



# Australian Government

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## Civil Aviation Safety Authority

### CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019

as amended

made under the *Civil Aviation Act 1988* and the *Civil Aviation Safety Regulations 1998*.

This compilation was prepared on 10 February 2020 taking into account amendments up to *CASA EX19/20 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Amendment Instrument 2020*.

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Compilation No. 1.

#### 1 Name

This instrument is *CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019*.

#### 2 Duration

This instrument:

- (a) commences on the day after it is registered; and
- (b) is repealed at the end of 31 March 2027.

*Note* The exemptions in section 5, the exemptions' conditions in section 6 and the directions in section 8 cease to be in force at the end of 30 September 2021. The directions in section 7 are in force until the repeal of this instrument.

#### 3 Definitions

- (1) In this instrument:

***DAMP-like program*** means a plan of a non-DAMP organisation that:

- (a) would meet the requirements of regulation 99.045 of CASR if that regulation were applied in accordance with section 4; and
- (b) is approved in writing by CASA or the Regional Manager Eastern, CASA.

***DAMP-like program contact officer*** means a person appointed by the non-DAMP organisation to liaise with CASA in relation to its DAMP-like program and the organisation's responsibilities under this instrument and Part 99 of CASR.

***DAMP-like program supervisor*** means a person in a non-DAMP organisation who:

- (a) has had relevant training to form an opinion as to whether a person may be adversely affected by a testable drug or under the influence of alcohol; and
- (b) is authorised by the non-DAMP organisation to do so for the purposes of drug and alcohol testing on an employee of the non-DAMP organisation who performs, or is available to perform, an applicable SSAA for the DAMP organisation.

***DAMP-like program medical review officer*** means a medical practitioner who, for drug or alcohol testing under a DAMP-like program, has:

- (a) competence in the field of interpreting drug and alcohol test results; and
- (b) knowledge of substance and use disorders; and
- (c) knowledge of the contents of Part 99 of CASR.

**employee**, of a non-DAMP organisation, includes a contractor engaged by the organisation.

**non-DAMP organisation** means a person other than a DAMP organisation.

- (2) An expression used in this instrument that is defined in regulation 99.010 of CASR has the meaning given by the regulation.

#### **4 Application of regulation 99.045 of CASR**

For the definition of **DAMP-like program**, regulation 99.045 of CASR must be applied as if:

- (a) a reference in that regulation to a DAMP organisation were a reference to a non-DAMP organisation; and
- (b) a reference in that regulation to a DAMP were a reference to a DAMP-like program; and
- (c) a reference in that regulation to a SSAA employee of the DAMP organisation were a reference to an employee of the non-DAMP organisation who performs, or is available to perform, an applicable SSAA for the DAMP organisation; and
- (d) a reference in paragraph 99.045 (c) to a person in the DAMP organisation who has the role of DAMP contact officer were a reference to a person in the non-DAMP organisation who has the role of DAMP-like program contact officer; and
- (e) a reference in paragraph 99.045 (c) to a person in the DAMP organisation who has the role of DAMP supervisor were a reference to a DAMP-like program supervisor; and
- (f) paragraphs (a) to (e) above applied similarly to references occurring in regulation 99.050, 99.055, 99.060, 99.065, 99.070 or 99.075 (a **referred provision**), for the purposes of this section; and
- (g) a reference in a referred provision to a DAMP medical review officer were a reference to a DAMP-like program medical review officer.

#### **5 Exemption — provision of applicable SSAA by non-DAMP organisation to DAMP organisation**

- (1) This section applies if:
  - (a) there is a written contract between a DAMP organisation and a non-DAMP organisation under which the non-DAMP organisation provides an applicable SSAA to the DAMP organisation; and
  - (b) an employee of the non-DAMP organisation performs, or is available to perform, the applicable SSAA for the DAMP organisation; and
  - (c) the non-DAMP organisation has a DAMP-like program that covers the employee; and
  - (d) the DAMP organisation has agreed in writing that the DAMP-like program that covers the employee is to apply instead of the DAMP of the DAMP organisation in relation to the employee's performance of, or availability to perform, the applicable SSAA for the DAMP organisation; and
  - (e) the DAMP organisation is satisfied on reasonable grounds that the non-DAMP organisation is implementing its DAMP-like program in relation to the employee.

*Note* The DAMP-like program must be approved in writing by CASA — see definition of **DAMP-like program** in section 3.

- (2) Subject to subsection (3), the DAMP organisation is exempt from compliance with:
  - (a) subregulation 99.030 (4) of CASR, to the extent that it requires the DAMP organisation to comply with paragraph 99.045 (d) of CASR in relation to a non-DAMP organisation's employee who performs, or is available to perform, an applicable SSAA for the DAMP organisation; and
  - (b) regulation 99.035 of CASR, to the extent that it requires the DAMP organisation to implement its DAMP by giving effect to regulation 99.080 of CASR in relation to a non-DAMP organisation's employee who performs, or is available to perform, an applicable SSAA for the DAMP organisation.
- (3) Subsection (2) does not apply in relation to the DAMP organisation's implementation of its DAMP regarding the employee of the non-DAMP organisation to the extent that the DAMP gives effect to the matters mentioned in subregulation 99.065 (2) of CASR.

