Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX84/26 — DAMP Implementation (Information) Exemption 2026

Purpose
The purpose of *CASA EX84/26 — DAMP Implementation (Information) Exemption 2026* (the ***instrument***) is to exempt a DAMP organisation, which has implemented a drug and alcohol management plan (***DAMP***), from a requirement under the *Civil Aviation Safety Regulations 1998* (***CASR***) to report certain information relating to its implementation of the DAMP, or a drug or alcohol test undergone by an SSAA employee of the organisation under Part 99 of CASR, to the Civil Aviation Safety Authority (***CASA***), subject to the organisation complying with stated conditions. The instrument, in effect, continues existing arrangements that end on 30 September 2026, under *CASA EX92/23 — DAMP Implementation (Information) Exemption 2023* (***CASA EX92/23***). Also, the instrument requires the organisation to protect the privacy of its SSAA employees when creating records of certain information, in compliance with the conditions.

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.

Requirement for DAMP organisation to provide certain information to CASA
Under subregulation 99.010(1) of CASR, a ***DAMP organisation*** is defined as a person that is required to have a DAMP under subregulation 99.030(1) of CASR. Under subregulation 99.030(1) of CASR, specified organisations involved in the aviation industry that have an employee or contractor who performs, or is available to perform, a safety-sensitive aviation activity is required to have a DAMP.

Under subsection 33(1) of the Act, ***safety-sensitive aviation activities*** means activities that impact directly or indirectly on the safety of:

(a) civil air operations in Australian territory; or
(b) the operation of Australian aircraft outside Australian territory.

Under subregulation 99.010(1), ***SSAA employee***, in relation to a DAMP organisation, means an employee of the organisation who performs, or is available to perform, an applicable SSAA.

Under subregulation 99.010(1), ***applicable SSAA*** is defined to mean a safety-sensitive aviation activity to which Part 99 of CASR applies under regulation 99.015 of CASR.

Under subsection 33(1) of the Act, ***drug or alcohol test*** means:

(a) a test of a body sample of a person to determine the presence (if any), but not the level, of alcohol or a testable drug in the sample; or
(b) a test of a body sample of a person to determine the presence (if any), and the level, of alcohol or a testable drug in the sample.

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Under subregulation 99.010(1), a ***DAMP reporting period*** is defined as the period of 6 months immediately before each 1 March and 1 September.

Under subregulation 99.100(1) of CASR, a DAMP organisation that has implemented a DAMP must provide specified information about the implementation to CASA in relation to each DAMP reporting period, or part of a DAMP reporting period, during which the DAMP was implemented.

Under subregulation 99.100(2), the information must be given in writing within 21 days after the end of the DAMP reporting period to which it relates.

Exemptions
Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations made under the Act. 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 the application of 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 11.205 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 (with a maximum penalty of 50 penalty units) for a person not to comply with an obligation 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.

Background
In instrument numbers CASA EX39/15, CASA EX143/17, CASA EX135/20 and CASA EX92/23, CASA granted an exemption to a DAMP organisation that implements a DAMP from compliance with the reporting requirements stated in subregulations 99.100(1) and (2). CASA continues to consider that the reporting requirements in the subregulations are not necessary and the exemption has no identifiable adverse impact on aviation safety. Consistent with this policy, the instrument continues to exempt a DAMP organisation that implements a DAMP from compliance with the reporting requirements, subject to its compliance with stated conditions.

One of the conditions requires the organisation to create records of the information mentioned in paragraphs 99.100(1)(a) to (l) in relation to each DAMP reporting period or part of a DAMP reporting period, for the organisation, during which its DAMP was implemented.

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Another condition requires the organisation, if requested in writing by CASA, to create records of other information relating to the organisation's implementation of a DAMP, or a drug or alcohol test undergone by an SSAA employee of the organisation under Part 99 of CASR, in relation to each DAMP reporting period or part of a DAMP reporting period, for the organisation, during which its DAMP was implemented. CASA may request the organisation to provide the information to CASA during any audit by CASA of the organisation's operation under regulation 99.090 of CASR. However, similar to the requirement stated in subregulation 99.100(3), the instrument requires that the records created in accordance with the conditions must not include any information in relation to an SSAA employee of the organisation that might identify the employee.

