safety arises from the transitional provisions in the MOS amendment.

**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.