

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX86/23 — DAMP Requirements for Maintenance Organisations Outside Australian Territory Exemption 2023

Purpose

The purpose of *CASA EX86/23 — DAMP Requirements for Maintenance Organisations Outside Australian Territory Exemption 2023* (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 effectively renew the exemption and conditions in *CASA EX102/21 — DAMP Requirements for Maintenance Organisations Outside Australian Territory Exemption 2021 (CASA EX102/21)*.

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)*.

Drug and alcohol management plans

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, SSAA.

Subsection 34(3) provides that regulations may not be made for the purposes of section 34 unless the performance of the SSAA 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 DAMP 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 an SSAA to which Part 99 of CASR applies under regulation 99.015.

Regulation 99.015 of CASR 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)
- the certification of maintenance of a kind mentioned in paragraph 99.015(2)(c) — see paragraph 99.015(2)(d)
- 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. These organisations are approved to provide maintenance services for aircraft and aeronautical products.

Subregulation 99.035(1) of CASR 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 of CASR sets out the requirements for a DAMP organisation making its DAMP available to SSAA employees.

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 compliance with a provision of CASR.

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 renew 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.

Background

Instrument CASA EX102/21 is in substantially the same terms as this instrument and expires at the end of 31 August 2023. In turn, it replaced instrument CASA EX102/19, which was in substantially the same terms.

Overview of instrument

The instrument has the effect of enabling DAMP organisations carrying out maintenance on aircraft or aeronautical products outside Australian territory to either develop a DAMP that covers the performance of the applicable SSAA outside Australian territory, or to rely on the exemption, and 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.

CASA is satisfied that the instrument has no negative impact on aviation safety.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences on 1 September 2023 and is repealed at the end of 31 August 2026.

Section 3 sets out definitions of terms used in the instrument, such as ***applicable SSAA***, ***DAMP***, ***DAMP organisation***, ***SSAA*** and ***SSAA employee***. These terms are defined in Part 99.010 of CASR and have the same meaning in the instrument.

Subsection 4(1) of the instrument provides that section 4 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 in force under regulations 30 of CAR or is a Part 145 organisation. Further, 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.

Subsection 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 the regulations may empower CASA to 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 a class of persons, being DAMP organisations carrying out maintenance on aircraft or aeronautical products outside Australian territory, from complying with the provisions in regulations 99.030, 99.035 and 99.040 of CASR. 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.

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*). However, this instrument will be repealed at the end of 31 August 2026, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

Consultation in accordance with section 17 of the LA took place with a number of overseas organisations with certificates under regulation 30 of CAR 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, and the exemption in the instrument will be included in the proposed amendments. CASA will undertake consultation on this exception to the general requirements in Part 99 of CASR during the drafting of the proposed amendments.

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.

As the instrument replaces an expiring instrument with the same (or largely the same) provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The instrument is likely to have a beneficial effect on maintenance organisations by providing a practical scheme for managing drug and alcohol issues in relation to maintenance carried out overseas.

Impact on regional and remote communities

The instrument is not expected to have any special impact on regional and remote 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 exemptions (OIA id: 14507).

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 a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

The instrument commences on 1 September 2023 and is repealed at the end of 31 August 2026.

Statement of Compatibility with Human Rights

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

CASA EX86/23 — DAMP Requirements for Maintenance Organisations Outside Australian Territory Exemption 2023

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 would have the effect of giving certain organisations that carry out maintenance on aircraft or aeronautical products outside Australian territory an alternative to developing a drug and alcohol management plan that covers the performance of applicable safety-sensitive aviation activities (**SSAA**) outside Australian territory. Those organisations may instead rely on the exemption in the instrument, put in place measures to ensure that a person performing the applicable SSAA is not affected by alcohol or drugs and notify CASA of these measures.

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