### Explanatory Statement

**Civil Aviation Safety Regulations 1998**

**Manual of Standards Part 172 Amendment Instrument 2025 (No. 1)**

**Purpose**

Parallel runway operations are normally designed to allow for safe increased traffic capacity at busy aerodromes. The purpose of the *Manual of Standards Part 172 Amendment Instrument 2025 (No. 1)* (the ***new MOS amendment***) is to restore certain requirements and procedures for the use of independent parallel runways to their pre‑2019 effect at the request of Airservices Australia (***AA***). This is necessary because the new rules, introduced in 2019, would cause AA significant operating difficulties and inefficiencies. The reversion to the previous rules has no adverse impact on aviation safety.

**Legislation**

Subsection 98 (1) of the *Civil Aviation Act 1988* (the ***Act***) provides that the Governor-General may make regulations for the purposes of the Act and in the interests of aviation safety.

Some of these regulations are contained in the *Civil Aviation Safety Regulations 1998* (***CASR***), in particular, Part 172 — Air Traffic Service (***ATS***) Providers, and Division 172.C.2, dealing with ATS providers and ATS standards.

Under subregulation 172.022 (1) of CASR, CASA may issue a Manual of Standards (a ***MOS***) for Part 172 of CASR, setting out various standards for ATS. Under paragraph 172.065 (1) (a), an ATS provider must ensure that any ATS it provides is in accordance with the standards set out in the MOS. CASA has issued a MOS for Part 172, namely, the MOS.

Under subregulation 172.065 (1), an ATS provider must ensure that any ATS that it provides is in accordance with the standards set out in the MOS **and** in Annex 11 of the Chicago Convention as varied by Gen 1.7 of Part 1 of the Aeronautical Information Publication (***AIP***). The AIP is a collection of documents relating to the safety of air navigation, published and updated from time to time by AA under regulation 14 of the *Air Services Regulations 2019*. It also records and publishes any approved variations (“differences”) from an ICAO Annex that have been notified by CASA to ICAO and that, relevantly, CASA has legislated in a MOS.

Under subregulation 172.075 (1), an ATS provider must ensure that any ATS that it provides is provided in accordance with ICAO Doc. 4444,as varied by Gen 1.7 of Part 1 of the AIP.

ICAO Doc. 4444 is also known as the *Procedures for Air Navigation Services — Air Traffic Management*,or by the abbreviation PANS-ATM. ICAO Doc. 4444 and PANS-ATM are, therefore, shorthand that are used interchangeably. The abbreviation ICAO Doc. 4444 is used in the remainder of this Explanatory Statement.

While subject to any differences filed by CASA and legislated in the MOS, ICAO Doc. 4444 is a highly detailed procedural document containing relevant ATM procedures. By virtue of clause 3.4 in Chapter 3 of Annex 11, ICAO Doc. 4444 is called up by, and may be regarded as matter that is applied, adopted or incorporated for, Annex 11.

Under paragraph 1.1.6.1 (f) and subsection 10.1.1.1 of the MOS, ICAO Doc. 4444 must be read in conjunction with the MOS, in effect, as if ICAO Doc. 4444 were part of the MOS.

Under regulation 172.085, if an ATS provider would be required to ensure that any ATS is provided in accordance with a standard in the MOS and a standard in Annex 11 (which may extend to ICAO Doc. 4444), and 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 standard in the MOS.

Under regulation 172.090, given that the MOS is the vehicle for any differences, if there is inconsistency between a procedure in the MOS and (relevantly) a procedure in ICAO Doc. 4444, the MOS procedure (and hence the differences) by implication, takes priority.

Thus, a relevant ICAO standard or procedure can be implemented in Australia by:

* requiring compliance with ICAO Doc. 4444 and reproducing any relevant difference to the standard or procedure within the MOS; or
* having no equivalent standard or procedure in the MOS so that, **by default** under Division 172.C.2 of CASR, the ICAO standard in Annex 11, and ICAO Doc. 4444 as in force from time to time, contains the relevant standard or procedure.

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.

**Background**

ICAO introduced standards and procedures within ICAO Doc. 4444 for simultaneous parallel runway operations in 1995. When the MOS was originally drafted in 2000, subsections 10.4.2 and 10.4.3 set out equivalent procedures. Similar to the ICAO standards, the procedures in the MOS mandated the use of an instrument landing system (***ILS***) for parallel approaches. Thus, the MOS, having set these matters out, and having been given legislative priority over the relevant ICAO standard and procedure was the only relevant standard in Australia for simultaneous parallel runway approach operations.

In 2005, GNSS landing system (***GLS***) was introduced at Sydney Kingsford Smith and subsequently other Australian aerodromes. Whilst providing precision 3D guidance for aircraft at least equivalent of ILS, GLS has significant advantages in terms of signal constancy and runway capacity. Consequently, GLS became the precision guidance of choice for many airlines operating at Sydney Kingsford Smith aerodrome for *non-simultaneous* approach operations. However, use of GLS for dependent and independent *parallel* approach operations in instrument meteorological conditions (IMC) was not allowable under the original MOS (or ICAO standards).

In 2019, ICAO introduced Amendment No. 8 to ICAO Doc. 4444, which enabled more types of instrument approach guidance for dependent and independent parallel approach operations. Under the change, ILS, as well as GLS, Required Navigation Performance, Authorisation Required (RNP AR) and Approach Procedures with Vertical Guidance (APV), became useable.

However, because the MOS had priority over ICAO Doc. 4444, the existing MOS requirement to use only ILS remained the only option for precision 3D guidance.

At the request of industry, CASA amended the MOS via *Manual of Standards Part 172 Amendment Instrument 2019 (No. 1)* (the ***previous MOS amendment***). The amendment was designed to align Australian requirements for simultaneous parallel runway operations, previously specified in the MOS, with this new international standard. This was done by repealing certain inconsistent rules in the MOS.

Thus, the previous MOS amendment allowed the new ICAO Doc. 4444 standard and procedure to **apply by default**. It would, therefore, apply, along with such of the rest of ICAO Doc. 4444 as is not subject to differences under the MOS.

**AA concerns**

Critical to independent parallel approach procedures are air traffic control (***ATC***) measures for ensuring aircraft accurately and consistently intercept the final approach course/track and the glide/vertical path for each runway.

Among the measures relevant to this matter, ATC must arrange heading and descent instructions that assist pilots to manage aircraft energy and configuration whilst positioning onto final approach track and the glide path.

Before 2019, the procedures within the MOS required ATC to provide **at least 1 nautical mile** (***NM***) straight flight prior to ILS localiser intercept, and to clear aircraft to descend to the appropriate glide path intercept altitude soon enough to provide a period of level flight to dissipate excess speed.

Those procedures were originally developed in 1999 around the time Sydney’s third (parallel) runway was commissioned.

However, the new ICAO Doc. 4444 Amendment 8 procedures, in particular paragraph 6.7.3.2.4 of ICAO Doc. 4444, included stricter requirements for ATC to provide at least 1 NM of straight and level flight prior to the final approach course or track intercept; and at least 2 NM of level flight prior to intercepting the glide/vertical path.

Before these new ICAO procedures could be implemented, the COVID-19 pandemic curtailed aircraft operations to the extent independent parallel approach procedures were discontinued for several years.

With the return of normal traffic levels, AA is preparing to reintroduce independent parallel approach procedures, and they have informed CASA that applying the aggregated 3 NM level flight segments at Sydney would cause significant operating difficulties and inefficiencies.

The issue primarily affects runway 16 parallel operations and is due to restrictive airspace and air route configurations to the north and north-west of Sydney Kingsford Smith aerodrome. Operations at Western Sydney aerodrome are likely to add further complexity to airspace arrangements.

In light of this, CASA has decided to restore the pre-2019 procedures mentioned above. To achieve this, it is necessary to amend the MOS to this effect to terminate the otherwise default application of the relevant paragraphs in ICAO Doc. 4444, and relevantly reinstate some of the previous, pre-2019, rules.

**The new MOS amendment**

Hence, the new MOS amendment instrument first provides that, despite paragraph 1.1.6.1 (f) and subsection 10.1.1.1 of the MOS (as mentioned above), paragraph 6.7.3.2.4 of ICAO Doc. 4444 (as mentioned above) and any successor provision to paragraph 6.7.3.2.4 but with a different paragraph number, as in force from time to time, does not apply in relation to independent parallel approaches.

