

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### ***Manual of Standards Part 90 Amendment Instrument 2011 (No. 1)***

##### **Purpose**

The main purpose of the *Manual of Standards Part 90 Amendment Instrument 2011 (No. 1)* (the ***amending instrument***) is to amend subsection 31.4 of the Part 90 Manual of Standards (the ***Part 90 MOS***), relating to interior emergency exit markings. The amending instrument also makes amendments to the *Manual of Standards Part 90 Instrument 2010* that are designed to make the Part 90 MOS a free-standing instrument, rather than one “contained in” the schedule of another instrument. These amendments will also ensure the correct legal nomenclature for the Part 90 MOS.

##### **Legislation — the Act**

Under subsection 98 (1) of the *Civil Aviation Act 1988* (the ***Act***), the Governor-General may make regulations for the Act and in the interests of the safety of air navigation.

Under paragraph 98 (5A) (b) of the Act, the regulations may empower CASA to issue instruments in relation to the airworthiness of, or design standards for, aircraft.

##### **Legislation — CASR Part 90**

Some of these regulations are contained in the *Civil Aviation Safety Regulations 1998* (***CASR 1998***). In particular, Part 90 (additional airworthiness requirements) of CASR 1998 (***CASR Part 90***) sets out airworthiness requirements for relevant aircraft with a certificate of airworthiness. These airworthiness requirements are additional, that is, they supplement the existing design standards known as type certification requirements. Under CASR Part 90, before conducting operations, the registered operator of an aircraft must ensure compliance with the additional airworthiness requirements.

Under subregulation 90.020 (1) of CASR 1998, CASA is empowered to issue a Manual of Standards (***MOS***) for CASR Part 90 that sets out matters relating to the airworthiness of, or design standards for, aircraft. Under paragraph 90.020 (2) (d) of CASR 1998, the Manual of Standards may set out standards for interior emergency exit marking.

In addition to regulation 90.020, other provisions of CASR Part 90 mention matters for which specific standards may be promulgated in the Part 90 MOS.

Regulation 90.200 provides that Subpart 90.C of CASR Part 90 applies to large aeroplanes (with maximum take-off weight of more than 5 700 kg) engaged in air transport operations (defined in the Dictionary as, in effect, equivalent to regular public transport and charter operations). Subpart 90.C includes regulation 90.220.

Regulation 90.220 (interior emergency exit marking) provides that the registered operator of a passenger-carrying aeroplane commits a strict liability offence if the operator operates the aircraft, or permits a person to operate the aircraft, and while the aircraft is operating, the identification marking for an emergency exit, or a location sign or instruction for opening the emergency exit, does not meet the standards set out in the Part 90 MOS.

### **Legislation — Part 90 MOS**

The Part 90 MOS was made by, and set out in Schedule 1 to, the *Manual of Standards Part 90 Instrument 2010*.

The relevant standards set out in Part 3 of the Part 90 MOS commenced on 1 December 2010, and apply only to a large aeroplane engaged in air transport operations.

Part 3 of the Part 90 MOS includes Subdivision 2.4 (interior emergency exit marking). The standards set out in that Subdivision are for a passenger-carrying large aeroplane and generally apply for paragraph 90.220 (1) (b) of CASR 1998.

Subdivision 2.4 of Part 3 of the Part 90 MOS includes subsection 31.4, which provides standards for passenger emergency exit markings.

### **Background**

Like CASR Part 90 which empowers them, the standards in the Part 90 MOS have been developed to be closely aligned with United States Federal Aviation Regulations (the **FAR**) Part 121 (Operating requirements: Domestic, flag and supplemental operations), and FAR Part 135 (Operating requirements: Commuter and on demand operations and rules governing persons on board such aircraft). It is also intended that CASR Part 90 and the Part 90 MOS be closely aligned with the European Joint Aviation Requirements (**JAR**) contained in JAR-26 (Additional airworthiness requirements for operations). These alignments ensure harmonisation between Australian requirements and those of other major national airworthiness authorities.

### **Amendment of the Part 90 MOS**

It was intended that requirements from Airworthiness Directives (**AD**), specifically the AD/General series, would be moved to CASR Part 90 and the Part 90 MOS without changing the content of those requirements. The amending instrument will correct an error that occurred during that transition which is known to affect some Airbus aircraft and may also affect other aircraft types. The aim of the amending instrument is to return the requirements of the Part 90 MOS, with respect to emergency exit placarding, to those contained in AD/General/4 immediately before that AD was cancelled on 1 December 2010.

