**Explanatory Statement**

**Civil Aviation Safety Regulations 1998**

**Manual of Standards Part 173 Amendment Instrument 2022 (No. 1)**

**Purpose**

The *Manual of Standards Part 173 Amendment Instrument 2022 (No. 1)* (the ***instrument***), by extending the intervals at which the Civil Aviation Safety Authority (***CASA***) must conduct a flight revalidation of a terminal instrument flight procedure (***TIFP***) from ‘not exceeding three years’ to ‘not exceeding five years’, aligns those intervals with related International Civil Aviation Organization (***ICAO***) standards and recommended practices. Those ICAO standards and recommended practices are identified below, under the heading ‘Overview of Instrument’.

**Legislation**

*Civil Aviation Act 1988* (the ***Act***)

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. Relevantly, the Governor‑General has made the *Civil Aviation Safety Regulations 1998* (***CASR***).

Under paragraph 98 (5A) (a) of the Act, the regulations may empower CASA to issue instruments in relation to matters affecting, relevantly, the safe navigation and operation of aircraft. The combined effect of that paragraph and the definition of ***Manual of Standards*** in regulation 173.010 of CASR empowers CASA to issue a Manual of Standards for Part 173 of CASR.

CASR

Each provision mentioned in this section is a provision of CASR.

Regulation 173.005 (a) provides that Part 173 provides for the standards that apply to the design of instrument flight procedures. Under regulation 173.010:

(a) ***Manual of Standards*** means the document called ‘*Manual of Standards (MOS) Part 173 – Standards Applicable to the Provision of Instrument Flight Procedure Design*’, published by CASA, as in force from time to time; and

(b) ***validate*** has the same meaning as in the Manual of Standards.

Part 173 provides for the standards that apply to the design of instrument flight procedures by reference to the Manual of Standards.

Manual of Standards

Unless otherwise stated, each provision mentioned in this section is a provision of the Manual of Standards (***MOS***).

Chapter 6 of the MOS relates to the administration of TIFP design.

The combined effect of paragraphs 6.1.1.1 and 6.1.2.1 of the MOS is that all TIFP designs, other than a design of the type ‘Helicopter (Off‑shore) — Airborne Radar’, must be validated in accordance with the Standards mentioned in Chapter 7.

Under paragraph 6.1.4.1 of the MOS, maintenance of a TIFP includes the following, but excludes the periodic flight revalidation of procedures:

(a) general text and data amendments;

(b) redesign to conform with changes to design standards;

(c) provision of advice regarding obstructions in the vicinity of the aerodrome or procedure;

(d) redesign or amendment required as a result of changes to critical obstacles;

(e) changes as directed by CASA.

Paragraph 6.1.4.2 of the MOS requires CASA to:

(a) conduct a flight revalidation of a TIFP at intervals not exceeding three years; and

(b) on completion of a flight revalidation, to advise the certified designer of any changes required.

Under paragraph 6.1.5.1 of the MOS, before the effective publication date of a TIFP, the certified designer must forward to the aerodrome operator for which a procedure has been designed, diagrams and obstacle data sufficient to enable the aerodrome operator to fulfil obligations to report and monitor obstacles in the vicinity of an aerodrome as required under Part 139 of CASR. The related provisions of Part 139 of CASR and the *Part 139 (Aerodromes) Manual of Standards 2019* (the ***Part 139 Manual of Standards****)* are described below, under the heading ‘Background’.

Chapter 7 of the MOS relates to flight validation. Under paragraph 7.1.1.1, flight validation is required for:

(a) instrument approach procedures;

(b) revised instrument approach procedures where the final course has been re‑aligned by 3 degrees or more.

Under paragraph 7.1.1.2 of the MOS, validation of an instrument flight procedure comprises:

(a) a review of the draft procedures from an operational perspective conducted by the validation pilot; and

(b) a validation flight check.

The *Acts Interpretation Act 1901* (the ***AIA***)

Under subsection 33 (3) of the AIA, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by‑laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**Background**

Since the Manual of Standards commenced in 2003, CASA has made other regulatory changes that support an extension of the intervals, mentioned in paragraph 6.1.4.2 of the MOS, at which CASA must conduct a flight revalidation of a TIFP. Those changes include, but are not necessarily limited to, those described in the remainder of this section.

