

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 138 MOS Amendment Instrument 2025

Purpose

The instrument provides greater flexibility to certain emergency service authorities and helicopter operators to coordinate, and conduct, fireground personnel carriage operations. The instrument amends the *Part 138 (Aerial Work Operations) Manual of Standards 2020* (the **Part 138 MOS**) to prescribe a fireground personnel carriage operation as a kind of aerial work operation for the purposes of Part 138 (Aerial work operations) of the *Civil Aviation Safety Regulations 1998 (CASR)*. The effect of that prescription is that those operations would not be air transport operations to which other more prescriptive Parts of CASR would apply.

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 CASR.

Under paragraph 98(5A)(a) of the Act, the regulations may empower the Civil Aviation Safety Authority (**CASA**) to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

Part 138 of CASR generally applies in relation to the operation of an aeroplane or rotorcraft for an aerial work operation.

Under regulation 138.020 of CASR, for subsection 98(5A) of the Act, CASA may issue a Manual of Standards (**MOS**) for Part 138 of CASR that prescribes matters required or permitted by that Part to be prescribed, or necessary or convenient for carrying out or giving effect to Part 138. This power is complemented by other provisions throughout Part 138 which empower CASA to prescribe specific matters in the MOS.

Under subregulation 138.010(1), the term **aerial work operation** is defined to mean one or more of the following (and each of the following is a kind of aerial work operation):

- (a) an external load operation;
- (b) a dispensing operation;
- (c) a task specialist operation;
- (d) an operation of a kind prescribed by the Part 138 MOS for the purposes of the paragraph.

The terms used in paragraphs (a) to (c) are defined in subregulations 138.010(2) to (4) respectively.

Under paragraph 138.125(1)(c) of CASR, an aerial work operator who conducts operations prescribed by the Part 138 MOS for the purposes of that paragraph must have a training and checking system, except in circumstances prescribed by the Part 138 MOS. The general exemption in section 8 of *CASA EX72/24 – Part 138 and Part 91 of CASR – Supplementary*

Exemptions and Directions Instrument 2024 may limit the requirements of subregulation 138.125(1) for a particular operator.

Under paragraph 138.140(1)(c) of CASR, an aerial work operator who conducts operations prescribed by the Part 138 MOS for the purposes of that paragraph must have a safety management system, except in circumstances prescribed by the Part 138 MOS. This requirement may be affected by exemptions, conditions and directions in Part 4 of *CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024*.

Under subregulation 138.150(2) of CASR, an aerial work operator must have a system for managing crew fatigue that meets the requirements prescribed by the Part 138 MOS for the purposes of that subregulation.

Under subregulation 138.210(2) of CASR, the operator and the pilot in command of an aircraft for a flight involving an aerial work operation must not operate the aircraft in a way during the flight that does not meet a requirement or limitation that is set out in the aircraft flight manual instructions for the aircraft and relates to the operation of the aircraft. Under subregulation (3), subregulation (2) does not apply to a limitation or requirement if circumstances prescribed by the Part 138 MOS apply to the aircraft for the flight.

Under regulation 138.370 of CASR, the operator of an aircraft for a flight involving an aerial work operation must comply with requirements prescribed by the Part 138 MOS relating to risk criteria that must be met to conduct an aerial work operation, and risk assessment and mitigation processes to be undertaken before conducting an aerial work operation.

It is a strict liability offence (with a maximum penalty of 50 penalty units) to contravene regulation 138.150, 138.210 or 138.370.

Under regulation 201.025 of CASR, for subsection 98(5A) of the Act, CASA may issue instruments prescribing matters for definitions in the regulations relating to matters mentioned in the subsection.

The term ***aerial work operator*** is defined in the CASR Dictionary to mean the holder of an aerial work certificate.

The term ***aerial work passenger*** is defined in the CASR Dictionary to mean a person in a class of persons prescribed by the Part 138 MOS for the purposes of the definition.

The term ***air transport operation*** is defined in subclause 3(1) of Part 2 of the CASR Dictionary to mean a passenger transport operation, a cargo transport operation or a medical transport operation that is: conducted for hire or reward; or is prescribed by an instrument issued under regulation 201.025. Under subclause 3(2), despite subclause (1), an ***air transport operation*** does not include an aerial work operation.

