

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 172 (Air Traffic Service Providers) Amendment (Fatigue Rules) Manual of Standards 2023

Purpose

The purpose of the amendment instrument (the *instrument*) is to establish standards for the management of fatigue among the operational personnel of air traffic service providers, being air traffic controllers and flight service officers. The standards require the air traffic service provider (*ATS provider*) to have a fatigue risk management system (an *FRMS*) that meets the prescribed requirements set out in Chapter 4 (inserted into the Manual of Standards by the instrument). The requirements align with the standards in Annex 11 to the Convention on International Civil Aviation (*Chicago Convention*) for an FRMS. The amendments enable Australia to comply with its international obligations under Annex 11 to implement fatigue management requirements. This requires legislation requiring ATS providers to have an FRMS that has been approved by the Civil Aviation Safety Authority (*CASA*).

The national ATS provider is Airservices Australia (*AA*), which has, for a number of years, been using a form of FRMS to manage its fatigue management risks. The instrument requires AA to have approval for an FRMS from CASA from 1 September 2024. This provides for a period of approximately a year for AA to transition to the Annex 11-compliant scheme for FRMS set out in the instrument.

Legislation

Section 98 of the *Civil Aviation Act 1988* (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*).

Part 172 of CASR provides for approval of ATS providers and their regulation. Under subregulation 172.022(1) of CASR, CASA may issue a Manual of Standards for Part 172 of CASR (the *Part 172 MOS*), setting out various standards for air traffic services, including procedures, systems and documents used to provide an air traffic service.

Subregulation 172.065(1) of CASR provides that an ATS provider must ensure that any traffic service that it provides is provided in accordance with (a) the standards set out in the Manual of Standards, and (b) the standards set out or referred to in Annex 11, as varied by Gen 1.7 of Part 1 of the Aeronautical Information Publication (AIP). Under regulation 172.085 of CASR, if it is not possible to comply with both standards, the provider is only required to ensure that the service is provided in accordance with the Manual of Standards.

Regulation 11.068 of CASR allows CASA, for subsection 98(5A) of the Act, to issue a legislative instrument that imposes a condition relating to a matter mentioned in that subsection on a class of authorisations. Authorisations include an approval, under Subpart 172.F of CASR of a person as an ATS provider. Under regulation 11.077 of CASR, it is a strict liability offence if a person who holds an authorisation that is subject to a condition under regulation 11.068, contravenes the condition.

The instrument provides for CASA to issue implementation approvals of an FRMS, on application by an ATS provider, in a staged process. Under section 4.06, the ATS provider may apply to CASA for a trial implementation approval, or a full implementation approval. An FRMS for either a trial or full implementation approval must meet the requirements prescribed under subsection 4.05(4) of the instrument.

CASA must be satisfied of the matters in subsection 4.06(3) for a trial implementation approval, and the matters in subsection 4.06(4) for a full implementation approval. The criteria in subsection (4) are qualitatively more difficult to meet, e.g., for a full implementation approval, CASA must be satisfied that the FRMS:

is a safe, data-driven system which will [*emphasis added for clarity*] continuously and effectively monitor and manage fatigue-related safety risks using scientific principles and knowledge, and operational experience.

The equivalent criteria for a trial implementation approval is that CASA must be satisfied that the FRMS:

is a safe, data-driven system which appears to be reasonably capable of [*emphasis added for clarity*] continuously and effectively monitoring and managing fatigue-related safety risks using scientific principles and knowledge, and operational experience.

An FRMS in relation to each of a trial or a full implementation approval application must include CASA's approval of each of the elements prescribed in subsection 4.05(2) of the instrument, and CASA must be satisfied that the FRMS is integrated with the ATS provider's safety management system. Under subsection 4.14(1), the ATS provider must have had a trial implementation approval for a period of at least 12 months before the provider is eligible to be granted a full implementation approval. If CASA decides not to issue the full implementation approval, the provider can apply again for another trial implementation approval.

