Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX83/26 — Implementation of DAMPs (Provision of Safety-Sensitive Aviation Activities by Non-DAMP Organisations) Instrument 2026

Purpose

The purpose of *CASA EX83/26 — Implementation of DAMPs (Provision of Safety-Sensitive Aviation Activities by Non-DAMP Organisations) Instrument 2026* (the ***instrument***) is to permit organisations that would otherwise be required to implement a drug and alcohol management plan (***DAMP***) in relation to contractors who perform certain safety-sensitive aviation activities (***SSAAs***) for them to instead rely on an approved program for the management of drugs and alcohol usage put in place by the organisation that provides that activity and those contractors, but only in specified circumstances.

The instrument achieves this purpose by exempting certain organisations (***DAMP organisations***) from the obligations under subregulation 99.030(4) and regulation 99.035 of the *Civil Aviation Safety Regulations 1998* (***CASR***) to implement their DAMP in relation to a contractor performing certain SSAAs for the organisations if the following circumstances apply:

(a) the organisation providing the contractor (a non-DAMP organisation) has a program in place for the management of drugs and alcohol usage by its employees and contractors that complies with certain requirements (a DAMP-like program);

(b) that DAMP-like program has been approved by the Civil Aviation Safety Authority (***CASA***);

(c) there is a contractual arrangement between the 2 organisations in relation to those contractors that the CASA-approved DAMP-like program is to be implemented in relation to the contractors provided to the DAMP organisation, instead of its own DAMP. However, under such a contractual arrangement, the DAMP organisation must still apply its own DAMP in specified circumstances such as where an employee or contractor of the non-DAMP organisation is suspected of being under the influence of drugs or alcohol, and in such circumstances, the exemptions granted by the instrument will not apply.

The instrument also includes safeguards, in the form of directions made under regulation 11.245 of CASR, requiring DAMP organisations to comply with notification and record-keeping requirements and directions applying to non-DAMP organisations, which mirror certain provisions of Part 99 of CASR that would normally only apply to DAMP organisations.

The rationale for the making of the instrument is to remove the cost and administrative burden arising from duplication when DAMP organisations are required to implement their own DAMP when another organisation has its own effective plan in place for the management of drugs and alcohol usage, and when employees or contractors who provide the relevant services to multiple organisations are otherwise subject to multiple DAMPs.

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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.

Authorisations
Section 3 of the Act defines ***civil aviation authorisation*** as an authorisation under the Act or the regulations to undertake a particular activity (whether the authorisation is called an Air Operator's Certificate, permission, authority, licence, certificate, rating or endorsement or is known by some other name). This is relevant to the definition in the instrument of ***DAMP-like program*** which requires CASA's approval.

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, CASA may grant an exemption from compliance with a provision of the regulations.

Under subregulation 11.160(2), 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), 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, on application by a person, 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 reissue an exemption on its own initiative.

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.

Directions
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), for subsection 98(5A) of the Act, 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 (with a maximum penalty of 50 penalty units) to contravene a direction under regulation 11.245.

Obligation to develop and implement a drug and alcohol management plan
Part 99 of CASR (Drug and alcohol management plans and testing), made under section 34 of the Act, prescribes a scheme for the regulation of alcohol and certain drug use by persons who perform, or who are available to perform, SSAAs. The SSAA concept is central to the

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application of the rules relating to drug and alcohol testing in Part 99. The term ***applicable SSAA*** is defined in regulation 99.010 of CASR by reference to the kinds of activities that are set out in regulation 99.015 of CASR, which include activities performed in aerodrome testing areas (for example, the tarmac and related areas) as well as flight crew duties, maintenance, aircraft refuelling, security, baggage handling and air traffic control.

Subpart 99.B of CASR deals with DAMPs. A ***DAMP*** is defined in regulation 99.010 as meaning a drug and alcohol management plan that complies, or purports to comply, with the requirements of regulation 99.045 of CASR relating to the content of a DAMP.