Part 138 Manual of Standards

The Part 138 MOS sets out requirements and safety standards for the conduct of aerial work operations, to manage the risk of deviating from the general operating and flight rules of Part 91.

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.

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) of the *Acts Interpretation Act 1901* applies to legislative instruments as if each provision of the instrument were a section of an Act.

Background

Part 91 of CASR prescribes the general operating and flight rules for Australian aircraft and is fundamental for all aviation operations. However, certain requirements in Part 91, which would otherwise disallow aerial work operations, must be disallowed if an operator is to conduct aerial work operations under Part 138. The primary purpose of Part 138 is to outline a separate set of safety risk management processes, risk mitigations and operational circumstances, which must be applied by the operator, and the crew members, for a flight involving an aerial work operation.

Fireground personnel carriage operations in aeroplanes and rotorcraft are currently regulated as air transport operations under Part 119, 121, 133 and 135 of CASR. Part 133 of CASR applies to air transport operations conducted in a helicopter.

From an aviation safety perspective, the carriage of passengers for hire or reward for the purpose of fireground personnel carriage under Part 138 of CASR, instead of carrying the passengers under Part 133 of CASR, can result in a lower level of overall safety for the passengers. The scale of this potential safety reduction has been significantly mitigated by the imposition of specific safety controls for this new kind of aerial work operation, accompanied by a requirement for passengers to be briefed sufficiently in advance of the differing safety levels between the new kind of operation and an air transport operation and consent to being carried in such an operation.

This change in acceptable risk level has in part been introduced in recognition of the public interest in enabling the efficient and flexible use of aviation assets when assisting fire emergency organisations to respond to fire emergencies. However, the existing alternative, being the carriage of passengers for hire or reward in and around firegrounds under Part 133 of CASR as an air transport operation, remains available for emergency service organisations whose risk tolerance level requires this higher level of safety assurance.

Overview of instrument

The instrument prescribes a fireground personnel carriage operation as a kind of aerial work operation for the purposes of paragraph 138.010(1)(d) of CASR. A definition of the term ***fireground personnel carriage operation*** is inserted into subsection 1.04(6) of the Part 138 MOS. The operation would only be able to happen with the authority of a State or Territory parks, wildlife or forestry service (but only to the extent that the service engages in

firefighting, or protecting or saving wildlife from an active fire) or a State or Territory fire service.

The instrument prescribes passengers being carried as part of a fireground personnel carriage operation for the purposes of the definition of the term *aerial work passenger* in the CASR Dictionary.

Under the instrument, an aerial work operator that conducts a fireground personnel carriage operation is required to have:

- (a) a training and checking system under regulation 138.125 of CASR; and
- (b) a safety management system under regulation 138.140 of CASR and, therefore, also a safety manager as one of its key personnel; and
- (c) a system for managing crew fatigue under regulation 138.150 of CASR.

The instrument prescribes the circumstances in which the operator, and pilot in command, of a helicopter for a flight that is a fireground personnel carriage operation would not be required to comply with subregulation 138.210(2) of CASR (which deals with compliance with the requirements and limitations relating to an aircraft's operation, as set out in the aircraft flight manual instructions for the aircraft).

The instrument states the circumstances in which a specialised risk assessment, known as an aerial work zone – risk assessment, would not be required to be undertaken by an aerial work operator in relation a fireground personnel carriage operation over an aerial work zone (*AWZ*) (which term is defined in section 1.05 of the Part 138 MOS). The processes would otherwise be required to be undertaken under paragraph 138.370(1)(b) of CASR.

The instrument inserts a new Chapter 17A into the Part 138 MOS, which states the requirements that must be complied with by the operator for a flight that is a fireground personnel carriage operation.

CASA has assessed the impact of the amendments on aviation safety and is satisfied the amendments will maintain an acceptable level of aviation safety.

In accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, the instrument amends the Part 138 MOS.

Document incorporated by reference

Item 8 of Schedule 1 of the instrument incorporates *Civil Aviation Order 48.1 Instrument 2019*, which is a disallowable legislative instrument. It incorporates that instrument as in force from time to time in accordance with subsection 14(1) of the LA. That instrument is an order issued by CASA relating to fatigue risk management, including duty and rest periods, for flight crew members. It is freely available on the Federal Register of Legislation.

Content of instrument

Section 1 of the instrument gives the instrument its title.

Section 2 of the instrument provides for the instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 of the instrument effects the amendments to the Part 138 MOS set out in Schedule 1 of the instrument.

Schedule 1

Schedule 1 sets out the amendments to the Part 138 MOS.

Item 1 of Schedule 1 repeals subsection 1.04(3), which is no longer required as it is inconsistent with the new definition of **ESO** affected by item 3.

Item 2 of Schedule 1 inserts a new definition of the term **fireground personnel carriage operation**, which is prescribed as a new type of aerial work operation by item 5. Amongst other limitations, a fireground personnel carriage operation is limited to an operation conducted by an aerial work certificate holder, for hire or reward, which is tasked by a fire emergency organisation to carry passengers in a helicopter.

Item 2 also inserts new definitions of the terms **fireground emergency organisation**, **fire helibase**, **relevant fireground** and **relevant ground activity**, which are used in the definition of **fireground personnel carriage operation** to prescribe the scope of such an operation.

Item 2 also has the effect that if any element of these definitions is not met during the preparation for, or conduct of, the operation, then, arising from the interplay of the definitions of **aerial work operation**, **air transport operation** and **Australian air transport operation**, the flight is automatically not categorised as an aerial work operation and, in most circumstances, will be categorised as a Part 133 operation. In those circumstances, the operator and pilot in command will need to comply with relevant requirements in Parts 119 and 133 of CASR. The supporting definitions mentioned in the paragraph above each contain multiple individual criteria which must be met at all times for a flight to be categorised as a fireground personnel carriage operation. Notably, the definition of **relevant ground activity** requires the passengers being carried to have the purpose of performing an activity for the purpose of saving or protecting persons, property or the environment. Ancillary purposes, such as the carriage of a passenger for the purpose of raising public or governmental awareness of the extent of a fire and its associated activities, are not a relevant ground activity.

Item 3 of Schedule 1 replaces the previous definition of the term **ESO** to clarify that the term when used in the Part 138 MOS does not include a fireground personnel carriage operation.

Item 4 of Schedule 1 amends subsection 2.02(2) to add passengers being carried as part of a fireground personnel carriage operation to the classes of persons who are prescribed to be an **aerial work passenger**, for the purpose of the definition of that term in the CASR Dictionary. It also makes consequential amendments to item 3 to use the term “ESO” instead of “emergency service operations”.

Item 5 of Schedule 1 inserts new section 3.01AA, which provides for kinds of operations that are prescribed as aerial work operations for the purposes of paragraph 138.010(1)(d) of CASR. Paragraph 3.01AA(a) prescribes a fireground personnel carriage operation as a kind

of aerial work operation. Paragraph 3.01AA(b) is reserved for future use if another kind of operation is to be prescribed.

Item 6 of Schedule 1 amends subsection 4.02(1) which prescribes, for paragraph 138.125(1)(c) of CASR, kinds of operations for which an aerial work operator must have a training and checking system. Item 6 adds a fireground personnel carriage operation to those kinds of operations. It also makes an editorial amendment to paragraph 4.02(1)(e).

Item 7 of Schedule 1 amends subsection 5.02(1) which prescribes, for paragraph 138.140(1)(c) of CASR, kinds of operations for which an aerial work operator must have a safety management system. Item 7 inserts paragraph 5.02(1)(a) to prescribe a fireground personnel carriage operation as a kind of operation. Paragraph 5.02(1)(b) is reserved for future use if another kind of operation is to be prescribed.

Item 8 of Schedule 1 replaces section 6.02, which prescribes requirements, under subregulation 138.150(2) of CASR, that must be met by an aerial work operator's system for managing crew fatigue. Section 6.02 is amended to apply to all aerial work certificate holders and limited aerial work operators. A **limited aerial work operator** is defined in subsection 1.04(6) of the Part 138 MOS to mean an operator who conducts an aerial work operation described in subregulation 138.030(2) of CASR for which the operator does not need to hold an aerial work certificate. Section 6.02 is no longer limited to external load, dispensing and task specialist operations of an operator. Therefore, it also applies to fireground personnel carriage operations.

Item 9 of Schedule 1 amends paragraph 8.03(1)(c). Section 8.02 provides that, for subregulation 138.210(3) of CASR, the requirements and limitations relating to the operation of an aircraft, as set out in the aircraft flight manual instructions for the aircraft, need not be complied with by the operator, or the operator's pilot in command, of a rotorcraft mentioned in subsection 8.03(1) if the circumstances mentioned in subsection 8.03(2) apply to the aircraft for the flight. Paragraph 8.03(1)(c) specifies the kinds of operations that the rotorcraft must be conducting for the exception in section 8.02 to apply. Item 9 amends subparagraph 8.03(1)(c)(i) in relation to the risk assessment required for an ESO. It also adds new subparagraph 8.03(1)(c)(iii) in relation to a fireground personnel carriage operation that requires the rotorcraft to enter the avoid area of the height-velocity envelope for the rotorcraft to avoid an accident or incident.

Items 10 to 14 amend section 13.09, which sets out, for paragraph 138.370(1)(b) of CASR, the risk assessment and mitigation processes to be undertaken by an aerial work certificate holder for a risk assessment for an AWZ.

Item 10 of Schedule 1 repeals subsections 13.09(1) to (3), other than the Note in subsection (3), which restricted the operation of section 13.09 to external load operations, dispensing operations and specified kinds of task specialist operations. Subsection 13.09(3) contained a definition of the term **AWZ operation**.

Item 11 of Schedule 1 amends subsection 13.09(4) so that it will apply to a fireground personnel carriage operation (and, therefore, disapply section 13.09) over an AWZ if the requirements relating to risk assessment in paragraphs (4)(a) and (b) are met.

Item 12 of Schedule 1 amends paragraph 13.09(4)(b) to reflect the expanded application of subsection 13.09(4) to include a fireground personnel carriage operation.

Item 13 of Schedule 1 amends subsection 13.09(5). It is an editorial amendment, consequential to item 10, to replace the reference to the AWZ operation with a reference to an operation over an AWZ.

Item 14 of Schedule 1 amends subsection 13.09(7). It is an editorial amendment, consequential to item 10, to replace the reference to the AWZ operation with a reference to the operation.

Item 15 of Schedule 1 inserts new Chapter 17A, which applies to fireground personnel carriage operations of an aerial work certificate holder. It prescribes requirements for the purposes of paragraphs 138.010(1)(d) and 138.020(b), and regulation 201.025, of CASR.

New section 17A.02 prescribes requirements that the operator must ensure are met before a flight that is a fireground personnel carriage operation. Under subsection (2), those requirements relate to the passengers on the flight being informed of, and acknowledging, the increased risk of the operation compared to an air transport operation under Part 133 of CASR and that participation in the operation is voluntary. The passenger must have consented, in writing, to participation in the operation within the past 12 months and received copies of the acknowledgements and consent. The passengers must also have completed any relevant training determined to be necessary by the operator. Subsection (3) requires the operator to verify the matters by receiving written notification from the relevant fireground emergency organisation to the effect that these requirements have been met for each passenger to be carried.

New section 17A.03 contains operational requirements for a fireground personnel carriage operation. Subsection (1) requires the operator for a flight to ensure that the helicopter, when operated over a populous area for the flight, is operated with OEI accountability. The term **populous area** is defined in the CASR Dictionary as including a city and a town. It is an outcome-based term whereby an area that is not normally populous can become populous in certain circumstances. CASA provides guidance on potential interpretations of this definition in the guidance materials associated with Part 91 of CASR. The term **OEI accountability** is defined in subsection 1.04(6) of the MOS.

Subsection (2) requires the operator to ensure that the specified flights and operations do not happen in conjunction with the fireground personnel carriage operation in relation to a fire emergency at a relevant fireground. Those prohibited flights and operations are a task specialist operation (other than aerial spotting, or aerial photography, conducted in relation to the emergency), a positioning flight, a dispensing operation and an external load operation. The purpose of these restrictions is to control the level of risk to which fireground aerial work passengers are exposed during a flight that is a fireground personnel carriage operation.

New section 17A.04 requires the operator for a flight that is a fireground personnel carriage operation to maintain records of its verification of the matters in subsection 17A.02(2) for at least 3 months after the day of the flight. This period is aligned with the existing requirement in regulation 119.245 of CASR for Australian air transport operators to retain passenger lists.

