

## **Explanatory Statement**

### **Civil Aviation Safety Regulations 1998**

#### **Manual of Standards Part 139 Amendment Instrument 2012 (No. x)**

##### **Purpose**

*Manual of Standards Part 139 Amendment Instrument 2012 (No. x)* (the **MOS Amendment**) is part of a package of rules to ensure that terminal instrument flight procedure (**TIFP**) designers play a protective role in relation to the requirement that (apart from specialised helicopter operations and ship's pilot PINS operations), TIFP must not be used *except* at a certified or registered aerodrome.

##### **Legislation — the Act**

Under subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**), the Governor-General may, among other things, make regulations prescribing matters required, permitted, necessary or convenient for the Act and in the interests of the safety of air navigation.

##### **Legislation — CASR Part 139**

Some of these regulations are contained in the *Civil Aviation Safety Regulations 1998* (**CASR 1998**). Part 139 of CASR 1998 deals with the operation of aerodromes, including rules about the certification of aerodromes and the requirements that apply to the operators of certified aerodromes.

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.

Relying on this power, under regulation 139.015 of CASR 1998, the standards for aerodromes are those set out in the Manual of Standards Part 139 — Aerodromes (the **MOS**).

Manual of Standards is defined in regulation 139.010 of CASR 1998 as the *Manual of Standards (MOS) — Part 139 Aerodromes*, published by CASA and as in force from time to time (**MOS Part 139**). The MOS contains mandatory standards for the facilities and equipment that aerodromes must have.

##### **CASR amendment for use of TIFP at aerodromes**

Commencing on 1 April 2012, Schedule 2 of *Civil Aviation Safety Amendment Regulations 2011 (No. 2)* (the **CASR Amendment Regulations**) amended regulation 139.030 of CASR 1998 to broaden, in the interests of aviation safety, that provision's previous restrictions on the use of runways at aerodromes that are not certified or registered aerodromes.

Previously, regulation 139.030 of CASR 1998 provided that a person must not operate an aerodrome with a *non-precision approach runway* available to the public, unless the aerodrome was certified or registered under CASR Part 139.

A non-precision approach runway was one used by aircraft making instrument landings.

However, with the introduction of new navigation technologies, the term *non-precision approach runway* no longer covers all categories of runway flight operations for which instrument flight procedures are produced.

### **Definitions**

The CASR Amendment Regulations inserted a new definition of TIFP into the CASR Dictionary as an instrument approach procedure or an instrument departure procedure.

An instrument approach procedure was consequentially defined as a series of predetermined manoeuvres by reference to flight instruments with specified protection from obstacles from the initial approach fix or, where applicable, from the beginning of a defined arrival route to a point from which a landing can be completed and thereafter, if a landing is not completed, to a position at which holding or en-route obstacle clearance criteria apply.

An instrument departure procedure was consequentially defined as a series of predetermined manoeuvres by reference to flight instruments with specified protection from obstacles from take-off until the aircraft reaches the en-route lowest safe altitude; or the minimum altitude at which the aircraft, on a minimum climb gradient of 3%, can intercept the planned flight route; or in a case where the aircraft has taken off from an aerodrome for which there is a radar control service in operation — the minimum radar vector altitude.

For safety, TIFP should only be conducted at certified or registered aerodromes because only such aerodromes are required to meet certain instrument flight safety standards, including monitoring the condition of the aerodrome to ensure no obstacles infringe the instrument approach surfaces that are critical to safety in TIFP.

The CASR Amendment Regulations amended regulation 139.030 of CASR 1998 to provide, in effect that, *except for specialised helicopter operations*, a person must not (at the risk of committing an offence) operate an aerodrome with a TIFP unless the aerodrome is a certified or registered aerodrome.

The CASR Amendment Regulations inserted into the CASR Dictionary a new definition of a *specialised helicopter operation* as a helicopter operation that involves the carriage of persons or cargo between the coast of Australia and an off-shore installation, or between off-shore installations, or to or from a helipad of a hospital or a State or Territory emergency service.

An *off-shore installation* was also newly defined in the Dictionary as an installation that is erected on, or floating in the sea above, the continental shelf for the purpose of extracting, or exploring for, petroleum or natural gas.