Under subregulation 99.030(1), an organisation must develop a DAMP if it has employees or contractors who perform applicable SSAAs (***SSAA employees***) and is on a list of the kinds of organisations defined in subregulation 99.030(2), for example, Air Operator's Certificate holders (***AOC holders***), maintenance organisations, aerodrome operators and air traffic service providers.

Under regulation 99.035, a person who is required to develop a DAMP must implement it by giving effect to regulation 99.080 of CASR and making the DAMP available to the person's SSAA employees.

Under paragraph 99.045(a), a DAMP organisation's DAMP must apply to all SSAA employees of the organisation. ***Employee*** is defined in regulation 99.010 to include ***DAMP contractors***.

Under paragraph 99.045(b), a DAMP must include a drug and alcohol education program, a drug and alcohol testing program and a drug and alcohol response program (for example, in relation to rehabilitation).

Subregulation 99.065(2) of CASR requires that a DAMP include requirements to not permit an SSAA employee to perform, or be available to perform, an SSAA if either or both of the following occur:

- a DAMP supervisor suspects the employee's faculties may be impaired due to the employee being under the influence of testable drugs or of alcohol
- the SSAA employee is involved in an accident or serious incident while performing the SSAA and either a test has not been conducted or the results of such a test have not been notified to the DAMP organisation.

Regulation 99.080 sets out requirements for implementation of a DAMP, which include SSAA employees attending the organisation's drug and alcohol education program.

Overview of instrument

The effect of the instrument is to exempt a DAMP organisation from the following requirements of CASR:

(a) the requirement to have a DAMP in place in relation to a non-DAMP organisation's employee or contractor who performs, or is available to perform, an applicable SSAA for the DAMP organisation (under subregulation 99.030(4));

(b) the requirement to implement its DAMP in relation to those employees or contractors of the non-DAMP organisation (under regulation 99.035).

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The exemptions apply only if the non-DAMP organisation has its own DAMP-like program that complies with regulation 99.045 (as applied with necessary modifications) and is approved in writing by CASA and that the DAMP organisation has agreed, by contractual arrangement, is to apply to these employees or contractors instead of its own DAMP.

Safeguards are included in the instrument in the form of directions made under regulation 11.245.

CASA recognises that DAMP organisations may have difficulty in devising effective DAMPs for employees and contractors of non-DAMP organisations who provide SSAAs for DAMP organisations under contract, for example, a ground handling agent contracted to an AOC holder. Many industry stakeholders such as ground handling agents, other ground service providers and regional aerodromes now have their own DAMP-like programs in place for their employees and contractors. The instrument would mean that these employees or contractors who provide SSAAs to multiple DAMP organisations would not be subject to multiple DAMPs. CASA considers it appropriate to continue to offer these businesses a simpler avenue for compliance without sacrificing safety outcomes.

CASA has assessed the impact of the instrument on aviation safety and is satisfied that, in all the circumstances, an acceptable level of aviation safety is preserved by the directions applying under the instrument.

The instrument effectively reissues the exemptions granted in *CASA EX93/23 — Implementation of DAMPs (Provision of Safety-Sensitive Aviation Activities by Non-DAMP Organisations) Instrument 2023*. The exemptions in that instrument expire at the end of 30 September 2026, but that instrument also contains directions relating to record keeping that continue after the exemptions expire. Those record-keeping obligations will cease to be in force at the end of 31 March 2032.

Content of instrument

Section 1 gives the instrument its name.

Section 2 sets out the duration of the instrument. It provides that it commences on 1 October 2026. There are 2 different repeal dates: one repeals section 5, subsection 6(1) and section 7 at the end of 30 September 2029. The remainder of the instrument is repealed at the end of 31 March 2035. This later repeal date is fixed for the record-keeping provisions of the instrument under subsection 6(2) to enable the records to be able to be kept for their full term which could potentially extend to 8 years after the commencement of the instrument.

Section 3 contains definitions of terms used in the instrument. A ***non-DAMP organisation*** is defined as a person other than a DAMP organisation. A ***DAMP-like program*** is defined as a plan of a non-DAMP organisation that complies with regulation 99.045 (as applied under section 4 of the instrument), as if the organisation were a DAMP organisation, and that is approved in writing by CASA.

Given that such an approval by CASA constitutes a civil aviation authorisation under the Act, a decision by CASA to refuse to approve a plan of a non-DAMP organisation as a DAMP-like program would be subject to a merits review before the Administrative Review

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Tribunal under section 31 of the Act or regulation 201.004 (Table 201.004, item 1) of CASR. Under regulation 11.056 of CASR, an approval may be granted subject to conditions.

Section 4 sets out how certain provisions of Part 99 of CASR are to apply (and are essentially modified) if the instrument requires or specifies compliance by a non-DAMP organisation with those provisions in relation to its DAMP-like program.

Section 5 sets out the exemptions under the instrument. Subsection 5(1) provides that the section applies in relation to a DAMP organisation if:

(a) a written contract exists between the DAMP organisation and a non-DAMP organisation under which the non-DAMP organisation provides an applicable SSAA to the DAMP organisation, an employee or contractor of the non-DAMP organisation performs, or is available to perform, the applicable SSAA under a DAMP-like program and the DAMP-like program (instead of the DAMP of the DAMP organisation) is to apply in relation to the SSAA; and

(b) the DAMP organisation reasonably believes that the non-DAMP organisation is implementing its DAMP-like program in relation to the employee or contractor.

The obligation on the non-DAMP organisation to have a DAMP-like program that covers the employee or contractor is ongoing in nature, so that the DAMP organisation cannot rely on the exemption at a particular point in time in relation to an employee or contractor of the non-DAMP organisation who performs, or is available to perform, applicable SSAA for the DAMP organisation, unless it is satisfied at that point in time that the non-DAMP organisation's DAMP-like program is being implemented in relation to the employee or contractor.

Under subsection 5(2), a DAMP organisation to which the section applies is exempt from the following provisions:

- subregulation 99.030(4), to the extent that it requires the DAMP organisation to comply with paragraph 99.045(d) in relation to a non-DAMP organisation's employee or contractor who performs, or is available to perform, an applicable SSAA for the DAMP organisation
- regulation 99.035, 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 or contractor who performs, or is available to perform, an applicable SSAA for the DAMP organisation.

Subsection 5(3) disapplies the exemptions insofar as a DAMP organisation implements its DAMP regarding the employee or contractor of the non-DAMP organisation to give effect to the matters mentioned in subregulation 99.065(2). A note explains that these requirements relate to not allowing an SSAA employee to perform, or be available to perform, an applicable SSAA if a DAMP supervisor suspects an employee's faculties may be impaired due to the person being under the influence of a testable drug or of alcohol, or if there is an accident or serious incident involving such an employee.

Section 6 sets out the directions applying in relation to DAMP organisations. Under subsection 6(1), if such an organisation implements its DAMP regarding an employee or contractor of the non-DAMP organisation (that is, in circumstances where the exemption does not apply), the DAMP organisation must notify the non-DAMP organisation of that fact

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and notify CASA if it prevents the employee or contractor from performing the applicable SSAA. These notifications must be given as soon as practicable.

Subsection 6(2) sets out record-keeping obligations applying to a DAMP organisation. Such an organisation must keep records of the grounds for its reasonable belief, under paragraph 5(1)(b), that the non-DAMP organisation is implementing its DAMP-like program in relation to the employee or contractor. Such records must be kept in a secure location for 5 years from the date that the record is created and either the record, or any parts of the record that relate to the results of drug or alcohol testing, must be deleted within the 6 months following that 5-year period.

Section 7 imposes obligations on a non-DAMP organisation in relation to its DAMP-like program that are equivalent to those imposed on a DAMP organisation under Part 99 of CASR in relation to the implementation and review of DAMP-like programs, audit of a non-DAMP organisation and the powers of CASA to ensure the suitability of DAMP-like programs.

Subsection 7(1) provides for implementation and review of a DAMP-like program. A non-DAMP organisation that has a DAMP-like program must meet the requirements of regulations 99.080 and 99.085 of CASR as applied under section 4 of the instrument.