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 138 (Aerial Work Operations) Manual of Standards 2020*, which is a legislative instrument. Therefore, it is also a legislative instrument, 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 principal instrument and is almost immediately spent and repealed in accordance with the automatic repeal provisions in section 48A of the LA. However, the Part 138 MOS, as amended by the instrument has enduring effect.

The Part 138 MOS 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.

The instrument deals with aviation safety matters and is intended to have enduring operation and it, therefore, would not be appropriate for it to be subject to sunsetting. The exemption from the sunsetting provisions affects parliamentary oversight by not requiring the instrument to be remade and subject to further tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Policy initiation and previous engagement with industry on the policy proposal

A policy proposal was developed and informally consulted with some external stakeholders between late 2023 and mid-2024 to allow Part 138 aerial work certificate holders to carry personnel involved in ground-based firefighting activities to and from a fireground in a helicopter for hire or reward as an alternative to carriage under the air transport rules. The policy development arose through feedback from helicopter operators and emergency organisations (including State and Territory fire authorities) that the operational environment of the fireground may be more closely aligned with the aerial work rules due to challenging and dynamic flying conditions and an uncertainty of landing sites, which sets it apart from typical air transport operations. Feedback was also received that the need for operators to change between operational rulesets multiple times a day depending on the operation being conducted at the fireground was creating challenges, confusion, and inefficiencies. Significant engagement with industry representatives followed for CASA to gain a deeper understanding of the passenger carrying activities conducted at firegrounds and the operating environment.

Policy development and analysis considered the different risks present in aerial work operations compared to air transport operations and the passenger's level of knowledge and understanding of those risks. A range of factors were considered to assure that an acceptable level of aviation safety could be maintained and ensure that appropriate operational rules can be applied to support the efficient movement of personnel in and around the fireground. These factors included the purpose and necessity of the operation, the extent to which risks

are elevated and the available mitigations, specific challenges faced within the sector and impact of operational rules, the type of passenger and their level of knowledge and ability to consent, and broader community and political expectations of aerial firefighting to help protect communities and the environment. It was determined that in limited circumstances, and subject to certain safety controls, the aerial work rules would provide an alternative framework for fireground passenger carrying operations to be conducted safely.

Public consultation on the policy proposal

Public consultation on the policy proposal was undertaken in September to October 2024 and resulted in 39 responses. Overall, the proposal received broad support, however there were a number of specific concerns raised on issues such as passenger safety and the higher protections offered by the air transport rules, insurance and liability risks for operators, the proposed training of passengers about the risks of the aerial work operations and how to validate a passenger's understanding of the risks, and further complexity being introduced into the operational rules. There was also strong advocacy from some parts of the sector to expand the proposal to other emergency service responses, such as flood relief.

CASA responded to the concerns in the Summary of Consultation that was published in December 2024, noting that the current proposal was targeted to firefighting and that other emergency service responses may be considered in future.

MOS amendment public consultation

CASA undertook public consultation on proposed amendments to the Part 138 MOS, which would implement the policy change, from 15 May 2025 to 13 June 2025, including the publication by CASA of a draft instrument in accordance with regulation 11.280 of CASR. A key communication message in this consultation was that the proposed MOS amendments would provide an additional flexibility for passenger carriage at firegrounds subject to the requirements of the proposed new kind of aerial work operation (a fireground personnel carriage operation) being met. However, the air transport rules also remain available for passenger carriage at firegrounds.

The response rate was smaller than the previous consultation, with 14 responses received. These were mainly from operators and emergency organisations (including State or Territory fire authorities). Overall, the feedback was mixed with some respondents agreeing, or agreeing with changes, that the MOS amendments appropriately implement the policy, and others disagreeing. A key theme in the feedback was continued advocacy for expanding the policy to other emergency responses under an "all hazards" approach to simplify emergency response management and increase efficiency. The other key concerns raised were around the appropriateness of the aerial work rules for passenger carrying operations, the proposed pre-flight passenger requirements (including the ability of a passenger to make a truly informed decision and the ability of an operator to verify a passenger's knowledge and understating of the risks), and complexity in the rules including with certain definitions. Overall, the responses highlighted a level of tension in different parts of the sector between operational requirements and risk management processes that maximise safety versus operational requirements that reflect the need to get the job done efficiently within a dynamic, challenging, and uncertain environment. Of the six responses received from operators, four indicated that they may consider applying to conduct fireground personnel carriage operations (noting this may not be reflective of the actual number of applications that CASA could receive from other operators).

