



4 February 2021

The Hon Michael McCormack MP  
Minister for Infrastructure, Transport and Regional Development  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo.mccormack@infrastructure.gov.au](mailto:dlo.mccormack@infrastructure.gov.au)

  
Dear Minister,

**Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

***Drafting***

Senate standing order 23(3)(e) requires the committee to scrutinise each instrument as to whether its drafting is defective or unclear.

Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402] (the instrument) provides for the operational, procedural and safety risk management standards in relation to aerial work operations for aeroplanes and rotorcraft.

Sections 3.01 and 5.02 appear to be incomplete and use the word 'reserved' to indicate parts of the sections for which the law has not yet been provided for in the instrument. In addition to these specific sections, the word 'reserved' is also used as a placeholder for the entirety of Chapters 10, 19 and 20.

The instrument's explanatory statement explains that section 3.01 is reserved for future use. The explanatory statement also explains that provisions in Chapter 5 are reserved for future safety management systems rules, and that Chapters 10, 19 and 20 are reserved for future provisions that may be required.

The committee is particularly concerned that the use of the placeholder 'reserved' in sections 3.01 and 5.02 may create uncertainty about the law, and notes that the explanatory statement does not adequately address why it is necessary for the content of these sections to be completed at an unspecified later date.

**In light of the above, the committee requests your advice as to:**

- **why it is considered necessary and appropriate for the substantive terms of the law in sections 3.01 and 5.02 to be provided at a later, unspecified date;**

- **why it is considered necessary and appropriate for Chapters 10, 19 and 20 of the instrument to be reserved in case they are needed for future provisions, and**
- **whether a clearer explanation for the approach can be set out in notes to the relevant provisions of the instrument.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. Noting that the 15th sitting day after the instrument was tabled in the Senate is 15 February 2021, the committee has resolved to give a notice of a motion to disallow the instrument on that day as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **18 February 2021**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au).

Thank you for your assistance with this matter.

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**



The Hon Michael McCormack MP

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Deputy Prime Minister  
Minister for Infrastructure, Transport and Regional Development  
Leader of The Nationals  
Federal Member for Riverina

Ref: MC21-000670

14 MAR 2021

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee for the Scrutiny of Delegated Legislation  
Parliament House  
CANBERRA ACT 2600

  
Dear Senator

Thank you for your letter of 4 February 2021 regarding Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402].

The Civil Aviation Safety Authority (CASA) has provided the following answers to the questions posed by the Committee:

**Why it is considered necessary and appropriate for the substantive terms of the law in section 3.01 and 5.02 to be provided at a later, unspecified date?**

Regulation 138.010(5)(g) of the Civil Aviation Safety Regulations 1998 provides that an aerial work operation does not include the following: *(g) any other operation of a kind prescribed by the Part 138 Manual of Standards for the purposes of this paragraph.* Section 3.01 of the Manual Of Standards (MOS) is currently reserved as all operations that were known and considered not to be an aerial work operation at the time of making of the MOS were included in Part 138 of the *Civil Aviation Safety Regulations 1998*. Should a new type of operation be developed in the future that is not required to be regulated as an aerial work operation, CASA will be able to prescribe the operation as not being aerial work at section 3.01 of the MOS. Regulation 138.140 of CASR provides a list of known types of operations where the complexity and risk of the operation requires a Safety Management System (SMS). Regulation 138.140(2) provides that the Manual of Standards (MOS) may prescribe certain types of operations as not requiring a SMS. Should a new type of operation be developed in the future that is not required to have a SMS, CASA is able to prescribe the operation at section 5.02 of the MOS.

While sections 3.01 and 5.02 presently have no operation, they are at least a flag to the relevant sector of the aviation industry that the MOS can express when a specific type of operation will not be taken to be an aerial work operation, or prescribe when a SMS is not required. The provisions will not cause confusion in the current terms as neither of these matters are expressed.

**Why it is considered necessary and appropriate for Chapters 10, 19 and 20 to be reserved in case they are needed for future provisions?**

These Chapters were omitted in the final stages of the preparation of the MOS in response to industry comments received during the consultation process. The requirements were consolidated into other Chapters of the MOS or omitted entirely. Rather than renumbering the MOS with the associated issues of renumbering the cross references, the Chapter numbering was retained. A post implementation review of the MOS is underway, in consultation with relevant parts of the aviation industry, which may result in amendments to the MOS including to insert content into Chapters 10, 19 and 20 as appropriate.

**Whether a clearer explanation for the approach could be set out in notes to the relevant provisions of the instrument?**

A Supplementary Explanatory Statement will be lodged explaining the above matters.

Thank you for bringing your concerns to my attention and I trust this information is of assistance.

Yours sincerely

Michael McCormack





AUSTRALIAN  
SENATE

Senate Standing Committee for the  
Scrutiny of Delegated Legislation  
Parliament House, Canberra ACT 2600  
02 6277 3066 | [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au)  
[www.aph.gov.au/senate\\_sdsc](http://www.aph.gov.au/senate_sdsc)

14 April 2021

The Hon Michael McCormack MP  
Deputy Prime Minister  
Minister for Infrastructure, Transport and Regional Development  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo.mccormack@infrastructure.gov.au](mailto:dlo.mccormack@infrastructure.gov.au)  
CC: [government.relations@casa.gov.au](mailto:government.relations@casa.gov.au)

  
Dear Minister,

**Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402]**

Thank you for your response of 14 March 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on Tuesday 13 April 2021. Based on your advice regarding the purpose of the sections in the instrument marked as 'RESERVED' as possible sections identified for additional information to be inserted following a post-implementation review of the standards, the committee has concluded its examination of the instrument.

The committee welcomes your undertaking to amend the explanatory statement to include this further information. This undertaking has been listed in Appendix D of *Delegated Legislation Monitor 6 of 2021*.

In light of this, the committee has resolved to withdraw the disallowance notice in place on the instrument in the sitting week commencing on 11 May 2021.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
Chair  
Senate Standing Committee for the Scrutiny of Delegated Legislation