The new MOS amendment instrument then restores the pre-2019 rule by providing that independent parallel approaches may be conducted to parallel runways if:

* when vectoring an aircraft, the final vector enables the aircraft to intercept the final approach course or track at an angle not greater than 30 degrees, and provides at least 1 NM straight flight before the interception
* the aircraft’s descent to the intercept altitude of the appropriate glide path or vertical path for the selected instrument approach procedure is cleared soon enough to provide a period of level flight to dissipate excess aircraft speed.

Further details of the instrument are set out in Appendix 1.

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

Under subsection 8 (4) of the LA, an instrument is a legislative instrument if: made under a power delegated by the Parliament; and any provision determines the law or alters the content of the law; and it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right. The MOS amendment satisfies these requirements and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

**Sunsetting**

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

The instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international. That must be the case for the MOS itself, which is an enduring piece of aviation safety legislation.

However, the new MOS amendment, as such, is automatically repealed in accordance with the requirements for the protection of parliamentary oversight under section 48A of the LA. Thus, for it no sunsetting avoidance issues arise and there is no impact on parliamentary oversight.

**Incorporations by reference**

Under subsection 98 (5D) of the Act, the new MOS amendment 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.

References to provisions of legislative instruments such as CASR or a MOS are taken to be as they are in force from time to time, by virtue of paragraph 13 (1) (c) of the LA. CASR, CAR and the MOS are freely available online on the Federal Register of Legislation.

ICAO Doc .4444, as in force from time to time is publicly available but subject to copyright that belongs to ICAO. It is made available by ICAO for a fee (<https://store.icao.int/>). This cost is not considered to be unreasonably onerous for AA, the Commonwealth Government agency to whom it is most relevant, but it does involve a modest impost for others, although academic and other researchers may obtain free access through university library subscriptions.

CASA has no effective control over these costs and it is considered extremely unlikely that ICAO, as the relevant owner of the intellectual property in the document, would sell CASA the copyright at a price that would be an effective and efficient use of CASA’s appropriated funds, or would otherwise permit CASA to make the document freely available.

CASA has incorporated the relevant provision of the document in the new MOS amendment instrument because it is integral to the purpose of the instrument.

CASA has noted the views of the Senate Standing Committee on Regulations and Ordinances (in its report *Parliamentary scrutiny of delegated legislation*, tabled out of session on 3 June 2019) that:

The incorporation of material by reference (particularly where that material is not publicly available) has been a longstanding concern for the committee. [para 3.65]

and

The committee appreciates that it may in some cases be costly to provide free, public access to all incorporated Australian and international standards. Nevertheless, the committee reiterates that one of its core functions is to ensure that all persons subject to or interested in the law may readily and freely access its terms. It intends to continue to monitor this issue. Any justification for a failure to provide for public access to incorporated documents, and any action the committee takes in relation to this matter, will be determined on a case-by-case basis.

[para 3.75]

CASA appreciates the Committee’s concern and to mitigate the situation as far as currently practicable proposes that where an incorporated document is copyright and not otherwise freely available to the general public, but is available to CASA as a licenced subscriber, CASA will, by prior arrangement, make CASA’s copy available, for *in-situ* viewing, free of charge, at any office of CASA.

It should also be noted that AA – the only ATS provider authorised under CASR Part 172 – is a subscriber to ICAO’s online library and has ready access to the ICAO Doc. 4444, as it is in force from time to time.

**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.

Parallel runway operations are normally designed to allow for safe increased traffic capacity at busy aerodromes. The MOS amendment will have the effect of removing significant operating difficulties and inefficiencies that would otherwise confront AA through its air traffic controllers having to apply the aggregated 3 NM level flight segments, particularly at Sydney Kingsford Smith aerodrome.

**Environmental impact**

Under subsection 9A (2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any material negative environmental impacts as a result of the MOS amendment as compared to the baseline that existed in February 2019 because the MOS amendment itself will not cause any increase in traffic but the safer and more efficient control of the air traffic that is arriving.

**Consultation**

In accordance with section 17 of the LA, and section 16 of the Act, CASA carried out public consultation on the proposed changes by publishing the draft new MOS amendment instrument on the CASA website for 14 Days in March-April 2025.