Under regulation 11.015 of CASR, an approval of this type is an authorisation under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

Regulation 11.055 sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation may be granted subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability if the person breaches a condition of an authorisation.

In accordance with regulation 201.004 of CASR, a decision by CASA to refuse an approval mentioned in the paragraphs above, is subject to merits review by the Administrative Appeals Tribunal.

Under subsection 14(1) of the *Legislation Act 2003* (the **LA**), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the LA, unless the contrary intention appears, the legislative instrument

may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98(5D) of the Act provides that, despite section 14 of the LA, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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. Under subsection 13(1) of the LA, subsection 33(3) applies to legislative instruments as if each provision of the instrument were a section of an Act.

Background

In November 2020, the International Civil Aviation Organization (*ICAO*) amended Annex 11 to the Chicago Convention by introducing new standards that require Contracting States to the Chicago Convention (which includes Australia) to promulgate legislation for managing fatigue in the provision of air traffic control services. The new standards require an ATS provider to use either prescriptive scheduling limits (that is, specified maximum duty hours/periods and minimum non-duty hours/periods) or to implement an FRMS.

Airservices Australia has used an FRMS since 2003. At the time the new ICAO standards came into effect, AA wrote to CASA expressing its intent to continue using an FRMS into the future and undertaking to, as necessary, amend its FRMS to address any differences with the Annex 11 standards.

While AA's voluntary compliance would satisfy immediate safety requirements, the arrangement is not sufficient to demonstrate that Australia is meeting its international obligations to have adequate legislation. As a signature to the Convention on Civil Aviation, Australia has an obligation to adopt ICAO standards unless there is a compelling reason against such an adoption.

CASA considers fatigue among aviation personnel to be a critical safety consideration requiring a clear legislative underpinning. Therefore, CASA carried out a regulatory change program to introduce legislation requiring ATS providers to have an FRMS.

Overview of instrument

The instrument amends the Part 172 MOS in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* to require ATS providers to meet prescribed standards for having and maintaining an FRMS for the management of fatigue in its operational personnel. The instrument will require the ATS provider to obtain an FRMS implementation approval from CASA by 1 September 2024. This will require that CASA be satisfied that the FRMS meets the standards set out in new Chapter 4 for an FRMS. The standards include standards relating to the components and operation of the FRMS.

There are also complementary changes to the Manual of Standards issued for Part 65 of CASR (air traffic service licensing) (the *Part 65 MOS*). The Part 65 MOS is amended by the

Part 65 (Air Traffic Service Licensing) Amendment (Fatigue Rules) Manual of Standards 2023 to introduce a requirement on an air traffic control licence holder or flight service licence holder, that the person must not perform a function under the licence if the person is, or is likely to be, fatigued.

As fatigue among aviation personnel is a critical safety consideration, CASA considers that its assessment and approval of an ATS provider's FRMS will have a beneficial impact on aviation safety. The instrument will also enable CASA to meet its international obligations as a Contracting State of the Chicago Convention.

Incorporations by reference

Under subsection 98(5D) of the Act, the instrument may apply adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act, as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made).

Under paragraph 15J(2)(c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

Paragraph 4.03(c) of the instrument incorporates sections 14.02 and 14.03 of the Part 65 Manual of Standards. Section 4.03 makes it a condition on the ATS provider's approval that the ATS provider must ensure that each of its operational persons complies with each requirement of sections 14.02 and 14.03 of the Part 65 MOS. Those provisions require the holder of an air traffic control licence, or flight service licence, to not begin to perform an air traffic function or flight service function if, due to fatigue, the person is, or is likely to be, unfit to perform a task for that function. The Part 65 MOS provides for standards relating to air traffic services licensing. The MOS is a legislative instrument that is available for free on the Federal Register of Legislation.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences the day after it is registered.

Section 3 provides that the Manual of Standards issued under regulation 172.022 of CASR is amended as set out in Schedule 1.