Before the commencement of the amending instrument, numerous Airbus aircraft (amongst others) did not comply with subsection 31.4 of the Part 90 MOS because of unintended changes to requirements. In particular, that subsection applied to aircraft of any certification period, whereas the previous requirement in AD/General/4 applied only to aircraft certificated prior to 1 May 1972. Further, the requirements in subsection 31.4 applied to all exit handles, rather than being limited, as they were in AD/General/4, to exit handles with a rotary motion. Therefore, subsection 31.4 had the unintended consequences of introducing Australian unique requirements.

The amending instrument will realign the Part 90 MOS with paragraph 121.310 (e) (1) (i) of FAR. These changes have no effect on industry other than to correct the situation that some aircraft were mistakenly made non-compliant at the time CASR Part 90 came into effect. There is no increase in burden for aircraft operators or owners.

The amending instrument also makes amendments to make the Part 90 MOS a free-standing instrument, rather than one “contained in” the schedule of another instrument, and to ensure the correct legal nomenclature for the Part 90 MOS.

Details of the provisions of the amending instrument are contained in Attachment 1.

### **Legislative Instruments Act**

Under subsections 98 (5B) and (5BA) of the Act, an instrument issued under a regulation made under paragraph 98 (5A) (b) of the Act, is a legislative instrument for the *Legislative Instruments Act 2003* (the **LIA**) if it relates to an airworthiness standard or a design standard and applies more broadly than to a particular aircraft, person or aeronautical product. The Part 90 MOS is of general application and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, 38 and 42 of the LIA.

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

Consultation on the Part 90 MOS was subsumed in the consultation that occurred for the parent instrument, CASR Part 90.

In November 2003, CASA published a Notice of Proposed Rule Making (**NPRM**) about the proposed additional airworthiness requirements (NPRM 0305CS – Additional Airworthiness Requirements). CASA received 3 responses to the NPRM by the closing date, and these included some substantive and comprehensive submissions. All comments were evaluated by CASA and taken into account in preparing CASR Part 90 and the Part 90 MOS. Following the NPRM process, regular consultation continued with the Maintenance Sub-committee and the Certification Sub-committee of the Standards Consultative Committee (**SCC**), a major CASA/industry consultative forum, with CASA again taking into account the SCC proposals.

Notification of the amendment to subsection 31.4 contained in the amending instrument was placed on the CASA website on 17 May 2011 and posted to the SCC and relevant Sub-committee discussion forums.

In accordance with regulation 11.280 of CASR 1998, on 5 September 2011, CASA published the details of the amending instrument on its website and invited comments from the public and the aviation industry by 19 September 2011. No comments were received.

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

OBPR assessed the proposed amendment of the Part 90 MOS as having a low impact on business, and imposes no or low compliance costs. Therefore, no further analysis (in the form of a Business Cost Calculator Report or Regulation Impact Statement) was required for this amendment of the Part 90 MOS (OBPR ID 12479).

### **Making and commencement**

The amending instrument and amendments commence on the day after the amending instrument is registered.

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 90 Amendment Instrument 2011 (No. 1)***

**1 Name of instrument**

This section names the instrument as the *Manual of Standards Part 90 Amendment Instrument 2011 (No. 1)*.

**2 Commencement**

Under this section, the instrument commences on the day after registration.

**3 Amendment of Manual of Standards Part 90 Instrument 2010**

Under this section, Schedule 1 makes amendments to the *Manual of Standards Part 90 Instrument 2010*.

**Schedule 1 Amendments**

The Schedule contains amendment to the *Manual of Standards Part 90 Instrument 2010*.

**Items 1 to 6, Stand-alone Part 90 MOS**

Items 1 to 6 are a series of drafting amendments that restructure the *Manual of Standards Part 90 Instrument 2010* so that Part 90 MOS becomes a stand-alone Manual of Standards, not contained in the Schedule of another instrument. These amendments also provide that the MOS is the Part 90 Manual of Standards, bringing the nomenclature of the MOS into line with that used in CASR 1998.

**Item 7, Schedule 1, subsection 31.4**

This item substitutes a new subsection 31.4 of the Part 90 MOS, which provides standards for passenger emergency exit markings.

The scope of the new subsection 31.4 is limited to transport category aeroplanes for which the application for the type certificate was filed before 1 May 1972. It is also limited to Type II or larger passenger emergency exits with a locking mechanism released by rotary motion of a handle.

The standards for the arrow that is required at these exits have been amended to require a red arrow with a shaft at least 19 mm wide and a head twice the width of the shaft. The arrow must extend along at least 70 degrees of arc at a radius about  $\frac{3}{4}$  of the handle length. Those standards reflect paragraph 121.310 (e) (1) (i) of the FAR and paragraph 2 (c) (1) (i) of Airworthiness Directive/General/4 as it was immediately before that AD was cancelled on 1 December 2010.