On 1 April 2012, Schedule 2 to the *Civil Aviation Safety Amendment Regulations 2011 (No. 2)* commenced, substituting regulation 139.030 of CASR. The new subregulation 139.030 (1) of CASR provided that the operator of an aerodrome commits an offence if there is a TIFP (other than a TIFP that is only for use in a specialised helicopter operation) for an aerodrome that is not a certified aerodrome or a registered aerodrome.

CASA is no longer registering aerodromes. However, most formerly registered aerodromes are now certified aerodromes.

On 13 August 2020, the *Civil Aviation Safety Amendment (Part 139) Regulations 2019* (the ***2019 Amendment Regulations***) commenced, substituting Subparts 139.A to 139.F of CASR, and making some related amendments. The following provisions included in CASR after the 2019 Amendment Regulations commenced are most relevant to the instrument:

(a) regulation 139.025, which makes it a strict liability offence if there is a TIFP for an aerodrome (other than a TIFP that is only for use in a specialised helicopter operation) and the operator of the aerodrome does not hold an aerodrome certificate for the aerodrome;

(b) subregulations 139.090 (1) and (2), which provide that the Part 139 Manual of Standardsmay prescribe requirements relating to:

(i) monitoring the airspace around a certified aerodrome for infringements, or potential infringements, of the airspace; and

(ii) reporting such infringements, or potential infringements; and

(iii) monitoring the obstacle limitation surfaces of an aerodrome; and

(iv) monitoring other surfaces and obstacles associated with the airspace around an aerodrome;

(c) subregulations 139.090 (4) and (5), which make it a strict liability offence if the operator of a certified aerodrome is subject to a requirement mentioned in subregulation 139.090 (1) and the requirement is not met;

(d) Division 139.E.2, which relates to the determination by CASA that certain objects or structures are a hazard to aircraft operations. It also provides for the publication and notification of particulars of the hazard by CASA.

On 5 March 2015, the *Civil Aviation Legislation Amendment (Part 175) Regulation 2014* inserted Part 175, relating to aeronautical information management, into CASR.

Subpart 175.E (regulations 175.480 to 175.500) of CASR contains powers that can be used to gather data about objects and structures that affect aviation safety. The data gathered under Subpart 175.E can be used in air navigation applications, including the design of TIFP.

Subregulation 175.485 (1) provides that Airservices Australia (***AA***) may request the data about an object or structure listed in paragraphs (1) (a) to (k).

Regulations 175.490, 175.495 and 175.500 give AA the discretionary power to request data mentioned in subregulation 175.485 (1) from, respectively:

(a) a person who owns, controls or operates an object or structure; and

(b) an aerodrome operator; and

(c) a Commonwealth, State, Territory or local government authority.

Regulations 175.490 and 175.495 make it a strict liability offence for, respectively, the person and the aerodrome operator not to comply with the request within 28 days of receiving it, or within the time stated in a notice of extension from AA. Similarly, subregulation 175.500 (2) provides that the authority must comply with the request.

Part 139 Manual of Standards

Each provision mentioned in this section is a provision of the Part 139 Manual of Standards.

Under subsection 3.01 (2):

(a) ***obstacle limitation surfaces*** (***OLS***) means a series of planes, associated with each runway at an aerodrome, that defines the desirable limits to which objects or structures may project into the airspace around the aerodrome so that aircraft operations at the aerodrome may be conducted safely; and

(b) ***PANS‑OPS*** means Doc.8168-OPS/611 Volume II (Procedures for Air Navigation Services – Construction of Visual and Instrument Flight Procedures) approved and published by decision of the Council of the International Civil Aviation Organization, as in force or existing from time to time.

Chapter 7 relates to obstacle restriction and limitation. It requires an aerodrome operator to: monitor the manoeuvring area of, and the airspace around, an aerodrome; maintain them free from obstacles in accordance with the Part 139 Manual of Standards; and report new or changed critical obstacles.

Under section 7.03,an aerodrome operator must establish and monitor the OLSapplicable to the aerodrome, and, as far as possible, ensure that the OLS within the aerodrome boundary is maintained clear of obstacles.