Subsection 7(2) provides, however, that if a DAMP organisation implements its DAMP regarding an employee or contractor of a non-DAMP organisation as mentioned in subsection 5(3), the non-DAMP organisation is not required to meet the requirements of regulation 99.080 of CASR to the extent that the DAMP gives effect to the matters mentioned. This avoids duplication of the requirements that would apply to the employee or contractor if the DAMP organisation decides, for example, to action the DAMP supervisor process under subregulation 99.065(2).

Subsection 7(3) requires a non-DAMP organisation that has a DAMP-like program to make it available to each of its employees or contractors who perform, or are available to perform, an applicable SSAA for the DAMP organisation. This requirement is similar to the requirement under regulation 99.040 of CASR for DAMP organisations to make their DAMPs available to their employees.

Subsection 7(4) requires a non-DAMP organisation that has a DAMP-like program to comply with certain requests by CASA, including requests to provide it with a copy of the DAMP-like program and related documents, and to make changes to or prepare a new DAMP-like program. These provisions are similar to the requirements under regulations 99.090 (audits of the organisation) and 99.095 (CASA powers to ensure compliance), but for non-DAMP organisations and their DAMP-like programs.

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.

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The instrument exempts DAMP organisations (a class of persons) from compliance with subregulation 99.030(4) and regulation 99.035 to the extent specified. In addition, the instrument issues directions to DAMP organisations, and to non-DAMP organisations in relation to their DAMP-like programs. 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, the instrument will be repealed at the end of 31 March 2035, 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 the instrument.

Consultation
The instrument is being issued to replace the exemptions in the previous instrument, which expire at the end of 30 September 2026. Extensive consultation occurred before the making of the first iteration of this instrument, that is, *CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019*.

Stakeholder engagement regarding renewal of a further iteration of this instrument, *CASA EX112/21 — Implementation of DAMPs (Provision of Safety-Sensitive Aviation Activities by Non-DAMP Organisations) Instrument 2021*, was held at the GO SAFE forum on 20 and 21 June 2023 at the CASA Melbourne office, where the issue of renewal of the existing instrument was discussed with relevant industry stakeholders across various airlines, airports, and ground handling agencies. Those that were already operating under the exemption indicated no issues and the remainder of stakeholders showed interest in how the instrument could be utilised.

This instrument contains substantially the same content as the previous instrument with the only changes being minor or machinery in nature. It is essential to issue the instrument to provide continued relief to DAMP and non-DAMP organisations from compliance with provisions of CASR that would otherwise impose significant regulatory and financial burdens. It is anticipated that changes will be made to Part 99 of CASR in the future to cover the subject matter of the instrument and at that stage the instrument will no longer be needed. In the meantime, relief to industry is provided in the form of the instrument.

Accordingly, 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

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(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.

The instrument is likely to have a beneficial effect on organisations to which it applies (both DAMP organisations and non-DAMP organisations) by removing the cost and administrative burden to industry in requiring a DAMP organisation to cover contracted employees under its DAMP when the non-DAMP organisation has its own effective plan in place for the management of drugs and alcohol usage by these persons.

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

Office of Impact Analysis
CASA has assessed the impact of the instrument against the Australian Government Impact Analysis Framework. As the instrument replaces an expiring instrument with the same (or largely the same) provisions, there will be no change in the cost impact on individuals, businesses or the community. As the impact is below $20m over 10 years and there are no disproportionate impacts, CASA has made the assessment that no Impact Analysis is required.

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 October 2026 and is repealed at the end of 31 March 2035, subject to the qualification that the exemptions under section 5, and the directions under subsection 6(1) and section 7, are repealed at the end of 30 September 2029.

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Attachment 1

Statement of Compatibility with Human Rights

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

CASA EX83/26 — Implementation of DAMPs (Provision of Safety-Sensitive Aviation Activities by Non-DAMP Organisations) Instrument 2026

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 purpose of this legislative instrument is to grant exemptions under Division 11.F.1 of the *Civil Aviation Safety Regulations 1998* (***CASR***).