No concerns were expressed to CASA about the proposal. As mentioned above, CASA had previously been liaising with AA to ameliorate its expressed concerns.

Regulation 11.280 of CASR 1998 requires CASA to publish a notice of its intention to issue a MOS, including an amendment to a MOS, on the internet. This requirement was complied with for the purposes of the consultation mentioned above.

Insofar as the proposal was a restoration of the pre-2019 rules at the request of AA, CASA considered the new MOS amendment, while having technical complexities, to be a relatively minor matter. In these circumstances, it was CASA’s view that no further consultation in relation to the instrument was necessary or appropriate.

**Office of Impact Assessment (*OIA*)**

The OIA has determined that for this new MOS amendment instrument detailed analysis is not required under the Australian Government’s Policy Impact Analysis Framework and, therefore, an Impact Analysis document is not required (OIA25‑09296).

**Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights at Appendix 2 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The legislative instrument does not negatively engage any of the applicable rights and freedoms and is, therefore, compatible with human rights, as it does not improperly infringe any human rights. However, as an aviation safety measure, the MOS amendment positively promotes the right to life by legislating for safer conditions at aerodromes.

**Making and commencement**

The new MOS amendment instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act, and commences on the day after it is registered.

**Appendix 1**

**Details of the Manual of Standards Part 172 Amendment Instrument 2025 (No. 1)**

1 Name of instrument

 This section names the instrument.

2 Commencement

 Under this section, the instrument commences on the day after it is registered.

3 Amendment of the Manual of Standards (MOS) Part 172

 Under this section, Schedule 1 amends the Manual of Standards Part 172 — Air Traffic Services.

Schedule 1 Amendment

[1] After subsection 10.4.1.2

 This amendment creates a new subsection of the MOS: 10.4.2 Requirements and Procedures for Independent Parallel Approaches

10.4.2.1 Under this subsection, ICAO Doc. 4444 has the same meaning as in section 3.02 (a definition provision).

10.4.2.2 Under this subsection, despite paragraph 1.1.6.1 (f) and subsection 10.1.1.1, paragraph 6.7.3.2.4 of ICAO Doc. 4444, and any successor provision with a different paragraph number, as in force from time to time, does not apply in relation to independent parallel approaches.

10.4.2.3 Under this subsection, independent parallel approaches may be conducted to parallel runways if:

(a) when vectoring an aircraft, the final vector:

 (i) enables the aircraft to intercept the final approach course or track at an angle not greater than 30 degrees; and

 (ii) provides at least 1 NM straight flight before the interception; and

(b) the aircraft’s descent to the intercept altitude of the appropriate glide path or vertical path for the selected instrument approach procedure is cleared soon enough to provide a period of level flight to dissipate excess aircraft speed.

**Appendix 2**

**Statement of Compatibility with Human Rights**

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

**Manual of Standards Part 172 Amendment Instrument 2025 (No. 1)**

**Summary**

The *Manual of Standards Part 172 Amendment Instrument 2025 (No. 1)* 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**

Parallel runway operations are normally designed to allow for safe increased traffic capacity at busy aerodromes.

The purpose of the *Manual of Standards Part 172 Amendment Instrument 2025 (No. 1)* (the ***legislative instrument***) is to restore certain requirements and procedures for the use of independent parallel runways to their pre-2019 effect at the request of Airservices Australia (***AA***). This is necessary because the new rules, introduced in 2019, would cause AA significant operating difficulties and inefficiencies. The reversion to the previous rules has no adverse impact on aviation safety.

**Human rights implications**

In the circumstances, the legislative instrument does not give rise to any limitations on any of the relevant human rights. However, it promotes a right, namely, the right to life.

***The right to life under the International Covenant on Civil and Political Rights (ICCPR)***

Insofar as the legislative instrument facilitates the effective vectoring of aircraft making independent parallel approaches, it promotes the right to life under Article 6 of the ICCPR by legislating for safer conditions at those aerodromes engaged in parallel runway operations.

**Conclusion**

The legislative instrument is compatible with human rights and, in a not insignificant way, promotes the right to life through facilitating the safe arrival of aircraft making independent parallel approaches at relevant aerodromes.

**Civil Aviation Safety Authority**