

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX19/20 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Amendment Instrument 2020

Purpose

The purpose of *CASA EX19/20 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Amendment Instrument 2020* (the **instrument**) is to amend instrument *CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019* (**CASA EX70/19**) so that CASA EX70/19 repeals at the end of 31 March 2027 instead of at the end of 30 September 2021. This will ensure that the directions issued under CASA EX70/19 to a DAMP organisation (as defined in subregulation 99.010 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR**)) continue to be in force until the end of 31 March 2027.

Under CASA EX70/19, the Civil Aviation Safety Authority (**CASA**) granted exemptions to DAMP organisations from compliance with subregulation 99.030 (4) and regulation 99.035 of CASR, to the extent specified in that instrument. The exemptions are subject to conditions. These exemptions and conditions will continue to be in force until the end of 30 September 2021.

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 CASR.

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), an exemption may be granted to a person or a class of persons.

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

Under subregulation 11.170 (3) of CASR, in deciding whether to grant 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 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.

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245 (1) (a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245 (2) provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions.

Under paragraph 11.250 (a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255 of CASR, it is an offence of strict liability to contravene a direction under regulation 11.245.

Part 99 of CASR is made for section 34 of the Act and prescribes a scheme for the regulation of alcohol and certain drug use by persons conducting safety sensitive aviation activities. Part 99 provides for the implementation of drug and alcohol management plans that comply, or purport to comply, with the requirements of regulation 99.045 of CASR (**DAMPs**).

For a further explanation of CASR provisions regulating DAMPs and their implementation, and the content of CASA EX70/19, see the Explanatory Statement for CASA EX70/19.

Under subsection 33 (3) of the *Acts Interpretation Act 1901* (the **AIA**), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

Subsection 7 (1) of CASA EX70/19 sets out directions relating to the keeping and disposal of certain records by DAMP organisations. Consistent with CASA's intention, subsection 7 (2) of CASA EX70/19 states that the directions in subsection 7 (1) cease to be in force at the end of 31 March 2027. However, paragraph 2 (b) of CASA EX70/19 states that CASA EX70/19 is repealed at the end of 30 September 2021.

Overview of instrument

In accordance with subsection 33 (3) of the AIA, the instrument amends CASA EX70/19.

The key amendment made by the instrument is to change the time of repeal of CASA EX70/19 from the end of 30 September 2021 to the end of 31 March 2027. This amendment is required so that the directions relating to record keeping and disposal that are in section 7 of CASA EX70/19 remain in force until the end of 31 March 2027. As a consequence, the instrument also amends CASA EX70/19 to include provisions specifying that the section setting out the exemptions (section 5), the section setting out the exemptions' conditions (section 6) and a section setting out directions (section 8) will cease to be in force at the end of 30 September 2021.

The instrument also substitutes the Note in section 2 (the duration provision) with a new Note. The instrument also makes 2 technical amendments.

The instrument is an amending instrument and does not incorporate any documents by reference.

Content of instrument

Section 1 states the name of the instrument.

Section 2 states the commencement of the instrument.

Section 3 states that CASA EX70/19 is amended as set out in Schedule 1.

In the following item descriptions, a reference to a section, subsection or paragraph is a reference to a section, subsection or paragraph of CASA EX70/19.

Item 1 of Schedule 1 amends paragraph 2 (b) to change the time CASA EX70/19 is to be repealed from the end of 30 September 2021 to the end of 31 March 2027.

Item 2 of Schedule 1 substitutes the Note at the end of section 2. The new Note states that the exemptions in section 5, the exemptions' conditions in section 6, and the directions in section 8 will cease at the end of 30 September 2021. It also states that the directions in section 7 are in force until the repeal of CASA EX70/19.

Item 3 of Schedule 1 inserts a new subsection 5 (5) stating that section 5 ceases to be in force at the end of 30 September 2021.

Item 4 of Schedule 1 is a technical renumbering amendment that is required because Item 5 inserts a new subsection (2) into section 6.

Item 5 of Schedule 1 inserts a new subsection 6 (2) stating that section 6 ceases to be in force at the end of 30 September 2021.

Item 6 of Schedule 1 is a technical amendment that clarifies that the directions in section 7 also apply to a DAMP organisation that was previously exempt under section 5 from specified provisions of CASR.

Item 7 of Schedule 1 inserts a new subsection 8 (6) that states, for regulation 11.250, the directions in section 8 cease to be in force at the end of 30 September 2021.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument is a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The instrument amends CASA EX70/19, which was registered as a legislative instrument. Therefore, the instrument is also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA is satisfied that no consultation is appropriate, or reasonably practicable, for the instrument for section 17 of the LA. The instrument makes amendments to CASA EX70/19, to ensure that particular directions given in that instrument are valid for the period intended by CASA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the instrument amends an exemption and direction instrument. Such instruments are covered by a standing

agreement between CASA and OBPR under which a RIS is not required for exemptions or directions (OBPR 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 the day after it is registered, and will be automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

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The 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 purpose of the legislative instrument (the *instrument*) is to amend *CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019 (CASA EX70/19)*.

The instrument amends CASA EX70/19 to change the time CASA EX70/19 will be repealed from the end of 30 September 2021 to the end of 31 March 2027. The purpose of this amendment is to ensure that, as intended by the Civil Aviation Safety Authority, the directions relating to record keeping and disposal that are issued under CASA EX70/19 to a DAMP organisation (as defined in regulation 99.010 of the *Civil Aviation Safety Regulations 1998 (CASR)*) continue to be in force until the end of 31 March 2027.

CASA EX70/19 will continue to exempt a DAMP organisation from subregulation 99.030 (4) and regulation 99.035 of CASR, to the extent specified in that instrument, until the end of 30 September 2021.

In addition to the amendments described above, the instrument amends CASA EX70/19 to state when the section setting out the exemptions, the section setting out the exemptions' conditions and a section setting out directions will cease to be in force. The instrument also makes 2 technical amendments.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority