



# Australian Government

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## Civil Aviation Safety Authority

Instrument number CASA EX81/20

I, WARREN CRAIG MARTIN, Executive Manager, Regulatory Services & Surveillance, 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 Services & Surveillance

27 May 2020

### **CASA EX81/20 — Implementation of Drug and Alcohol Management Plans (Micro-businesses and DAMP Organisations) Exemption 2020**

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#### **1 Name**

This instrument is *CASA EX81/20 — Implementation of Drug and Alcohol Management Plans (Micro-businesses and DAMP Organisations) Exemption 2020*.

#### **2 Duration**

This instrument:

- (a) commences on 1 June 2020; and
- (b) is repealed at the end of 31 May 2023.

#### **3 Repeal of instrument CASA EX05/18**

Instrument *CASA EX05/18 — Implementation of Drug and Alcohol Management Plans Exemption 2018* is repealed.

#### **4 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, including the following terms defined in regulation 99.010 of CASR: *accident, applicable SSAA, DAMP contact officer, DAMP or drug and alcohol management plan, DAMP organisation, employee, serious incident, SSAA, SSAA employee, testable drug*.

In this instrument:

**CASA Micro-business DAMP** means the *CASA Micro-business Drug and Alcohol Management Plan (DAMP)* published by CASA, as existing from time to time.

*Note* The latest version of the CASA Micro-business DAMP is available on the CASA website at <https://www.casa.gov.au>, as at commencement of this instrument, it was available at <https://www.casa.gov.au/safety-management/standard-page/damp-exemption-micro-businesses>.

**contractor**, of a non-DAMP organisation, means a person, or the employee of a person, who is:

- (a) a party to a contract with the organisation; or
- (b) a subcontractor.

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

**exempted provisions** means regulations 99.035 and 99.040, and paragraph 99.045 (d), of CASR.

**generic SSAA** means the SSAA mentioned in paragraphs (e), (f), (h), (i), (j), (k) and (l) of subregulation 99.015 (2) of CASR.

*Note* These provisions relate to aircraft refuelling, airport security, aircraft baggage handling, air traffic control, flight information and search and rescue alert services, and aerodrome fire fighting. The effect of this definition and the definition of **micro-business employee**, for a micro-business, is that persons providing SSAA services, other than those contracted with other organisations to provide DAMP organisations with **generic SSAA**, must be counted as employees of the micro-business.

**micro-business** means a DAMP organisation that:

- (a) has not more than 10 micro-business employees who:
  - (i) are reasonably likely to perform an applicable SSAA at least 2 or more times every 90 days for the micro-business; or
  - (ii) are available to perform an applicable SSAA for the micro-business; and
- (b) is not engaged in, and does not provide services to, any regular public transport operation.

**micro-business DAMP**, of a micro-business DAMP organisation, means the micro-business DAMP adopted by the organisation under this instrument, or (in the case of someone to whom section 7 applies) instrument number CASA EX66/18.

**micro-business DAMP organisation** means a person that is complying with the conditions on the exemption mentioned in section 6, or (in the case of someone to whom section 7 applies) instrument number CASA EX66/18.

**micro-business employee**, for the definition of **micro-business**, is an employee of the micro-business who is not a person who has a contract of service or a contract for service with another organisation to provide DAMP organisations generally with generic SSAA.

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

**subcontractor** means a person who is a party to:

- (a) a contract with a contractor of a non-DAMP organisation within the meaning of paragraph (a) of the definition **contractor** in this section; or
- (b) a contract with another subcontractor (under a previous application of this definition).

## 5 Exemption — micro-business

- (1) A micro-business is exempt from compliance with each provision of Subpart 99.B of CASR.

*Note* The exemption does not apply if the number of micro-business employees is more than 10 — see definition of **micro-business**.

- (2) The exemption is subject to the conditions in section 6.

## **6 Conditions — micro-business**

- (1) The micro-business must:
- (a) if existing at the date of commencement of this instrument — by the end of 30 June 2020:
    - (i) adopt as its DAMP a DAMP in the form of the CASA Micro-business DAMP, as it exists on the date this instrument commences; and
    - (ii) give CASA a copy of the adopted DAMP; and
    - (iii) tell CASA, in writing, the name and contact details of its DAMP contact officer; and
  - (b) if it came into existence after the date of commencement of this instrument:
    - (i) immediately adopt as its DAMP a DAMP in the form of the CASA Micro-business DAMP; and
    - (ii) within 14 days of its adoption — give CASA a copy of the adopted DAMP and tell CASA, in writing, the name and contact details of its DAMP contact officer.

*Note* The CASA Micro-business DAMP is as existing from time to time — see definition of **CASA Micro-business DAMP**. The micro-business must, therefore, adopt a DAMP in the form of the latest version of the CASA Micro-business DAMP published by CASA.

- (2) If the micro-business receives a notice from CASA to adopt a DAMP in the form of a new version of the CASA Micro-business DAMP, the micro-business must, within 28 days of receiving the notice, adopt as its DAMP a DAMP in the form of the CASA Micro-business DAMP, as it exists on the date the notice was received.
- (3) The micro-business must, as if the DAMP of the micro-business were a DAMP referred to in CASR:
- (a) fully cooperate with CASA for regulations 99.090 and 99.095 of CASR; and
  - (b) at all times comply with the terms of its DAMP.
- (4) For subsections (1) and (2), a DAMP must be adopted in writing and signed by the most senior executive manager of the business (however described).

## **7 Transitional provision — adoption of CASA Micro-business DAMP under CASA EX66/18**

A micro-business that, as at the time immediately before the commencement of this instrument, has adopted as its DAMP the CASA Micro-business DAMP, in accordance with section 5 of instrument number *CASA EX66/18*, is taken to have complied with section 6 (1).

## **8 Exemption — performance of applicable SSAA by DAMP organisation, or micro-business DAMP organisation, for a DAMP organisation**

- (1) This section applies if:
- (a) there is a contract between a DAMP organisation (the *first organisation*) and another DAMP organisation (the *second organisation*) in relation to the performance of an applicable SSAA for the second organisation; and
  - (b) a SSAA employee of the first organisation performs, or is available to perform, the applicable SSAA for the second organisation; and

- (c) the second organisation is satisfied on reasonable grounds that the first organisation is implementing the first organisation's DAMP in relation to the employee.
- (2) This section also applies if:
  - (a) there is a contract between a micro-business DAMP organisation (the ***first organisation***) and a DAMP organisation (the ***second organisation***) in relation to the performance of an applicable SSAA for the second organisation; and
  - (b) a SSAA employee of the first organisation performs, or is available to perform, the applicable SSAA for the second organisation; and
  - (c) the second organisation is satisfied on reasonable grounds that the first organisation is complying with the terms of the first organisation's micro-business DAMP in relation to the employee.
- (3) The second organisation is exempt from compliance with the exempted provisions, to the extent that compliance requires implementation of the second organisation's DAMP in relation to the SSAA employee's performance of, or availability to perform, the applicable SSAA for the second organisation.
- (4) The exemption is subject to the condition that the second organisation must:
  - (a) keep records that evidence its grounds for the satisfaction mentioned in paragraph (1) (c) or (2) (c); 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) destroy or delete each record within 6 months after the end of the 5-year period for which the record was kept under paragraph (c); and
  - (e) implement its DAMP in relation to the SSAA employee to the extent that the DAMP gives effect to the matters mentioned in subregulation 99.065 (2) of CASR; and
  - (f) notify the first organisation in writing of any implementation of the second organisation's DAMP under paragraph (e).

*Note* Subregulation 99.065 (2) requires that a DAMP include requirements to not permit a SSAA employee to perform, or be available to perform, a 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.

## **9 Exemption — emergency**

- (1) This section applies if:
  - (a) there is a contract between an emergency services organisation and a DAMP organisation in relation to the performance of an applicable SSAA for the DAMP organisation; and
  - (b) the emergency services organisation is a non-DAMP organisation; and
  - (c) an employee of the emergency services organisation performs, or is available to perform, the applicable SSAA for the DAMP organisation in response to an emergency; and

- (d) it is not reasonably practicable for the DAMP organisation to implement its DAMP in relation to the employee's performance of, or availability to perform, the applicable SSAA in response to the emergency.
- (2) The DAMP organisation is exempt from compliance with the exempted provisions, to the extent that compliance requires implementation of the DAMP organisation's DAMP in relation to the employee's performance of, or availability to perform, the applicable SSAA for the DAMP organisation in response to the emergency.
- (3) The exemption in subsection (2) is subject to the following conditions:
  - (a) the DAMP organisation must give the employee a drug and alcohol risk mitigation notice not more than 24 hours before the employee performs, or is available to perform, the applicable SSAA for the DAMP organisation in response to the emergency;
  - (b) the DAMP organisation must make a contemporaneous record of the following information:
    - (i) the name and address of the employee to whom the notice is given;
    - (ii) the date and time the employee is given the notice;
    - (iii) details of the emergency in relation to which the notice is given;
  - (c) if the DAMP organisation has reasonable grounds to believe the employee is adversely affected by a drug or alcohol while performing, or available to perform, the applicable SSAA in response to the emergency, the DAMP organisation must not allow the employee to perform, or be available to perform, the SSAA in response to the emergency whilst the reasonable grounds continue to exist;
  - (d) if an accident or serious incident happens, involving the employee, while the employee is performing, or available to perform, the applicable SSAA in response to the emergency, the DAMP organisation must not allow the employee to perform, or be available to perform, the SSAA in response to the emergency during the period of 32 hours after the time the accident or incident happened.
- (4) In this section, ***drug and alcohol risk mitigation notice*** means a notice stating the following:
  - (a) the employee must not perform, or be available to perform, the applicable SSAA in response to the emergency if the employee is aware that he or she is adversely affected by a drug or alcohol;
  - (b) if any of the following applies, the employee is encouraged to disclose this information to the DAMP organisation:
    - (i) the employee is taking a testable drug;
    - (ii) the employee has consumed alcohol within 24 hours before the employee performs, or is available to perform, the applicable SSAA in response to the emergency;
  - (c) if the DAMP organisation has reasonable grounds to believe the employee is adversely affected by a drug or alcohol while performing, or available to perform, the applicable SSAA in response to the emergency, the DAMP organisation will not allow the employee to perform, or be available to perform, the SSAA in response to the emergency whilst the reasonable grounds continue to exist;

- (d) if an accident or serious incident happens, involving the employee, while the employee is performing, or available to perform, the applicable SSAA in response to the emergency, the DAMP organisation will not allow the employee to perform, or be available to perform, the SSAA in response to the emergency during the period of 32 hours after the time the accident or incident happened;
- (e) under Subpart 99.C of CASR, CASA may carry out a drug or alcohol test in relation to a person who performs, or is available to perform, an applicable SSAA;
- (f) for drug or alcohol testing under Subpart 99.C of CASR:
  - (i) testable drugs include opiates, cannabis, cocaine and amphetamines; and
  - (ii) the permitted level for alcohol is a level of alcohol of less than 0.02 grams of alcohol in 210 litres of breath.

***emergency*** means an event or situation, requiring a significant and coordinated response, which:

- (a) endangers, or threatens to endanger, the safety or health of persons or animals; or
- (b) destroys or damages, or threatens to destroy or damage, property.

***emergency services organisation*** means the Australian Federal Police, or a State or Territory police service, fire and rescue service, ambulance service, emergency service or volunteer rescue organisation, or other similar organisation.

***opiate*** includes codeine and morphine.

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