Schedule 1

Item [1] amends section 1.2.2 by adding signpost definitions for ***fatigue*** and ***fatigue risk management system***, or ***FRMS***. Section 1.2.2 is the general definitions section for the Part 172 MOS.

Item [2], inserts a new paragraph 1.2.2.2 to include a signpost in the general definitions section to other definitions that are used in Chapter 4 (Fatigue Management) of the Part 172 MOS.

Item [3] amends paragraph 2.1.2.1 to provide that the details of an FRMS are to included in the ATS provider's operations manual.

Item [4] adds a note below subsection 2.1.2.1 to explain that Chapter 4 provides for the requirement for an ATS provider to have and implement an FRMS.

Item [5] substitutes a new Chapter 4 (Fatigue Management). The rules in Chapter 4 are largely modelled on the standards for FRMS specified in Annex 11 to the Chicago Convention, with additional practical operating procedures and administration requirements derived from the rules providing for FRMS in Civil Aviation Order 48.1 (fatigue management flight crew).

Section 4.01

This section provides for the scope of Chapter 4, that it sets out requirements for the management of fatigue in the provision of air traffic services by an ATS provider.

Section 4.02

This section sets out definitions of key words and phrases used in Chapter 4. These include definitions for *duty*, *duty period*, *fatigue*, *fatigue risk management system (FRMS)*, *FRMS manager*, *non-duty period*, *operational person*, and *time-in-position*.

Section 4.03

This section provides for a condition on the ATS provider's approval as an ATS provider, using the power in regulation 11.068 of CASR. It is a condition on the ATS provider's approval that:

- the provider complies with:
 - the requirements in Chapter 4
 - the limits and requirements for an operational person as provided for in the ATS provider's FRMS
- the provider ensures that each of its operational persons complies with the requirements imposed by section 14.02 and 14.03 of the Manual of Standards issued for Part 65 of CASR. Under those provisions, an ATC licence holder or flight service licence holder must not begin to perform an air traffic function if, due to fatigue, the person is, or is likely to be, unfit to perform a task for that function.

Section 4.04

Subsection 4.04(1) provides that an ATS provider must not assign a duty to an operational person to provide an air traffic control function, or a flight service function, if the provider reasonably believes that the person is unfit to perform the function because of fatigue.

Subsection 4.04(2) requires that limits and requirements applying to an operational person are those determined in accordance with the FRMS.

Section 4.05

Subsection 4.05(1) provides that an ATS provider must have an FRMS appropriate for the size, nature and complexity of the provider's organisation. The FRMS must include each of the elements set out in subsection (2), and must, on and after 1 September 2024, have been approved for implementation by CASA under section 4.13 or section 4.14.

Subsection 4.05(2) provides that the elements are:

- the policy and objectives, and related documentation, in accordance with section 4.07
- the practical operating procedures, in accordance with section 4.08

- the hazard identification, risk assessment and mitigation procedures, in accordance with section 4.09
- the safety assurance procedures, in accordance with section 4.10
- the safety promotion procedures, in accordance with section 4.11
- the change management procedures, in accordance with section 4.12.

Section 4.06

This section provides for the application process for an ATS provider to apply to CASA and obtain a trial FRMS implementation approval, or full FRMS implementation approval.

For an implementation approval, the FRMS must include each of the elements mentioned in subsection 4.05(2), and must be integrated with the ATS provider's safety management system.

Subsection 4.06(3) sets out other criteria for a trial implementation approval.

Subsection 4.06(4) sets out other criteria for a full implementation approval. These set a higher bar than the criteria for a trial approval.

Under regulation 11.015 of CASR, an approval of this type is an authorisation under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

In accordance with regulation 201.004 of CASR, a decision by CASA to refuse an approval mentioned in the paragraphs above, is subject to merits review by the Administrative Appeals Tribunal.

Section 4.07

This section provides for the requirements relating to the FRMS policy, objectives and documentation. The policy must include all the elements referred to in subsection 4.05(2) and must require all the operations to which the FRMS applies to be clearly defined in the operations manual.

Subsection 4.07(3) provides a list of other requirements to be met by the policy.

Subsection 4.07(4) requires the policy to be in a written statement, and to require the subsection 4.05(2) elements to also be described in a written statement.

Subsection 4.07(5) provides for the documentation that must support the FRMS, in addition to the limits and procedures that are required to be set out in the operations manual.

Section 4.08

This section provides for FRMS practical operating procedures. These must set out maximum values for each operational person, for:

- the number of hours in a duty period
- the number of consecutive work days
- the number of hours worked in a defined period
- the time-in-position in a duty period.

They must also set out the minimum values for each operational person, for:

- the duration of a non-duty period

- the number of non-duty days required in a defined period
- the duration of breaks between periods of time-in-position in a duty period.

Subsection 4.08(3) provides that the values for each operational person must be based on scientific principles and knowledge and subject to safety assurance processes. It is anticipated that maximum and minimum values would vary according to complexity of task and workload, circadian factors and the requirements for day or night shift work.

Subsection 4.08(3) provides for the maximum and minimum values that are set under subsection (1) to be amended (in accordance with the change management processes in section 4.12) if data is acquired from the FRMS to show that the values are too high or too low.

Subsection 4.08(4) deals with the variation of a maximum or minimum value set under subsection 4.08(1) in the event of sudden and unforeseen operational circumstances. The values can be varied, if the operator records the matters in paragraph (4)(a) and carries out the safety assessment mentioned in paragraph (4)(b). Paragraph (4)(b) requires the provider to ensure a level of safety equivalent to that which would exist if no deviation from the values had occurred.

Section 4.09

Section 4.09 provides the requirements for FRMS hazard identification procedures, FRMS risk assessment procedures and FRMS risk mitigation procedures.

FRMS hazard identification procedures include predictive, proactive and reactive processes. Reactive processes include identifying fatigue-related hazards by examining the scheduling of operational persona and taking account of factors that affect sleep, fatigue and operational performance. Proactive processes include identifying fatigue-related hazards by measuring fatigue levels within a provider's current operations. Reactive procedures identify the contribution of an individual's fatigue to safety reports and events that have occurred. FRMS risk assessment procedures cover identifying the situations or conditions where fatigue may constitute a hazard, evaluating the level of fatigue risk; and introducing risk mitigations when needed.

FRMS risk mitigation procedures cover the selection of mitigation strategies for the fatigue-related hazards; the implementation of mitigation strategies; and the monitoring of the implementation and effectiveness of the strategies.

Section 4.10

Section 4.10 provides the requirements for FRSM safety assurance procedures. The procedures include a formal process of managing and assessing changes to the FRMS arising from changes in the operational environment, or within the provider's organisation. The procedures must provide for the continuous improvement of the FRMS in accordance with subsection 4.10(4).

Section 4.11

This section provides for the requirements for safety promotion procedures. These must include training and communication programs for supporting and continuously improving the elements of the FRMS in delivery of optimum safety levels.

Section 4.12

This section provides for the requirements for FRMS change management procedures. The ATS provider must have procedures that clearly indicate how the provider will amend, change or modify any element of the FRMS consistently with the requirements of the section.

The change management procedures set out in subsections (4), (5) and (6) apply on and after 1 September 2024, being the date by which an ATS provider is required to have an implementation approval issued by CASA. Subsection (4) requires that a significant change must be approved in writing by CASA. Subsection (1) defines *significant change* to be an increase to the values required by paragraph 4.08(1)(a) (maximum values), a decrease to the values required by paragraph 4.08(1)(b) (minimum values) and any other change to any element of the FRMS that would not maintain or improve, or be likely to maintain or improve, aviation safety.

Subsection (6) requires the provider not to make a change that is not a significant change unless the provider's procedures provide for making non-significant changes, and it is done in accordance with the procedures, and the provider gives CASA written notice of the change and a copy of amended operations manual showing the change.