In accordance with regulation 11.290 of CASR, CASA has considered any comments it has received on an earlier draft of the instrument, which gave effect to the substantive policy proposals.

CASA is satisfied that no further consultation is 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 the economic and cost impact of the instrument is not significant on the basis that the amendments to the Part 138 MOS provide additional flexibility that emergency service authorities and operators can elect to operate under, rather than being a mandatory requirement.

Impact on categories of operations

The instrument is likely to have a beneficial effect on the conduct of fireground personnel carriage operations, and related operators and fireground emergency organisations, by providing greater flexibility in the conduct of those operations.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on regional and remote communities to the extent that the greater flexibility to conduct fireground personnel carriage operations will assist to reduce the impact of fires on those communities.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for amendments to Manuals of Standards (OIA reference number: OIA23-06250). However, an IA was conducted and OIA determined that detailed analysis was not required under the Australian Government's Policy Impact Analysis Framework (OIA reference number: OIA25-09409).

Provisions that enable the collection and use of personal information

Provisions that enable the collection and use of personal information and the type of information that may be collected

Item 15 of Schedule 1 to the instrument will insert new provisions into the Part 138 MOS with requirements for operators conducting flights that are fireground personnel carriage operations, and the relevant fireground emergency organisations, to collect certain personal information from passengers on the flight.

Information is collected in the form of written acknowledgements about the risks of the operation and that participation is voluntary, and written consent, from each passenger in relation to the proposed flight.

Why the provisions that enable the collection and use of personal information are considered necessary and appropriate

The collection of acknowledgments and consent is necessary to ensure that passengers have been informed about the increased risks of a fireground personnel carriage operation, as compared to a Part 133 operation, and have consented to participate in the flight.

A privacy impact statement has not been prepared in this case.

The safeguards in place to protect personal information

There are safeguards in place to protect the confidentiality of the information collected under the provisions of the instrument that engage the right to protection of privacy (namely, Item 15 of Schedule 1).

As APP entities, the fireground emergency organisation and the operator must comply with the *Privacy Act 1988* (the ***Privacy Act***), which establishes a privacy protection framework that protects the information collected from persons and limits its use and disclosure.

The obligations under the Privacy Act include obligations to comply with the Australian Privacy Principles set out in Schedule 1 to the Privacy Act. In particular, Australian Privacy Principle 3 prohibits an APP entity from collecting personal information about an individual unless the individual consents to the collection of the information and either the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities or the collection of the information is required or authorised by or under an Australian law. The instrument satisfies those preconditions.

Australian Privacy Principle 6 contains protections in relation to the use and disclosure of personal information held by an APP entity. The requirement for the operator to maintain the record of the passenger's personal information is for a limited period, being 3 months after the day the flight ends.

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 and 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 138 MOS Amendment Instrument 2025

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 instrument provides greater flexibility to certain emergency service authorities and helicopter operators to coordinate, and conduct, fireground personnel carriage operations. The instrument amends the *Part 138 (Aerial Work Operations) Manual of Standards 2020* to prescribe a fireground personnel carriage operation as a kind of aerial work operation for the purposes of Part 138 (Aerial work operations) of the *Civil Aviation Safety Regulations 1998 (CASR)*. The effect of that prescription is that those operations would not be air transport operations to which other more prescriptive Parts of CASR would apply.

Human rights implications

The instrument engages with the right to privacy in Article 17 of the International Covenant on Civil and Political Rights. The instrument requires the collection of personal information about and from passengers in the form of written acknowledgements about the risks of the operation and that participation in the operation is voluntary, and written consent, from the passenger in relation to the proposed flight.

However, any limits on these human rights are reasonable, necessary and proportionate because they promote aviation safety by ensuring that passengers have been informed about the increased risks of a fireground personnel carriage operation. The obligations imposed by the *Privacy Act 1988* continue to apply.

Conclusion

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

Civil Aviation Safety Authority