### **The MOS Amendments**

In the light of the new CASR Part 139 requirement that apart from a specialised helicopter operation a TIFP may only be used at a certified or registered aerodrome, MOS Part 139 and the *Manual of Standards (MOS) Part 173 — Standards Applicable to the Provision of Instrument Flight Procedures Design (MOS Part 173)* were each amended to impose new and complementary reporting, notifying and maintenance obligations on TIFP designers and on CASA.

### **MOS Part 173**

Under MOS Part 173 as amended, maintenance of a type of TIFP requires that if written notification about an aerodrome is received from CASA under subsection 2.1.9A of MOS Part 139, the designer must withdraw the TIFP and give written notification to the aerodrome operator. The notification must be to the effect that in accordance with the maintenance requirements the TIFP design has been withdrawn because the aerodrome was not a certified aerodrome or a registered aerodrome.

A Note explains that this procedure is to complement the obligation on CASA under subsection 2.1.9A of MOS Part 139.

### **MOS Part 139**

The MOS amendment inserts the new subsection 2.1.9A into MOS Part 139 as a facilitative provision. It provides that where an aerodrome with a TIFP ceases (for whatever reason) to be

- (a) a certified aerodrome (and does not immediately become a registered aerodrome); or
- (b) a registered aerodrome (and does not immediately become a certified aerodrome);

CASA will take every reasonable step necessary to notify the certified or authorised designer of the TIFP of the cessation.

An accompanying Note explains that this procedure is to complement the obligations on the certified or authorised designer of a TIFP under Chapter 6 of MOS Part 173. The Note also indicates that a failure to comply with subsection 2.1.9A does not affect any obligation under Chapter 6 of the Part 173 MOS.

Thus, the MOS amendment and the simultaneously made *Manual of Standards Part 173 Amendment Instrument 2012 (No. x)* operate in tandem as a regulatory package.

### **Legislative Instruments Act**

Under subsections 98 (5AA) and (5AB) of the Act, an instrument issued under a regulation made under paragraph 98 (5A) (a) of the Act, is a legislative instrument for the *Legislative Instruments Act 2003* (the *LIA*) if it relates to the safe operation of aircraft and applies more broadly than to a particular aircraft or person. The MOS Amendment is of general application and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA.

### **Consultation for section 17 of the LIA**

CASA conducted industry consultation on the CASR Amendment Regulations, in relation to the use of TIFP at uncertified or unregistered aerodromes, through the release of a consultative draft in February 2011. Additionally, CASA wrote to 34 aerodrome operators who might be affected by the amendments to CASR Parts 139 and 173.

CASA received 4 responses to the consultation draft, 3 of which indicated it was not acceptable to limit the use of TIFPs to registered and certified aerodromes only. In August 2011, CASA notified the same 34 aerodrome operators that revised draft regulations were published on its website, stressing the safety benefits of the procedures applying to registered and certified aerodromes. Consultation on the MOS

amendment is considered to have been subsumed in the consultation on the CASR Amendment Regulations.

#### **Office of Best Practice Regulation (OBPR)**

OBPR does not require a RIS for the MOS amendment because a preliminary assessment of the business compliance costs indicates that the MOS amendment will have only a nil to low impact on business (OBPR ID: 10866 and OBPR ID: 13040).

#### **Statement of Compatibility with Human Rights**

This following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The MOS amendment, in its nature and contents, is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. It is a facilitative provision to assist in the safety regulation of TIFP, to ensure that these flight procedures are conducted only at certified or registered aerodromes because only such aerodromes have the procedures and safety environment suitable for use of TIFP.

Thus, the MOS amendment does not engage any of the applicable human rights or freedoms and it is compatible with human rights as it does not raise any human rights issues.

#### **Making and commencement**

The MOS Amendment is expressed to commence on 1 April 2012 (following registration), the same day as commencement of Schedule 2 of the CASR Amendment Regulations amending regulation 139.030 of CASR 1998, and the same day as commencement of *Manual of Standards Part 173 Amendment Instrument 2012 (No. x)*.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Manual of Standards Part 173 Amendment Instrument 2012 (No. x)]