Under subsection 7.20 (1), an aerodrome operator must monitor any object or structure that may infringe the aerodrome’s OLS and PANS-OPS airspace associated with instrument approach procedures.

Under subsection 7.20 (2), an aerodrome operator must:

(a) establish procedures to monitor:

(i) the OLS; and

(ii) such obstacles, associated with the aerodrome’s TIFPs, as are determined by the instrument flight procedure designer to be critical obstacles; and

(b) include the procedures in the aerodrome manual.

Under subsection 7.20 (3), the aerodrome operator must inform the designer of a TIFP at the aerodrome of the following:

(a) any change in the status of an existing critical obstacle;

(b) any proposed development that is to be higher than the critical obstacles within the area depicted by the designer;

(c) any new object or structure that is higher than the critical obstacles within the area depicted by the designer.

In Chapter 12, Division 1 relates to serviceability inspections at specified intervals. Within that Division, subsection 12.03 (6) provides that the serviceability inspection must check for any infringements of, or obstructions present in, any of the following surfaces that are visible from the aerodrome:

(a) the take-off, approach and transitional elements of the OLS;

(b) PANS-OPS airspace, including any critical obstacles that would otherwise affect the safety or integrity of PANS‑OPS airspace.

Division 2 of Chapter 12 relates to aerodrome technical inspection programs. Within that Division:

(a) subsection 12.05 (2), provides that, subject to sections 12.06 and 12.07, an aerodrome technical inspection must comply with section 12.09; and

(b) subsections 12.09 (1) to (7) set out what an aerodrome technical inspection must include. Most relevantly, those requirements include the following:

(i) an instrument survey of the approach, the take‑off and the transitional surfaces;

(ii) a check of other applicable surfaces associated with the OLS;

(iii) a check of the aerodrome operator’s monitoring of the instrument approach procedure‑critical obstacles nominated by the procedure designer for any TIFPs published for the aerodrome.

**Overview of instrument**

The instrument will extend the intervals at which CASA must conduct a flight revalidation of a TIFP from ‘not exceeding three years’ to ‘not exceeding five years’.

The three‑year interval between flight revalidations of a TIFP set down in paragraph 6.1.4.2 of the Part 173 MOS is shorter than the five‑year interval set down by ICAO in:

(a) the *Convention on International Civil Aviation* (ICAO Doc 7300)*, Annex 11 — Air Traffic Services*, Fifteenth Edition, July 2018 — see paragraph 6 of Appendix 7; and

(b) *Procedures for Air Navigation Services — Aircraft Operations* Volume II, *Construction of Visual and Instrument Flight Procedures* (ICAO DOC 8168), Seventh Edition, 2020 — see Part I, section 2, Chapter 4, paragraph 4.4.3.

Since CASA established the TIFP flight revalidation program in 2008, very few related aviation safety issues have been identified. Therefore, CASA has assessed that extending the intervals at which CASA must conduct a flight revalidation of a TIFP from ‘not exceeding three years’ to ‘not exceeding five years’ would have no negative effect on aviation safety of operations at certified aerodromes with TIFPs (particularly considering the strengthened requirements for operator monitoring and reporting, including in section 7.20 of the Part 139 Manual of Standards).

In accordance with subsection 33 (3) of the AIA, the instrument amends the Manual of Standards.

***Content of instrument***

Section 1 names the instrument.

Section 2 mentions when the instrument commences.

Section 3 mentions that Schedule 1 amends the Manual of Standards.

**Schedule 1**— **Amendment**

Item [1] amends paragraph 6.1.4.2 of the Manual of Standards by omitting ‘three years,’ and inserting ‘five years,’.

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

Paragraph 10 (1) (d) of the LA provides that an instrument is a legislative instrument if it includes a provision that amends or repeals another legislative instrument.Because the instrument amends a legislative instrument – the Manual of Standards – the instrument is also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

In this case, the instrument amends the principal Manual of Standards and is almost immediately spent and repealed in accordance with the automatic repeal provisions in regulation 48A of the LA. However, the principal Manual of Standards prescribes aviation safety standards. As such, the instrument is intended to have enduring operation and it would not be appropriate for it to be subject to sunsetting. The exemption from the sunsetting provisions affects parliamentary oversight by not requiring the Manual of Standards to be remade and subject to further tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

**Consultation**

In accordance with subregulation 11.280 (1) of CASR, CASA has issued a notice of its intention to issue an amendment to the Manual of Standards that includes the amendment in Schedule 1 to the instrument.

From 8 July 2022, for a period of not less than 14 days, CASA published a consultation draft of the instrument on the CASA website, along with the following information:

(a) its title and a description of its contents;

(b) how to obtain a copy of it;

(c) the period during which comments on it may be lodged;

(d) how comments are to be made and lodged.

CASA considered any comments it received on the draft instrument. Therefore, CASA has undertaken public consultation of the proposed minor or machinery amendment of the Manual of Standards in accordance with subregulations 11.280 (2) and (4) of CASR.

Under those circumstances, CASA is satisfied that no further consultation is:

(a) reasonable in the circumstances for subregulation 11.280 (4) of CASR; or

(b) appropriate or reasonably practicable for this instrument for section 17 of the LA.

**Sector risk, economic and cost impact**

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration. Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

(a) consider the economic and cost impact on individuals, businesses and the community of the standards; and

(b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

CASA has assessed that extending the intervals at which CASA must conduct a flight revalidation of a TIFP does not impose any new obligations on TIFP design organisations, aerodrome operators or airspace users.

However, CASA has identified that making the amendment included in the instrument will result in an annual cost saving to CASA.

Although CASA has identified that there will be a financial impact on the aviation industry commensurate with the annual cost saving, that financial impact will be:

(a) confined to the business or entity that, by arrangement with CASA provides the related services after the request for tender process is complete; and

(b) offset by reduced costs for businesses or entities that produce TIFPs, because those businesses or entities will be required to produce maintenance of flight revalidation packages for CASA and its contractors at intervals not exceeding five years instead of at intervals not exceeding three years.

The economic and cost impact of the instrument has been determined by the following:

(a) the identification of individuals and businesses affected by the instrument;

(b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements;

(c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government;

(d) a valuation of the impact the different requirements would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly;

(e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow‑on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

**Impact on categories of operations**

By extending the intervals at which CASA must conduct a flight revalidation of a TIFP, the amount paid by CASA to businesses or entities that provide services of that kind by arrangement with CASA will be reduced. However, that reduction will be offset by reduced costs for businesses or entities that produce TIFPs, because those businesses or entities will be required to produce maintenance of flight revalidation packages for CASA and its contractors at intervals not exceeding five years instead of at intervals not exceeding three years.

**Impact on regional and remote communities**

Related CASA and Australian Securities and Investments Commission records indicate that the business that, by arrangement with CASA, currently conducts flight validation of TIFPs, has its principal place of business and its registered office in a regional area. Therefore, if after a proposed tender and procurement processes are complete:

(a) a business or entity located in the same regional area continues, by arrangement with CASA, to conduct flight validation of TIFPs, there will be a financial impact on the aviation industry in that regional area commensurate with the approximate annual cost saving to CASA; and

(b) a business or entity located in another regional area, by arrangement with CASA, conducts flight validation of TIFPs, the impact on the aviation industry will vary. While the financial impact on regional and remote areas as a whole will continue to be as described in paragraph (a), there will be a relocation of the related amount paid by CASA to the regional area in which the new business or entity is located.

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

OBPR has assessed that a Regulation Impact Statement is not required in this case because the amendment is likely to have no more than a minor impact (OBPR id: 22‑02847).

**Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

**Making and commencement**

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

The instrument commences on the day after it is registered and is automatically repealed in accordance with section 48A of the LA.

**Attachment 1**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

**Manual of Standards Part 173 Amendment Instrument 2022 (No. 1)**

The legislative instrument 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*.

**Overview of the legislative instrument**

The *Manual of Standards Part 173 Amendment Instrument 2022 (No. 1)* extends the intervals at which the Civil Aviation Safety Authority must conduct a flight revalidation of a terminal instrument flight procedure from ‘not exceeding three years’ to ‘not exceeding five years’.

**Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Civil Aviation Safety Authority**