Subpart 99.B of CASR deals with drug and alcohol management plans (***DAMPs***), being plans that comply, or purport to comply, with the requirements of regulation 99.045 of CASR. Subpart 99.B requires a person who, under subregulation 99.030(1) of CASR, is required to have a DAMP (a ***DAMP organisation***) to implement its DAMP in relation to employees of the organisation who perform, or are available to perform, specified safety-sensitive aviation activities (the ***applicable SSAAs***). Under Part 99 of CASR, an employee of a DAMP contractor who performs applicable SSAAs for a DAMP organisation is an SSAA employee of the DAMP organisation.

Examples of DAMP organisations are Air Operator's Certificate holders, operators of certified aerodromes, persons approved as an aerodrome rescue and firefighting service and air traffic services training providers. An example of a non-DAMP organisation is a ground handling agent.

The legislative instrument exempts a DAMP organisation that, under a contract with an organisation other than a DAMP organisation (a ***non-DAMP organisation***), receives an applicable SSAA provided by an employee or contractor of the non-DAMP organisation, from compliance with:

- subregulation 99.030(4), to the extent that the provision requires the DAMP organisation to comply with paragraph 99.045(d) of CASR in relation to the non-DAMP organisation's employee or contractor
- 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 or contractor.

The exemptions enable the DAMP organisation to rely on the implementation by the non-DAMP organisation of a program (a ***DAMP-like program***) that complies with CASR and is approved by the Civil Aviation Safety Authority (***CASA***), so that there is no

duplication in DAMP requirements with which an employee or contractor of a non-DAMP organisation that performs applicable SSAA for a DAMP organisation must comply.

Many non-DAMP organisations have plans in place for the management of drugs and alcohol for their employees and contractors. The instrument would also assist those employees or contractors who provide SSAAs to multiple DAMP organisations to no longer be subject to multiple DAMPs. However, the instrument does require the DAMP organisation to apply its DAMP in specified circumstances, such as where the employee or contractor is suspected of being under the influence of drugs or alcohol.

The legislative instrument includes directions, issued under regulation 11.245 of CASR, in relation to a DAMP organisation, including notification requirements and requirements for record keeping, and in relation to a non-DAMP organisation, including in relation to its implementation and review of its DAMP-like program, audits of the organisation and CASA's powers of ensuring the suitability of the program.

Human rights implications

This legislative instrument arguably engages with the right to work in Article 6 of the International Covenant on Economic, Social and Cultural Rights (***ICESCR***) and rights in work in Article 7 of the ICESCR by reducing the range of circumstances in which a person may be required to submit to drug and alcohol testing. The change arguably engages negatively with rights in work by potentially reducing the level of health and safety in relevant workplaces if an employer does not identify that a person is working under the influence of drugs or alcohol. However, in practical terms, it is not expected that the instrument will have any substantial impact on this right, since the person will in any case have had to have undergone a test in the recent past.

This legislative instrument engages with the right to work and rights at work by potentially reducing the range of circumstances in which a person employed by a non-DAMP organisation with a DAMP-like program who performs SSAAs for multiple DAMP organisations may be required to submit to drug and alcohol testing. This is because, provided the DAMP organisations agree, the person may no longer be subject to multiple DAMPs.

Any risks associated with a potential reduction of the level of health and safety in relevant workplaces if an employer does not identify that a person is working under the influence of drugs or alcohol under its own DAMP are mitigated by the directions in the instrument for DAMP and non-DAMP organisations which ensure appropriate implementation, review and audit of, and compliance with, their DAMP-like programs. The directions in the instrument aim to manage the risks associated with alcohol and other drug impacts on aviation. A DAMP organisation may also include provisions in its contract with a non-DAMP organisation for additional onsite testing of all employees and contractors, for example, in the event of an accident or serious incident.

The engagement with the right to work and rights at work is reasonable and proportionate to the risks associated with the exemption and directions in the instrument.

This legislative instrument also engages positively with the right to privacy in Article 17 of the International Covenant on Civil and Political Rights by reducing the range of

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circumstances in which some persons working in the aviation industry may be required to submit to drug and alcohol testing.

Conclusion

This legislative instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate. It also promotes the protection of human rights by reducing circumstances in which drug and alcohol testing is conducted.

Civil Aviation Safety Authority

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