



Australian Government

Civil Aviation Safety Authority

Instrument number CASA EX16/21

I, WARREN CRAIG MARTIN, Executive Manager, Regulatory Oversight, a delegate of CASA, make this instrument under regulations 11.160 and 11.205 of the *Civil Aviation Safety Regulations 1998*.

[Signed C. Martin]

Craig Martin
Executive Manager, Regulatory Oversight

24 February 2021

CASA EX16/21 — CASR Subpart 99.B DAMP Requirements for Foreign Air Transport AOC Holders Exemption 2021

1 Name

This instrument is *CASA EX16/21 — CASR Subpart 99.B DAMP Requirements for Foreign Air Transport AOC Holders Exemption 2021*.

2 Duration

This instrument:

- (a) commences on 1 March 2021; and
- (b) is repealed at the end of 28 February 2023.

3 Definitions

Note In this instrument, certain terms and expressions have the same meaning as they have in the *Civil Aviation Act 1988* and the regulations. These include: *AOC*, *approved tester*, *body sample*, *DAMP*, *DAMP supervisor*, *donor*, *drug or alcohol test*, *foreign air transport AOC*, *regular SSAA employee*, *SSAA* and *testable drug*.

In this instrument:

body sample donor means:

- (a) a donor; or
- (b) a person who is asked to give, or has given, a body sample for the purposes of a test.

place means the place where the circumstances mentioned in paragraphs 99.050 (2) (b), (c) and (d) of CASR occurred.

relevant organisation means the holder of a foreign air transport AOC:

- (a) engaged in international air navigation; and
- (b) not engaged in domestic air navigation in Australia.

Standard, for a commercial device used in a test, means the minimum requirements to be met for the device to be considered by the Standards body to be reliable and effective for its purpose.

Standards body means the organisation officially recognised for setting Standards in a place.

test, for the presence in a body sample of a testable drug or alcohol, means a test:

- (a) using a commercial device that complies with the Standard for such devices in the place; or
- (b) by a medical practitioner registered to practice medicine in the place.

4 Exemption from DAMP requirements after notifying CASA of senior person to contact regarding body sample donor

- (1) Subject to subsection (2), a relevant organisation is exempt from compliance with Subpart 99.B of CASR.
- (2) The exemption in subsection (1) does not apply to a relevant organisation unless it has notified CASA in writing of the name, title and contact details, including emergency contact details, of a senior person in the relevant organisation with whom CASA may liaise in relation to a body sample donor.
- (3) The exemption in subsection (1) is subject to the conditions in section 6.

5 Exemption from DAMP identity requirements for donors

- (1) An employee of a kind mentioned in subsection (2) is exempt from compliance with subregulation 99.325 (1) of CASR if the employee produces the photographic identification issued by the relevant organisation that employs the employee:
 - (a) immediately; or
 - (b) within 1 hour of being asked by an approved tester for identification.
- (2) For subsection (1), the kind of employee is an employee of a relevant organisation who:
 - (a) is performing, or is available to perform, an applicable SSAA; and
 - (b) has been asked by CASA for a body sample under Subpart 99.C of CASR.

6 Conditions

- (1) The relevant organisation must, upon request by CASA and within the timeframe mentioned in subsection (2), provide CASA with the name, date of birth, address both inside and outside Australia where applicable, and telephone number both inside and outside Australia where applicable, of each of its employees who:
 - (a) performs, or is available to perform, an applicable SSAA for the organisation; and
 - (b) is unable to produce to an approved tester photographic identification of the kind mentioned in:
 - (i) subregulation 99.125 (3) of CASR; or
 - (ii) section 5.
- (2) For subsection (1), the timeframe is as follows:
 - (a) if CASA specifies a timeframe for the provision of the information — the specified timeframe;
 - (b) if CASA does not specify a timeframe for the provision of the information — as soon as practicable.

Note The relevant organisation must provide to CASA the name of a person with whom CASA may liaise in relation to a body sample donor and make requests for the information mentioned

in subsection (1) — see subsection 4 (2). CASA generally specifies a timeframe for a response when making a request.

- (3) Despite not having a DAMP, the relevant organisation must, if it has procedures that provide for the conduct of tests in the following circumstances, ensure that tests for the presence in a body sample of a testable drug or alcohol are conducted on any SSAA employee:

- (a) who falls within a circumstance mentioned in paragraph 99.050 (2) (b) or (d) of CASR;

Note Paragraph 99.050 (2) (b) of CASR refers to an accident or serious incident involving an SSAA employee while in that role. Paragraph 99.050 (2) (d) refers to an SSAA employee returning to that role having been excluded because of positive drug or alcohol results.

- (b) who the relevant organisation has reasonable grounds for considering may be adversely affected by a testable drug or by alcohol while performing, or available to perform, an applicable SSAA.

Note 1 For example, a relevant organisation would have reasonable grounds for considering that the SSAA employee may be adversely affected by a testable drug or by alcohol if the organisation, as part of its management of the risks of drug or alcohol usage by SSAA employees, has a person performing equivalent duties to a DAMP supervisor who reasonably considers the SSAA employee may be so adversely affected.

Note 2 Paragraph (3) (b) is based on paragraph 99.050 (2) (c) of CASR.

- (4) Despite not having a DAMP, the relevant organisation must prevent an employee from performing, or being available to perform, an applicable SSAA in any circumstance mentioned in regulation 99.065 of CASR, including where the circumstance arises from a test mentioned in subsection (3) or Subpart 99.C of CASR.

- (5) If, because of subsection (4), a relevant organisation prevents an employee from performing, or being available to perform, an applicable SSAA, the organisation must ensure that the employee does not perform, and is not available to perform, applicable SSAA for the relevant organisation inside Australian territory until:

- (a) each applicable circumstance mentioned in subregulation 99.070 (2) of CASR has occurred; and
- (b) the relevant organisation has informed CASA, in writing, of the following:
- (i) for an employee who had a positive result for a test under subsection (3) — the action taken by the relevant organisation with respect to the employee following the test;
 - (ii) for an employee who, under Subpart 99.C of CASR, had a positive result for a confirmatory drug test, or for a confirmatory alcohol test, or for both such tests — the action taken by the relevant organisation with respect to the employee following the test;
 - (iii) for an employee who refused to take the test under subsection (3) or interfered with the test — the action taken by the relevant organisation with respect to the employee following the refusal or interference;
 - (iv) for an employee who, with respect to a drug or alcohol test under Subpart 99.C of CASR, refused to take the test or interfered with the test — the action taken by the relevant organisation with respect to the employee following the refusal or interference; and
- (c) for an employee mentioned in subparagraph (b) (ii) or (b) (iv) — the employee has been approved by a CASA medical review officer to perform, or be available to perform, the applicable SSAA.

- (6) If, because of subsection (4), a relevant organisation prevents an employee from performing, or being available to perform, an applicable SSAA, but before completion of all applicable requirements under subsection (5), the employee ceases to be a regular SSAA employee of the organisation (*cessation*), the organisation must notify CASA, as soon as practicable after the cessation, of the employee's:
- (a) name and, if applicable, ARN; and
 - (b) address inside and outside Australia, as applicable; and
 - (c) date of cessation; and
 - (d) current or proposed employment, if known.
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