

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX135/20 — DAMP Organisations to provide Information to CASA Exemption 2020

##### Purpose

The purpose of *CASA EX135/20 — DAMP Organisations to provide Information to CASA Exemption 2020* (the *instrument*) is to exempt an organisation that has implemented a drug and alcohol management plan (**DAMP**) from the requirement to report information to the Civil Aviation Safety Authority (**CASA**) every 6 months, subject to the organisation keeping records of the information that would otherwise be required to be provided to CASA. The instrument continues existing arrangements that expire on 30 September 2020 (instrument number CASA EX143/17).

##### 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**).

##### Requirements for DAMP organisations to provide information

Subpart 99.B (Drug and Alcohol Management Plans) of CASR provides for the persons required to have a DAMP, matters required to be included in a DAMP, the implementation of a DAMP, requirements associated with a DAMP and offences relating to a DAMP.

Under regulation 99.010 of CASR, a **DAMP organisation** is defined as a person that is required to have a DAMP under subregulation 99.030 (1) of CASR. Under subregulation 99.030 (1), specified organisations involved in the aviation industry, who employ or engage people who perform safety-sensitive aviation activities (**SSAA**), are required to have a DAMP.

Also under regulation 99.010, a **DAMP reporting period** is defined as the period of 6 months immediately before each 1 March and 1 September.

Under subregulation 99.100 (1) of CASR, a DAMP organisation that has implemented a DAMP must provide specified information to CASA in respect of each DAMP reporting period, or part of a reporting period, during which the DAMP was implemented. The specified information includes, among other things: the number of the organisation's employees who performed an applicable SSAA at least 2 or more times in the 90 days preceding the end of the reporting period; the number of the organisation's employees who attended a drug and alcohol education program during the period; the number and type of drug or alcohol tests undergone by SSAA employees under the DAMP during the period; and the results of the tests.

Under subregulation 99.100 (2) of CASR, a DAMP organisation must provide the information in writing within 21 days after the end of the reporting period to which it relates.

Regulation 99.105 of CASR relates to the keeping of records provided to CASA under regulation 99.100 of CASR. It requires a DAMP organisation to keep records used to

provide information to CASA under regulation 99.100 for 5 years from the date the information was provided to CASA, and to keep the records in a secure location. It also requires the DAMP organisation to destroy or delete the records, or the parts of the records that relate to the results of drug or alcohol testing, within 6 months after the end of the 5 year period.

### **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, 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.

Regulation 11.205 of CASR provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, 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) of CASR, the maximum duration of an exemption is 3 years.

### **Background**

There are approximately 1 800 DAMP organisations and approximately 60 000 individuals employed by DAMP organisations who perform SSAA.

In instrument numbers CASA EX143/17 and CASA EX39/15, CASA granted a general exemption to DAMP organisations that implement a DAMP from the reporting requirements in subregulations 99.100 (1) and (2). CASA continues to consider that the reporting requirements in those subregulations are not necessary and their removal will have no identifiable impact on safety. Consistent with this policy, the instrument exempts DAMP organisations from compliance with those reporting requirements.

### **Overview of instrument**

The instrument grants a general exemption to DAMP organisations that implement a DAMP from the reporting requirements in subregulations 99.100 (1) and (2).

The instrument does not explicitly exempt micro-businesses that might otherwise be required to report to CASA in accordance with their DAMP from the reporting requirements in their DAMP. Such businesses are covered by an exemption in instrument number CASA EX81/20. In addition, micro-business DAMP organisations are exempt from the requirement to report to CASA, subject to a condition to keep records that reflect the conditions of the current instrument, CASA EX143/17.

It is a condition of the exemption that the DAMP organisation create records of the information mentioned in subregulation 99.100 (1). The instrument imposes a record-keeping requirement similar to that required for information required to be provided to CASA under regulation 99.105.

Using the ***DAMP reporting period*** term defined in regulation 99.010, the DAMP organisation must keep the records in a secure location for 5 years from the end of the DAMP reporting period during which a record was created.

The DAMP organisation must also comply with the record destruction requirement in subregulation 99.105 (3) of CASR as if the record was provided to CASA on the last day of the DAMP reporting period in which the record was created.

For example, a record created on 1 July 2021 would be created in the DAMP reporting period ending on 31 August 2021. The DAMP organisation would be required to keep the record in a secure location for 5 years from the end of the reporting period, being a period ending on 31 August 2026. The DAMP organisation would then have to comply with subregulation 99.105 (3) in relation to the record, and that compliance is required within a period of 6 months from the end of the 5 year period, being 28 February 2027.

#### **Document incorporated by reference**

The instrument incorporates by reference the information mentioned in subregulation 99.100 (1). In accordance with section 10 of the *Acts Interpretation Act 1901* and section 13 of the *Legislation Act 2003* (the *LA*), a reference to CASR is a reference to CASR as in force from time to time. CASR is the enabling legislation for the instrument and a legislative instrument registered on the Federal Register of Legislation.

#### **Content of instrument**

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument by providing that it commences on 1 October 2020 and is to be repealed at the end of 30 September 2023.

Section 3 exempts a DAMP organisation that has implemented a DAMP from compliance with subregulations 99.100 (1) and (2).

Section 4 imposes conditions on the exemption. The conditions are that the DAMP organisation must:

- (a) create records of the information mentioned in subregulation 99.100 (1); and
- (b) ensure each record states the date the record was created; and
- (c) keep each record in a secure location for 5 years from the end of the DAMP reporting period during which the record was created; and
- (d) comply with subregulation 99.105 (3) in relation to a record, as if the record was provided to CASA on the last day of the DAMP reporting period in which the record was created.

#### ***Legislation Act 2003***

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 instrument exempts DAMP organisations

that have implemented a DAMP from compliance with subregulations 99.100 (1) and (2). 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.

### **Consultation**

Consultation on this instrument has not been undertaken in this case because of the extensive consultation which preceded the making of the original exemption, instrument number CASA EX39/15. CASA received substantial feedback from industry about the burdensome nature of the DAMP reporting requirements. The instrument extends the relief for DAMP organisations against these reporting requirements.

CASA has previously estimated that the annual cost for compliance by industry with the DAMP reporting requirements is \$460 000, with the amount for each DAMP organisation varying depending on whether it is involved in regular public transport activities, and on whether it is a micro-business. CASA does not expect that there will have been any significant change to that level of saving since the estimate was made.

CASA understands that exempting businesses from the DAMP reporting requirements continues to provide significant resource relief for both industry and CASA, without compromising safety.

CASA is progressing amendments to Part 99 of CASR so that this exemption will no longer be required. CASA anticipates that these changes will be made in March 2022.

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 (OBPR)**

A Regulation Impact Statement (*RIS*) is not required because 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**

The Statement of Compatibility with Human Rights at Appendix 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

### **Making and commencement**

The exemption has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR. The instrument commences on 1 October 2020 and is repealed at the end of 30 September 2023.

## Statement of Compatibility with Human Rights

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

### **CASA EX135/20 — DAMP Organisations to provide Information to CASA Exemption 2020**

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 grants a general exemption, subject to conditions, to a person that is required to have a drug and alcohol management plan (**DAMP**) from the reporting requirements in subregulations 99.100 (1) and (2) of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Section 3 of the instrument exempts a DAMP organisation that has implemented a DAMP from compliance with subregulations 99.100 (1) and (2).

Section 4 imposes conditions on the exemption. The conditions require the DAMP organisation to create, keep and destroy records relating to the DAMP as if it was not exempt from the reporting requirements.

#### **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**