*Note* See the exemption condition in section 6.

- (4) The exemptions in subsection (2) are subject to the conditions in section 6.

*Note 1* The employee of the non-DAMP organisation is a SSAA employee of the DAMP organisation — see definitions of **SSAA employee**, **employee** and **DAMP contractor** in regulation 99.010 of CASR.

*Note 2* Subregulation 99.065 (2) requires that a DAMP include requirements to not permit a SSAA employee to perform, or be available to perform, an applicable SSAA in specified circumstances related to: (1) the employee's faculties being suspected of being impaired due to the employee being under the influence of prescribed drugs or alcohol, or (2) the SSAA employee being involved in an accident or serious incident.

- (5) This section ceases to be in force at the end of 30 September 2021.

## **6 Conditions**

- (1) The DAMP organisation must, as soon as practicable after implementing its DAMP regarding a non-DAMP organisation's employee in relation to the matters in subregulation 99.065 (2) of CASR:
  - (a) notify the non-DAMP organisation in writing of the implementation; and
  - (b) notify CASA in writing if the DAMP organisation does not permit the employee to perform, or be available to perform, an applicable SSAA for the DAMP organisation.
- (2) This section ceases to be in force at the end of 30 September 2021.

## **7 Directions — DAMP organisation**

- (1) For regulation 11.245 of CASR, a DAMP organisation that is, or was, exempt under section 5 from compliance with specified provisions of CASR must:
  - (a) keep records that evidence its grounds for the satisfaction mentioned in paragraph 5 (1) (e); 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 date that the record is created; and
  - (d) within 6 months after the end of the 5 year period for which the record was kept under paragraph (c), destroy or delete:
    - (i) each record; or
    - (ii) any parts of each record that relate to the results of drug or alcohol testing.

- (2) For regulation 11.250 of CASR, the directions in subsection (1) cease to be in force at the end of 31 March 2027.

## **8 Directions — non-DAMP organisation**

- (1) This section is made for regulation 11.245 of CASR.

### *Implementation and review of DAMP-like program*

- (2) Subject to subsection (3), a non-DAMP organisation that has a DAMP-like program must meet the requirements of regulations 99.080 and 99.085 of CASR applied as if a reference in those regulations:
- (a) to the DAMP organisation were a reference to the non-DAMP organisation; and
  - (b) to a DAMP were a reference to a DAMP-like program; and
  - (c) to a SSAA employee of the DAMP organisation were a reference to an employee of the non-DAMP organisation who performs, or is available to perform, a SSAA for the DAMP organisation; and
  - (d) to a DAMP supervisor were a reference to a DAMP-like program supervisor.
- (3) During any implementation by the DAMP organisation of its DAMP to give effect to the matters mentioned in subregulation 99.065 (2) of CASR regarding an employee of the non-DAMP organisation, subsection (2) does not apply to the non-DAMP organisation to the extent that it must meet the requirements of regulation 99.080 of CASR, applied in accordance with subsection (2), to give effect to the matters mentioned in subregulation 99.065 (2) regarding the employee.

### *Availability of DAMP-like program*

- (4) A non-DAMP organisation that has a DAMP-like program must make the DAMP-like program available to each employee of the non-DAMP organisation who performs, or is available to perform, applicable SSAA for a DAMP organisation.

### *Provision of records and making of CASA-directed changes*

- (5) A non-DAMP organisation that has a DAMP-like program must comply with:
- (a) a request by CASA to provide CASA with:
    - (i) specified information and records, demonstrating that the organisation has developed and implemented a DAMP-like program; and
    - (ii) a copy of the DAMP-like program that is being implemented; and
  - (b) any other information and records specified by CASA that are relevant to the non-DAMP organisation ensuring appropriate development, implementation and enforcement of a DAMP-like program; and
  - (c) any direction by CASA to do any of the following:
    - (i) make a change specified by CASA to a provision in the organisation's DAMP-like program;
    - (ii) prepare a new DAMP-like program that complies with the requirements of regulation 99.045 of CASR applied in accordance with section 4 of this instrument;
    - (iii) submit any proposed changes to the organisation's DAMP-like program or submit a newly prepared DAMP-like program, as the case may be, to CASA.
- (6) For regulation 11.250 of CASR, the directions in this section cease to be in force at the end of 30 September 2021.

# Notes to CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019

## Note 1

*CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019* (in force under section 94 of the *Civil Aviation Act 1988* and regulations 11.160, 11.205 and 11.245 of the *Civil Aviation Safety Regulations 1998*) as shown in this compilation is amended as indicated in the tables below.

### Table of instruments

Title	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
CASA EX70/19 Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019	1 November 2019 (see F2019L01414)	2 November 2019 (see s. 2)	—
CASA EX19/20 Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Amendment Instrument 2020	10 February 2020 (see F2020L00114)	11 February 2020 (see s. 2)	—

### Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
s. 2	am. F2020L00114
s. 5	am. F2020L00114
s. 6	am. F2020L00114
s. 7	am. F2020L00114
s. 8	am. F2020L00114