Document incorporated by reference
Under subsection 14(1) of the *Legislation Act 2003* (the ***LA***), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time.

The instrument incorporates by reference the information mentioned in paragraphs 99.100(1)(a) to (l). In accordance with section 10 of the *Acts Interpretation Act 1901* and section 13 of the LA, a reference in the instrument to CASR is a reference to CASR as in force from time to time. CASR is available for free on the Federal Register of Legislation.

Content of instrument
Section 1 states the name of the instrument.

Section 2 states the duration of the instrument.

Section 3 defines various terms used in the instrument. Other terms are defined in the Act or CASR Dictionary.

Section 4 exempts a DAMP organisation, which has implemented a DAMP, from compliance with subregulations 99.100(1) and (2).

Section 5 imposes conditions on the exemption, which contain requirements relating to the creation and retention of records and the protection of the privacy of SSAA employees of the organisation. As DAMP organisations are exempt from the requirements in subregulations 99.100(1) and (2) to provide information to CASA, the requirements to create and retain records containing the same information will assist CASA to conduct audits of the operation of DAMP organisation under regulation 99.090 of CASR.

Legislation Act 2003
Paragraph 98(5A)(a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft. Also, paragraph 98(5AA)(a) 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 applies to a class of persons, namely DAMP organisations. 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.

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Sunsetting
As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (in accordance with 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 30 September 2029, 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
During the consultation that happened during the post-implementation review by CASA of Part 99 of CASR, CASA received feedback from the aviation industry that the subject DAMP reporting requirements were too onerous, both administratively and financially. Also, the requirements placed a significant administrative burden on CASA in processing the information it received from DAMP organisations complying with the requirements. This led to CASA granting an exemption to a DAMP organisation from compliance with the requirements. CASA believes the exemption has not compromised aviation safety.

CASA has recently received a query from an aircraft operator concerning renewal of the instrument.

CASA still plans to amend Part 99 of CASR, following the post-implementation review of Part 99. This will include the repeal of the requirements. Once this happens, the exemption will no longer be required and will be repealed.

In these circumstances, CASA is satisfied that no further consultation is appropriate, or reasonably practicable, for the instrument for section 17 of the LA.

Sector risk, and 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) states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, 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.

Compared to compliance with the regulations, the instrument reduces the costs for DAMP organisations as they do not have to provide periodic reports to CASA. Instead, they only have to do so when requested in writing.

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As the instrument replaces an expiring instrument, with the same legislative effect, there will be no change to the economic and 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 and conditions, 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 Appendix 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

Making and commencement
The exemption 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 will be repealed at the end of 30 September 2029.

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Appendix 1

Statement of Compatibility with Human Rights

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

CASA EX84/26 — DAMP Implementation (Information) Exemption 2026

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 *CASA EX84/26 — DAMP Implementation (Information) Exemption 2026* (the ***instrument***) is to exempt a DAMP organisation, which has implemented a drug and alcohol management plan (***DAMP***), from a requirement under the *Civil Aviation Safety Regulations 1998* (***CASR***) to report certain information to the Civil Aviation Safety Authority. The relevant information relates to implementation of the DAMP, or a drug or alcohol test undergone by an employee of the organisation who performs, or is available to perform, an applicable safety-sensitive aviation activity under Part 99 of CASR.

The exemption is subject to the organisation complying with stated conditions relating to creation and retention of records containing the information. Also, the instrument requires the organisation to protect the privacy of its SSAA employees when creating records of certain information, in compliance with the conditions.

The instrument, in effect, continues existing arrangements that end on 30 September 2026, under *CASA EX92/23 — DAMP Implementation (Information) Exemption 2023*.

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