Section 4.13

This section provides for matters regarding an application to CASA for a trial FRMS implementation approval. CASA may issue the trial approval for up to 24 months. Subsection (1) sets out the criteria for an approval. Subsections (2) and (3) provide for how CASA could extend an FRMS trial implementation approval.

Section 4.14

This section provides for matters regarding an application to CASA for a full FRMS implementation approval. Paragraph 4.14(1)(a) requires that the provider must have held a trial FRMS implementation approval for at least 12 months.

Paragraph 4.14(1)(b) provides that, for a full approval, CASA must be satisfied that the FRMS is demonstrably delivering the safety outcomes expected when the trial approval was given, and is capable of delivering continuous improvement in delivery of safety outcomes.

Under subsection 4.14(2), the ATS provider can apply for a trial FRMS implementation approval if the provider is not successful with the application for a full approval.

Items [6] and [7] amend paragraph 6.1.1.1. That paragraph provides for the requirements of an ATS provider's safety management system. The amendments insert a paragraph (h) to include the processes for integrating the ATS provider's fatigue risk management system into the safety management system.

Item [8] adds a note below subsection 6.1.1 to refer to the requirements in Chapter 4 for an ATS provider to have an FRMS.

Legislation Act 2003

Paragraph 10(1)(d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument

amends the **Part 172 MOS** and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Subsection 8(4) of the LA provides that an instrument is a legislative instrument if it determines the law or alters the content of the law, rather than determining particular cases in which the law is to apply or is not to apply. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

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

In this case, the instrument amends the Manual of Standards for Part 172 of CASR and is almost immediately spent and repealed in accordance with the automatic repeal provisions in Subdivision A in Division 1 of Part 3 of Chapter 3 of the LA. The principal instrument deals with aviation safety matters and is intended to have enduring operation. It, therefore, would not be appropriate for it to be subject to sunseting. The exemption from the sunseting provisions affects parliamentary oversight by not requiring the principal to be remade and subject to further tabling and disallowance in the Parliament under sections 38 and 42 of the LA. However, Part 172, including the Manual of Standards made under it, is currently the subject of a post-implementation review (***PIR***) within CASA. The amendments resulting from the PIR will be subject to parliamentary scrutiny.

Consultation

CASA has carried out public consultation on proposed fatigue management standards. Initially, CASA consulted on the broad concept of fatigue management standards within Policy Proposal (PP) 2207AS, which was open for public comment between 8 June 2022 and 7 July 2022. In total, there were 8 respondents to PP 2207AS. While there were recommendations for small changes to the initial proposal, feedback was supportive of the proposed standards.

CASA followed up PP 2207AS with Summary of Proposed Change (SPC) 2303AS, which was open for public comment between 17 May 2023 and 23 June 2023. The proposals in SPC 2303AS were similar to those in the original consultation except for small changes to accommodate feedback from the original consultation. There were 17 responses to the latest consultation.

The majority of feedback supported the proposed legislation action, particularly because the action enables CASA to have a more direct role in ensuring the adequate functioning of an ATS provider's FRMS. Consequently, CASA was confident to proceed with making the changes.

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 the economic and cost impact of the instrument is not significant. This is because AA already has an FRMS implying it already has the necessary resources (people, procedures, equipment, etc.). AA has also told CASA it is willing to amend its FRMS to meet the ICAO standard. Therefore, any changes necessary to comply with proposed standards should be within the scope of AA's existing resources and should not require significant additional investment.

The Office of Impact Analysis (the **OIA**) has also made the assessment that the impact of the instrument is minor and that an Impact Analysis (an **IA**) is not required. As there is no significant economic or cost impact on individuals or businesses, there will be no community impacts.).

Impact on categories of operations

The instrument is likely to have a beneficial effect on all operations in Australian airspace as it provides an increased assurance to participants in the aviation transport sector about the adequate management of fatigue for the personnel that provide associated air traffic services.

Impact on regional and remote communities

The instrument does not have any impact on regional and remote communities as it deals solely with the management of fatigue for specialist personnel employed by a single regulated entity.

Office of Impact Analysis

The OIA has made the assessment that the impact of the instrument is minor and that an IA is not required (OIA id: 23-05269).

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*.

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. As an amending instrument, it is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

Part 172 (Air Traffic Service Providers) Amendment (Fatigue Rules) Manual of Standards 2023

This 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 purpose of the amendment instrument (the *instrument*) is to establish standards for the management of fatigue among the operational personnel of air traffic service providers, being air traffic controllers and flight service officers. The standards require an air traffic service provider (*ATS provider*) to have a fatigue risk management system (an *FRMS*) that meets the prescribed requirements set out in Chapter 4 (inserted into the Manual of Standards by the instrument). The requirements align with the standards in Annex 11 to the Chicago Convention for an FRMS. The amendments enable Australia to comply with its international obligations under Annex 11 to implement fatigue management requirements. This requires legislation requiring ATS providers to have an FRMS that has been approved by the Civil Aviation Safety Authority (*CASA*).

The national ATS provider is Airservices Australia (*AA*) which has, for a number of years, been using a form of FRMS to manage its fatigue management risks. The instrument requires AA to have approval for an FRMS from CASA from 1 September 2024. This provides for a period of approximately a year for AA to transition to the Annex 11-compliant scheme for FRMS set out in the instrument. This will require that CASA be satisfied that the FRMS meets the standards set out in new Chapter 4 for an FRMS. The standards include standards relating to the components and operation of the FRMS.

There are also complementary changes to the Manual of Standards issued for Part 65 of CASR (air traffic service licensing) (the *Part 65 MOS*). The Part 65 MOS is amended by the *Part 65 (Air Traffic Service Licensing) Amendment (Fatigue Rules) Manual of Standards 2023* to introduce a requirement on an air traffic control licence holder or flight service licence holder, that the person must not perform a function under the licence if, due to fatigue, the person is, or is likely to be, unfit to perform a task for that function,

As fatigue among aviation personnel is a critical safety consideration, CASA considers that its assessment and approval of an ATS provider's FRMS will have a beneficial impact on aviation safety. The instrument will also enable CASA to meet its international obligations as a Contracting State of the Chicago Convention.

Right to life under the ICCPR***Right to safe and healthy working conditions under the ICESCR***

The instrument may engage these rights. This engagement is in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework, including Part 172 of CASR and the Manual of Standard for the Part, is to uphold aviation safety by prescribing standards for the provision of air traffic control services. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote, and enhance aviation safety. Accordingly, the amendments to the Manual of Standards are crafted and intended, as far as practicable, to promote and enhance aviation safety standards for the provision of air traffic control services. The instrument promotes the right to life under Article 6 of the ICCPR by legislating for the standards to be met in the provision of air traffic control services, that will minimise the risk of accidents and prevent accidental death. Thus, for Article 7 of the ICESCR, the instrument also promotes the right to safe and healthy working conditions for providers of air traffic controller services and all entities that use these services.

Right to work

The instrument may engage the right to work that is protected under Article 6(1) of the ICESCR. This right includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept.

The instrument does not directly address the right to work. However, its provisions may have an impact on the way that the work involved in providing air traffic services to the aviation community is carried out. The instrument imposes requirements for a fatigue risk management system that is intended to have a beneficial impact on the work life of holders of air traffic controller and flight services licences. An ATS provider has an obligation not to assign an operational person to perform an air traffic control function or flight services function if the provider believes the person is unfit to perform the function because of fatigue. CASA considers that fatigue among aviation personnel is a critical safety consideration. As such, the obligations arising under the instrument are reasonable, necessary and proportionate requirements under aviation safety law to ensure aviation safety.

Accordingly, any potential limitation on the right to work is itself necessary, reasonable and proportionate in achieving the aim of protecting and improving aviation safety consistent with the objects of the Act and the regulations.

Conclusion

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

Civil Aviation Safety Authority