

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX102/19 — DAMP Requirements for Maintenance Organisations Outside Australian Territory Exemption 2019

Purpose

The purpose of the instrument is to allow DAMP organisations carrying out maintenance on aircraft or aeronautical products outside Australian territory to be exempt (subject to conditions) from the obligation to have a drug and alcohol management plan (*DAMP*) in relation to the maintenance carried out outside Australia by the organisation.

The instrument would replace CASA EX132/16, with some changes to clarify the policy intention.

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*) and *Civil Aviation Regulations 1988* (*CAR*).

Exemptions

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, the Civil Aviation Safety Authority (*CASA*) may grant an exemption from a provision of the regulations.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160 (3) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.175 (4) of CASR, in deciding whether to reissue an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

Regulation 11.205 provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition.

Regulation 11.225 of CASR requires an exemption to be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Drug and alcohol management plans (*DAMP*)

Part IV of the Act deals with drug and alcohol management plans and testing. Division 1 of Part IV defines *safety-sensitive aviation activities* (*SSAA*) to mean activities that impact directly or indirectly on the safety of civil air operations in Australian territory or the operation of Australian aircraft outside Australian territory.

Australian aircraft means aircraft registered in Australia or aircraft in Australian territory other than foreign registered aircraft and state aircraft, see section 3 of the Act.

Division 2 of Part IV of the Act sets out regulation-making powers in relation to DAMP and testing.

Subsection 34 (1) of the Act provides that the regulations may make provision for and in relation to the development, implementation and enforcement of DAMP covering persons who perform, or are available to perform, safety-sensitive aviation activities.

Subsection 34 (3) provides that regulations may not be made for the purposes of section 34 unless the performance of the safety-sensitive aviation activities concerned could be adversely affected by the use of alcohol or a testable drug by persons who perform the activities.

Section 35 of the Act provides the kinds of things that may be covered by regulations made under subsection 34 (1) of the Act. These include the persons required to develop a DAMP, the persons covered by the plans and the content of such plans including requirements for drug and alcohol tests, drug and alcohol management, treatment, counselling and rehabilitation.

Part 99 of CASR

Part 99 of CASR provides for the development, implementation and enforcement of DAMPs covering persons who perform, or are available to perform, applicable SSAA, see paragraph 99.005 (1) (a).

Applicable SSAA is defined in subregulation 99.010 (1) to mean a safety-sensitive aviation activity to which Part 99 of CASR applies under regulation 99.015.

Regulation 99.015 sets out the applicable SSAAs for Part 99 and includes:

- maintenance of aircraft, aeronautical products, aviation radionavigation products and aviation telecommunications products, see paragraph 99.015 (2) (c); and
- the certification of maintenance of a kind mentioned in paragraph 99.015 (2) (c), see paragraph 99.015 (2) (d); and
- issuing a certificate of release to service for an aircraft or aeronautical product in relation to maintenance carried out on the aircraft or aeronautical product, see paragraph 99.015 (2) (da).

Under subregulation 99.030 (1) of CASR, an organisation must develop a DAMP if the organisation is listed in subregulation 99.030 (2) and has an employee or contractor who performs, or is available to perform, an SSAA. This is a strict liability criminal offence provision with a penalty of 50 penalty units.

Paragraphs 99.030 (2) (i) and (j) list the holder of a certificate of approval under regulation 30 of CAR and a Part 145 organisation as organisations that must develop a DAMP.

Subregulation 99.035 (1) provides that a person who is required to develop a DAMP must implement the DAMP by giving effect to regulation 99.080 and making the DAMP available to the person's SSAA employees as required by Subpart 99.B.

Regulation 99.040 sets out the requirements for a DAMP organisation making its DAMP available to SSAA employees.

Background

CASA EX132/16 was in substantially the same terms as this instrument and expired on 31 August 2019. In turn, it replaced CASA EX95/13, which was in substantially the same terms.

Overview of instrument

Section 2 of the instrument would provide that the instrument commences on 1 September 2019 and is repealed at the end of 31 August 2021.

Section 4 (1) of the instrument provides that the instrument applies to a DAMP organisation in relation to the maintenance of Australian aircraft or aeronautical products outside Australian territory, if the organisation is the holder of a certificate of approval or is a Part 145 organisation. The instrument only applies if the DAMP organisation has not developed a DAMP that covers the performance of the applicable SSAA outside Australian territory. In this way, the instrument gives the DAMP organisation the choice of covering the performance of the SSAA outside Australian territory or relying on the exemption.

Section 4 (2) of the instrument exempts the DAMP organisation from compliance with regulations 99.030, 99.035 and 99.040 in relation to the performance of the applicable SSAA outside Australian territory.

Section 5 imposes conditions on the exemption. The conditions require the DAMP organisation to put in place measures to ensure that a person performing the applicable SSAA is not affected by alcohol or drugs and to notify CASA of these measures.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft. Additionally, paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The exemption applies to a class of persons, that is, DAMP organisations carrying out maintenance on aircraft or aeronautical products outside Australian territory. The exemption is, therefore, a legislative instrument.

Consultation

Consultation in accordance with section 17 of the LA took place with a number of overseas CAR 30 organisations when the policy for granting exemptions from Part 99.B was first being determined for CASA EX95/13. There have been no known safety issues resulting from the implementation of previous such exemptions. The exemption relieves DAMP organisations from the difficulties of implementing a Part 99 DAMP outside of Australia, while still having measures in place to ensure persons performing SSAA for their organisation are not affected by drugs or alcohol. As the instrument is a renewal of previous such exemptions, no further consultation has been undertaken. CASA proposes to amend Part 99 of CASR to remove the need for such exemptions. CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Office of Best Practice Regulation (the OBPR)

The instrument renews a previous exemption for which the OBPR did not require the preparation of a Regulation Impact Statement (*RIS*) because a preliminary assessment of business compliance costs in the context of the nature of the instrument indicated that it would have only a nil to low impact on business.

Also, a RIS is not required in this case, as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment 1.

Making and commencement

The exemption has been made by a delegate of CASA relying on the power of delegation under regulation 11.260 of CASR.

The instrument commences on 1 September 2019 and is repealed at the end of 31 August 2021.

Statement of Compatibility with Human Rights

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

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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 legislative instrument would allow DAMP organisations carrying out maintenance on aircraft or aeronautical products outside Australian territory to be exempt (subject to conditions) from the obligation to have a drug and alcohol management plan in relation to the maintenance carried out outside Australia by the organisation.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority