

Revision 0

### Drug and Alcohol Management Plans (DAMPs)

15 August 2024

#### General

Civil Aviation Authority (CAA) Advisory Circulars (ACs) contain information about standards, practices, and procedures that the Director has found to be an **acceptable means of compliance** with the associated rule.

Consideration will be given to other methods of compliance that are presented to the Director. When new standards, practices, or procedures are found to be acceptable they will be added to the appropriate AC.

#### Purpose

This AC explains the rules in Part 99, *Drug and Alcohol Management Programmes*, that give effect to Civil Aviation Act 2023 (the Act) requirements for drug and alcohol management plans (DAMPs) and testing.

#### Related Rules

This AC relates specifically to Part 99. It also refers to associated rules on DAMPs in Parts 115, 119, 137, 139, 140, 141, 145, 146, 147, 148, 171, 172, 173, 174 and 175.

#### Change Notice

This is the initial issue of the AC.

#### Version History

History Log

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| AC99-1, Rev 0 | 15 August 2024 | Initial issue      |

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# 1 About this AC

This AC explains:

- how the Act, rules, transport instrument, and this AC connect
- who a DAMP operator is, and how to determine if your organisation is one
- what a DAMP operator needs to do
- what needs to be in a DAMP
- what happens once a DAMP is approved and operational
- Director testing
- what happens during the transitional period from April 2025 to April 2027.

## 1.1 CAA has created a template DAMP operators can choose to use

CAA has created a [DAMP template](#) that operators can use. It is available on the CAA website.

DAMP operators are not required to use the template – they can write their DAMP in another format as long as it covers what is required under the Act, rules, transport instrument and this AC.

## 1.2 This AC refers to NZ Standards

This AC and the [DAMP template](#) recommend referring to existing Australia/New Zealand Standards. If needed, the Standards are available from [Standards New Zealand](#), though there is a cost to access these documents.

## 2 The DAMP regime is in the Act, rules, and a transport instrument

Requirements and information about DAMPs is set out in the Civil Aviation Act 2023 (the Act), rules, transport instrument, and this AC. A summary of what each of these documents contains is below.

### 2.1 The Act sets the requirement for DAMPs, and what a DAMP operator must do

Provisions relating to drugs and alcohol management are in sections 113 to 119 of the Act. These provisions [came in] in April 2025 to help to manage the risk of drug and alcohol use in the aviation sector.

The Act:

- Defines the types of organisations that are DAMP operators.
- Sets out what needs to be in a DAMP.
- Requires DAMP operators to prepare DAMPs and do random drug and alcohol testing of its safety-sensitive workers.
- Requires DAMP operators to notify CAA when:
  - a safety-sensitive worker returns a non-negative result,
  - a safety-sensitive worker refuses to be tested, and/ or
  - tampering is suspected.
- Sets out how Director testing of safety-sensitive workers works in practice.
- Makes it clear that test results can't be used in criminal proceedings other than prosecutions under the Act or the Health and Safety at Work Act 2015 (HSWA).

### 2.2 The rules identify classes of person that are DAMP operators and provides details of what is required

The majority of the rules are in Part 99. These rules:

- Identify the class of persons that are DAMP operators (by listing relevant certificates).
- Provide the ability for the Director to specify testable drugs.
- Set out notification and reporting obligations, and administrative matters.
- Set out how the two-year transition period (up to 4 April 2027) is to be managed.

There are also rules in relevant Parts – rules 115.79(a)(1B), 119.81(a)(1B), 119.125(a)(1B), 137.161, 139.77(a)(1B), 139.417(a)(1B), 140.61(a)(1A), 141.63(a)(1B), 145.67(a)(1B), 146.67(a)(1B), 147.23(a)(2A), 148.67(a)(1B), 171.77(a)(1B), 172.125(a)(1B), 173.71(a)(1B), 174.79(a)(1B) and 175.69(a)(1B).

These rules:

- Reflect Part 99 requirements and make it clear that having a DAMP is part of the requirements for holding that particular certificate (for example a Part 119, or 145 operating certificate).
- Provide for DAMPs to be amended or updated, noting that changes that are not material do not need to be approved by CAA<sup>1</sup>.

### **2.3 The transport instrument details what information DAMP operators must report to the Director**

One transport instrument has been developed to date – the Civil Aviation Transport (Drug and Alcohol Management Plan: reporting to the Director) Instrument 2024.

The transport instrument (CATI 99.19) sets out what DAMP operators must report to the Director. It requires DAMP operators to report certain information within the reporting period, with reports to be submitted each quarter via the approved form.

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<sup>1</sup> Examples of material changes in a DAMP which must be kept up to date are explained in section 10.1 of this AC.

### 3 Definitions and acronyms

Many of the definitions and acronyms relevant to DAMPs, the rules and this AC are found in the Act. Definitions and acronyms that are relevant are listed here, along with the source.

**Note:** All references to ‘sections’ relate to the Civil Aviation Act 2023, and references to Parts relate to the Civil Aviation Rules.

| Term                  | Meaning and source   |
|-----------------------|--|
| Chief Executive (CE)  | <p>the person appointed or listed in the exposition or equivalent documentation associated with the certificate to operate.</p> <p>Source: Parts 115, 119, 137, 139, 140, 141, 145, 146, 147, 148, 171, 172, 173, 174 and/or 175 as appropriate</p>  |
| current DAMP operator | <p>a person who is a DAMP operator on 5 April 2025. This definition expires on 6 April 2028.</p> <p>Source: Part 99.</p>   |
| DAMP                  | <p>a drug and alcohol management plan developed in accordance with <a href="#">section 114</a> of the Act which applies to all safety-sensitive activities; providing for random testing; and a response plan.</p> <p>Source: sections 113 and 114 of the Act.</p>   |
| DAMP operator         | <p>a person who holds any of the certificates listed in rule 99.5, is required to hold that certificate for their operation, and conducts an operation that involves one or more safety-sensitive activities.</p> <p>Source: section 113 of the Act and rule 99.5.</p>   |
| Director              | <p>the Director of Civil Aviation, as appointed by the board of CAA under section 31 of the Act.</p> <p>Source: sections 5 and 31 of the Act and Part 1.</p>   |
| Director testing      | <p>drug or alcohol testing carried out under <a href="#">section 116</a> of the Act – that being the testing of a safety-sensitive worker of a DAMP operator by an inspector appointed by the Director.</p> <p>Source: section 113 of the Act.</p>   |
| drug or alcohol test  | <p>either:</p> <ul style="list-style-type: none"> <li>a) a test of a person’s bodily sample to determine the presence, but not the level, of a testable drug or alcohol (or both) in the sample, or</li> <li>b) a test of a person’s bodily sample to determine the presence and the level of a testable drug or alcohol (or both) in the sample</li> </ul> <p>Source: section 113 of the Act.</p> |

| Term                            | Meaning and source  |
|---------------------------------|---|
| holder of a medical certificate | <p>means a person who (a) holds an aviation document or is permitted under the rules to operate an aircraft solo as a pilot; and (b) holds, or is required under the rules to hold, a medical certificate.</p> <p>The same as the definition of 'licence holder' in Clause 1 of Schedule 2 of the Act.</p>  |
| negative result                 | <p>in relation to a drug or alcohol test, when the test reveals that:</p> <ul style="list-style-type: none"> <li>a) a testable drug or alcohol is not present in the bodily sample, or</li> <li>b) if the DAMP specifies a level of a testable drug or alcohol in relation to a test, that a testable drug or alcohol (or both) is not present in the body at or above the specified level.</li> </ul> <p>Source: section 113 of the Act.</p> <p>The 'specified level' referred to in b) above is just below any 'permissible level' set out in the DAMP, that is, a test result at a permissible level is a negative result.</p> |
| permissible level               | <p>the amount of testable drugs or alcohol set out in a DAMP in relation to the testing for drugs or alcohol and identification of permitted levels.</p>  |
| random testing                  | <p>drug or alcohol testing of a safety-sensitive worker by a DAMP operator under <a href="#">section 115</a>, where the worker:</p> <ul style="list-style-type: none"> <li>a) is selected for testing in a way that is non-discriminatory, and</li> <li>b) is not given advance notification of the testing</li> </ul> <p>Source: sections 113 and 115 of the Act.</p>  |
| response plan                   | <p>that part of a DAMP that sets out actions taken by the DAMP operator when a safety-sensitive worker refuses to consent to a drug or alcohol test, returns a result other than a negative result, or is suspected of tampering.</p> <p>Source: section 113 of the Act.</p>  |
| safety-sensitive activity       | <ul style="list-style-type: none"> <li>(a) an activity that: <ul style="list-style-type: none"> <li>i. could significantly affect the health or safety of any person on board an aircraft, including the person performing the activity, or</li> <li>ii. if not performed safely, could cause or contribute to an accident or incident involving an aircraft, and</li> </ul> </li> <li>(b) includes an activity prescribed under the rules</li> </ul> <p>Source: section 113 of the Act.</p> <p><b>Note:</b> To date no safety-sensitive activities have been prescribed in the rules.</p>  |



| Term                    | Meaning and source   |
|-------------------------|--|
| safety-sensitive worker | <p>an individual employed or engaged by a DAMP operator in a role that involves the individual performing a safety-sensitive activity, including the DAMP operator, if the DAMP operator is an individual.</p> <p>Source: section 113 of the Act.</p>                        |
| tampering               | <p>a suspicion on reasonable grounds that a person being tested has consumed, administered, or supplied any substance with intent to dilute, contaminate, or otherwise alter any sample (or otherwise tampered with the testing).</p> <p>Source: section 118 of the Act.</p> |
| testable drug           | <p>in relation to a DAMP, a drug that the DAMP operator has specified in their DAMP, which must include any drug that is specified in the rules as a testable drug.</p> <p>Source: sections 113, 114(2)(b)(i) and 114(3) of the Act and rule 99.7.</p>                       |
| the Act                 | <p>when used in this AC means the Civil Aviation Act 2023.</p>   |
| transport instrument    | <p>an instrument made by the Director under section 431, including an instrument yet to be made, and any instrument as amended or replaced from time to time.</p> <p>Source: Part 1 and section 431 of the Act.</p>  |

## 4 Who is a DAMP Operator?

Only organisations identified as DAMP operators are required to develop DAMPs. The Act defines DAMP operator:

DAMP operator means a person who—

- (a) conducts an operation that involves 1 or more safety-sensitive activities; and
- (b) is required under the rules to hold an aviation document for that operation; and
- (c) is in a class of persons specified in the rules as a DAMP operator. [section 113]

The Act provides for a narrowing of the scope of DAMP operator through rules.

As outlined in rule 99.5, a DAMP operator is an organisation that meets these two criteria:

1. holds one or more of the certificates listed in rule 99.5 (a) (i.e. be in the class of person and hold the relevant certificate), **AND**
2. conducts one or more safety-sensitive activities.

### 4.1 Criterion 1 – Conducting one or more safety-sensitive activities

Safety-sensitive activities are defined in the Act:

Safety-sensitive activity—

- (a) means an activity that—
  - (i) could significantly affect the health or safety of any person on board an aircraft, including the person performing the activity; or
  - (ii) if not performed safely, could cause or contribute to an accident or incident involving an aircraft; and
- (b) includes an activity prescribed under the rules.... [section 113]

Conducting a safety-sensitive activity involves or depends on a human, as indicated in the definition of safety-sensitive worker:

safety-sensitive worker—

- (a) means an individual employed or engaged by a DAMP operator in a role that involves the individual performing a safety-sensitive activity; and
- (b) includes the DAMP operator, if the DAMP operator is an individual.... [section 113]

CAA has determined that activities considered safety-sensitive include activities:

- (i) directly affecting conduct of an aircraft during flight:
  - piloting an aircraft (including activities involving a tandem master, a pilot-in-command and co-pilots)
  - crewing on an aircraft (including activities involving a worker being trained and the trainer – consistent with the definition of crew member in Part 1)
  - providing an air traffic control service or air traffic services
  - flight following.
- (ii) with responsibility for, or affecting, preparing an aircraft for flight:
  - installing of safety-important components
  - maintaining or assembling aircraft or component parts (including work on safety equipment associated with the aircraft, from navigation instruments to the packing of parachutes)
  - installing any aircraft parts
  - fuelling or related checks
  - calculating and making decisions on loading
  - working in any airside security area or security-enhanced area<sup>2</sup> of a certified aerodrome. This doesn't include activities like food and drink catering for passengers prior to boarding
  - undertaking security or aviation screening or searching duties at a certified aerodrome, including activities affecting the safety of security of buildings, aircraft, and people.
- (iii) to ensure safety, including design sign-off of safety important componentry for use on an aircraft.

This is not an exhaustive list. Organisations will need to consider their own circumstances and allow for other activities, including future, new ones.

An organisation may be doing just one of the listed activities or many of them.

As noted, safety-sensitive activities involve safety-sensitive workers (humans) doing them. The DAMP operator will need to consider if they have individuals employed or engaged to do the safety-sensitive activities.

Sometimes this will be clear. For example, if the safety-sensitive activity is piloting, and the operator has pilots and co-pilots employed, then those individuals are safety-sensitive workers. Similarly, if the safety-sensitive activity is calculating and making decisions on loading then the worker may also be the pilot, or ground crew or someone with another title. And if the DAMP

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<sup>2</sup> See section 15 of the Act

operator employs or contracts the person who does this, then that person is a safety-sensitive worker.

However, sometimes there is no one identifiable person responsible for the safety-sensitive activity. The DAMP operator will need to consider each safety-sensitive activity and whether they employ or engage individuals to do it. This will then inform whether the operator is conducting safety-sensitive activities.

Below are some questions and answers to help establish who safety-sensitive workers are.

### ***Are people in management positions safety-sensitive workers?***

People in senior management roles that are not directly related to the safety of an aircraft or persons on board (for example they aren't also pilots or making decision about air traffic and decisions to fly) are not considered safety-sensitive workers for the purposes of the Act's drug and alcohol management regime.

### ***Are medics safety-sensitive workers?***

Although doctors employed by an organisation have a key role in supporting safe operations, they will not generally be considered safety-sensitive workers under the Act, unless they do other activities that are clearly 'safety-sensitive'.

### ***Are people who do indirect activities like supporting provision of meteorological advice or design activities safety-sensitive workers?***

People in these roles are not generally individually performing a safety-sensitive activity because critical decisions and activities involve tiers of checking and sign off. So, although some indirect activities 'could cause or contribute to an accident'<sup>3</sup>, for that to happen many other safety checks and procedures would need to be bypassed. The individual's actions are not safety-sensitive or a potential single point of failure.

### ***Are third-party contractors safety-sensitive workers?***

Third parties could be contracted workers who work as ground handlers and caterers who work for airlines, or construction workers, technicians, truck drivers and some engineering and maintenance roles.

The answer as to whether these people are safety-sensitive workers isn't black and white. It depends on the contractual arrangements that are in place. A person on an individual contract to supply services to a DAMP operator – for example, a maintenance engineer named as the service provider - would be 'engaged' to the DAMP operator and a 'safety-sensitive worker' under the Act.

Where an individual works for a third-party organisation that is contracted to the DAMP operator (the airline, maintenance organisation etc,) the individual is 'engaged' to their employer (the third-party), not the DAMP operator. Because of this, they're not engaged or employed by the DAMP operator and not considered safety-sensitive workers under the Act.

CAA acknowledges there have been instances in employment law where individuals contracted through a labour hire organisation have argued they are 'employed' by the head organisation for

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<sup>3</sup> Refer to the Act, section 113 definition, subsection (a)(ii).

the purpose of seeking employment rights. This AC can't provide guidance about how the definition of safety-sensitive workers might apply in these situations. Under employment law the contractual relationships will be relevant on a case-by-case basis.

### ***Is someone working in a security area automatically a safety-sensitive worker?***

Not necessarily. This needs to be considered on a case-by-case basis.

The DAMP operator needs to consider the work the person does, and the physical area where they do it. The DAMP operator should question whether the activity could affect aircraft safety by being undertaken in that area.

For example, someone serving coffee in an aerodrome sterile area would not meet the definition of being a safety-sensitive worker. Someone close to a runway, however, in a security-enhanced area, or next to particular equipment or plant may, simply by their presence, be a safety-sensitive worker.

### ***Are volunteers safety-sensitive workers?***

Volunteers may be safety-sensitive workers, depending on how they are associated with the DAMP operator. Some aviation organisations engage and rely on volunteers for their activities (although on an unpaid basis).

### ***Are students safety-sensitive workers?***

Students, including those at an aviation college, are not workers in the legal sense. The Act doesn't mandate that they are randomly tested for drugs and alcohol. The organisation can choose to require students to comply with drug and alcohol policies and be subject to testing, but this is not required under the Act.

### ***Can the DAMP operator be a safety-sensitive worker?***

If a person is both the individual who holds the certificate and someone doing a safety-sensitive activity, then they are a safety-sensitive worker under the DAMP regime.

### ***How are workers who occasionally do safety-sensitive work treated?***

An operation may have persons who undertake safety-sensitive activities periodically. This means that the number of safety-sensitive workers at any one time may vary.

The DAMP will need to consider this in the way that the random testing is designed.

A person would need to understand that on the days they are assigned safety-sensitive work they are potentially subject to random testing, but not on other days.<sup>4</sup>

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<sup>4</sup> Note the alternative to this scenario is where an organisation applies a wider testing regime across its workforce. Having a wider scope of affected workers is the choice of the operator, subject to any employment law or health and safety considerations – see 7.4.

## ***Treatment of workers based overseas***

Organisations with safety-sensitive workers overseas must comply with New Zealand laws and civil aviation rules while accommodating local jurisdictional differences. Companies should design their Drug and Alcohol Management Plans (DAMP) to include all safety-sensitive workers, incorporating both New Zealand obligations and local regulations. See 'overseas workers' under 7.5 for further detail.

### **4.2 Criterion 2 – Certificates listed in rule 99.5(a)**

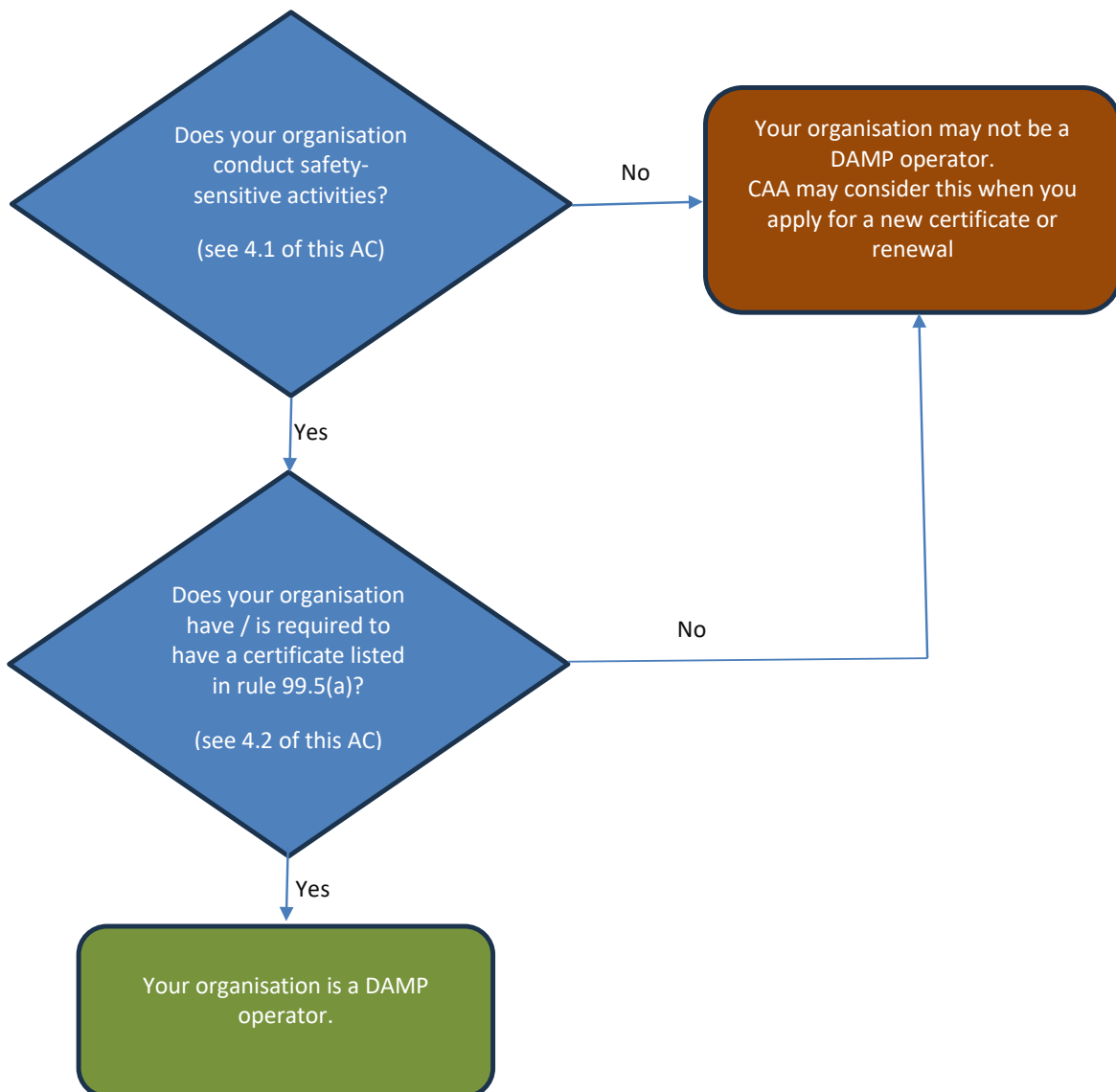
Rule 99.5 establishes the class of persons that are DAMP operators, and covers the holders of any of these certificates:

- an adventure aviation operator certificate issued under rule 115.9
- an airline air operator certificate issued under rule 119.11(a)
- a general aviation air operator certificate issued under rule 119.11(b)
- an agricultural aircraft operator certificate issued under rule 137.153
- an aerodrome operator certificate granted under rule 139.9
- a qualifying aerodrome operator certificate granted under rule 139.9
- an aviation security service certificate issued under rule 140.9
- a standard aviation training organisation certificate granted under rule 141.5(a)
- a maintenance organisation certificate issued under rule 145.9
- an aircraft design organisation certificate granted under rule 146.9
- a maintenance training organisation certificate granted under rule 147.35
- a manufacturing organisation certificate granted under rule 148.9
- an aeronautical telecommunication service certificate issued under rule 171.9
- an air traffic service certificate granted under rule 172.9
- an instrument flight procedure service certificate granted under rule 173.9
- a meteorological service certificate granted under rule 174.9, and/ or
- an aeronautical information service certificate issued under rule 175.7.

An organisation must have (or be applying for) one of the above certificates to be a DAMP operator.

### 4.3 How to determine if your organisation is a DAMP operator

The figure below will help you determine if your organisation is a DAMP operator:



### 4.4 Organisations cannot seek an exemption from being a DAMP operator

If an organisation meets the two criteria, then it is a DAMP operator and, under rule 99.5(b), an organisation can't seek an exemption from being a DAMP operator.

## **5 The Chief Executive is accountable for the DAMP**

If an organisation is a DAMP operator, rule 99.13 states that the organisation's Chief Executive (CE) is accountable for developing and implementing the DAMP, including ensuring that the associated DAMP is followed, and testing is carried out.

CEs are able to delegate operational tasks (for example, delegating oversight of random testing to the operational or health and safety manager).

There is no requirement to appoint a senior person solely responsible for the DAMP. However, larger organisations may need senior people in addition to the CE, to ensure that DAMPs are developed, maintained, and carried out properly. In these situations, the CE still has overall accountability for the DAMP.



## 6 What is required of Adventure Aviation (Part 115) certificate applicants and certificate holders

Holders of aviation documents for adventure aviation activities have been required to have a drug and alcohol management programme since late 2012, as set out in rule 115.62 (a), *Drug and alcohol programme*. AC115-1, *Adventure Aviation - Operator Certification*, sets out the acceptable means of compliance. Drug and alcohol testing (including random testing) is one of the means of complying with rule 115.62 (a).

Part 99 requires Part 115 certificate holders to be DAMP operators and comply with rule 115.62 (a).

CAA advises Part 115 certificate holders that:

- Compliance with rule 115.62 (1) may mean that DAMP requirements are mostly met. The requirements for a DAMP can loosely be described as a sub-set of the Part 115 drug and alcohol programme requirements, particularly as the DAMP just covers random testing - not other forms<sup>5</sup>.
- Rule 115.62 (b) specifically allows for the required DAMP to be part of the Part 115 drug and alcohol programme documentation. But it is important that all the things that need to be in the DAMP are in the programme documentation and are easy to identify.
- The main additional requirements for Part 115 certificate holders, due to also being a DAMP operator, are operational matters that are covered later in this AC:
  - notification to the Director of results that are non-negative – but just for the safety-sensitive workers covered by the Act
  - regular reporting to CAA.
  - checking that the way a person is approved to be tested (asked for consent etc.) follows the precise processes set out in the Act, and
  - that safety-sensitive workers can be subject to Director Testing (which may not be random).

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<sup>5</sup> AC 115-1, in regard to rule 115.62, sets out as a means of compliance, drug testing at pre-employment, for due cause, random and every 12 months as a minimum, and post-accident.

## 7 What must be in a DAMP

The Act sets out what must be in a DAMP. This AC sets out that the DAMP:

- Should be an identifiable document.
- Must list safety-sensitive activities but doesn't need to list which safety-sensitive workers do those activities.
- Must explain how random testing will be done, and what procedures will be used, and can set out other procedures.
- Must set out which drugs will be tested for and may set permissible levels for drugs and alcohol.
- Must include a response plan.

The AC also provides instructions on how to use the [DAMP template](#) available on the CAA website.

### 7.1 The DAMP should be an identifiable document

A DAMP should be a clearly identifiable document, organised in a way that makes it clear:

- what its scope is
- how it works in practice, and
- what legal requirements it is meeting.

There are no rules describing a DAMP's format or relationship with other documents. It could be:

- a chapter of a safety management system or operations manual
- a separate document (that is cross-referenced in other key documents), or
- a sub-part of a wider drug and alcohol policy or programme.

The DAMP will be part of an operator's exposition when the operator applies for a certificate or renewal of a certificate.

### 7.2 The DAMP must list the operator's safety-sensitive activities

A DAMP operator conducts safety-sensitive activities, and the DAMP must list those safety-sensitive activities. The DAMP operator will need to consider each safety-sensitive activity.

#### Using the template – **Identifying safety-sensitive activities**

Go to 1. Safety-sensitive activities in the template.

To use the template the DAMP operator:

- Considers their operations and what safety-sensitive activities they do.

- Amends the template to reflect their operation, by:
  - deleting listed activities they don't do.
  - adding in activities they do which meet the Act definition of safety-sensitive activities and are not listed in the template.

### **7.3 The DAMP does not need to list safety-sensitive workers**

The DAMP operator needs to determine which individual workers do the safety-sensitive activities.

The DAMP does not need to include a list of these workers. But the organisation will need a list somewhere, as these workers:

- are subject to random testing under the DAMP
- are subject to the section 117 Act requirement for the DAMP operator to notify CAA if they return a non-negative test or don't consent to random testing, and
- could be tested as part of Director testing under the Act.

The list may include workers' names or just roles/positions.

### **7.4 Organisations can choose to test workers who don't do safety-sensitive activities**

While the Act only requires those who qualify as safety-sensitive workers under the Act to be tested, organisations can choose to include other workers in a testing regime, such as:

- personnel in management and administrative roles
- personnel contracted through service agreements and not directly 'engaged or employed', and/ or
- students.

If, and how, a DAMP operator extends a testing regime to other employees or contracted services<sup>6</sup> is a decision for the organisation and may be subject to general employment law or health and safety considerations.

Any additional people the DAMP operator chooses to test are not subject to the DAMP or requirements of the Act, rules, or transport instrument. They would also not be subject to Director testing.

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<sup>6</sup> For example employment agreements or clauses in service agreements might be used.

## 7.5 The DAMP must explain how random testing will be done

The DAMP must cover how random testing will be done, including how to make it random and the testing frequency. The Act states that random testing must be ‘non-discriminatory’ and without ‘advance notification’.<sup>7</sup>

The DAMP operator can decide how to randomly select workers. It’s important:

- for the DAMP operator to consider whether workers are on site regularly or not, as this will affect how the testing is arranged, and
- that workers have confidence in the randomness of the chosen method.

There are several tools that can be used to randomly select workers: computer generated / digital randomiser, use of a third party, names / employee numbers drawn at random (e.g. pulled out of a hat), or random selection in time e.g. a temporary cordon (like a road traffic spot check).

How often random testing occurs will depend on the size of the organisation, the number of safety-sensitive workers and, to some extent, the cost and feasibility of undertaking testing.

The regime needs to work as a deterrent. Hence, it works best if the frequency and random nature means safety-sensitive workers behave as if they could be tested ‘today or any day’.

The DAMP needs to set out detail sufficient for CAA to understand what proportion of safety-sensitive workers would be subject to random testing over a period such as a year. The actual number of workers (1, 10 etc.) or percentages (10%, 50%) may be appropriate depending on the size of the organisation.

Some examples of the level and timing of random testing that could be conducted are:

- 10 workers on-site tested every three months.  
*This is appropriate for an organisation which has an average of 100-200 safety-sensitive workers daily on-site.*
- testing conducted randomly on at least four occasions per annum. The number of tests conducted on each occasion will be 10% of the organisation’s total head count on the day of testing.  
*This is appropriate for an organisation with more than 100 safety-sensitive workers.*
- personnel expecting to be randomly tested at least once a year on average.  
*This is appropriate for a small organisation with under 10 safety-sensitive employees.*

### **Dealing with a fluctuating work force and part time workers**

Some operators have fluctuating safety-sensitive work forces. For example:

- safety-sensitive workers may work part-time with different DAMP operators and the operation may be small in nature – i.e. a sole owner operator reliant on seasonal workers.
- individuals may only do safety-sensitive work for a small proportion of days a year, with the rest of the time doing non-safety-sensitive work.

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<sup>7</sup> Section 113 Interpretation definition of random testing

The intent of the DAMP regime would be achieved if at the time/day when random testing was occurring all the persons on-site doing safety-sensitive activities could potentially be identified in a non-discriminatory way for testing.

It may be appropriate for the design of the random testing to reflect fluctuating numbers of safety-sensitive workers by, for example, bounding the time when testing might occur to a particular operating season, or when the work force was above a certain level.

### **Overseas workers**

Organisations with safety-sensitive workers working overseas remain subject to New Zealand laws and the applicable civil aviation rules, however, they must also accommodate jurisdictional differences where necessary. Companies with overseas operations should aim to include all safety-sensitive workers in their DAMP in compliance with local legislation in those countries. Although uniform treatment of all safety-sensitive workers is desirable, practical adjustments may be required to respect local legislation e.g. laws not permitting random testing of workers in a particular jurisdiction.

Additionally, legislation in other countries may impose specific requirements or restrictions related to drug and alcohol management that need to be integrated into the company's DAMP. Therefore, companies with overseas operations and personnel should consider a DAMP design that includes safety-sensitive workers, and that incorporates both New Zealand legal requirements and the relevant legislation of the country their workers are working in.

## **7.6 The DAMP must set out procedures for testing for drugs and alcohol**

The Act does not prescribe the type of testing to be used but requires that procedures are set out and the person carrying out the test is competent, with necessary experience or qualifications.<sup>8</sup>

CAA recommends that the description of the actual procedures is not too detailed, so the DAMP does not need to be updated if there are minor changes.

The description of the testing process and procedures in the DAMP needs to state whether testing is done in-house or by a third party, and what processes are used if it is done in-house.

Some organisations might share resources, for example, sharing the cost of a drug testing service. Such financial arrangements do not need to be described in a DAMP.

The organisation's size, capacity, activities, and remoteness will likely determine what is sensible and practicable.

For example, the DAMP could explain that initial screening for the presence of drugs will occur on-site, involving trained staff from the organisation and saliva tests, but any confirmatory testing sought will use a professional testing lab.

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<sup>8</sup> Section 115(3) 'The DAMP operator must ensure that a person who carries out random testing is competent to carry out the testing, including by having any necessary experience or qualifications.'

## ***Drug testing procedures***

For drug testing, urine testing typically detects drug use within the 3-4 days before sample collection. Oral fluid (saliva) testing indicates very recent use, generally 3-12 hours before testing, so it may indicate that the effect of the drug use is still active. However, neither test indicates impairment.

The DAMP could state that urine and oral fluid (saliva) testing might be used, or just one form of testing.

For drug collecting and testing (either a urine sample or oral fluid) procedures in the DAMP need to meet or exceed the procedures set out in relevant New Zealand Standards below (or their successors):

- *AS/NZS 4308:2023 Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine.*
- *AS/NZS 4760:2019 Procedure for specimen collection and the detection and quantification of drugs in oral fluid.*

**Note:** *When doing drug testing it is common for the first test to be a screening test (which returns a very quick result) with a follow up test (confirmatory test) that involves a lab assessment.*

## ***Alcohol testing procedures***

For alcohol testing, DAMP operators may prefer that breath alcohol is tested rather than blood alcohol. This is because breath alcohol testing is easier to do and less intrusive than a blood test.

For alcohol breath testing, the procedure and device used need to meet or exceed:

- *Australian Standard AS 3547:2019 Breath Alcohol Testing Devices* or successor Standards or
- *NMI R 126, Pattern Approval Specifications for Evidential Breath Analysers.*

### **Using the template – Explaining how random testing will be done, and setting out procedures**

Go to 4. Random Testing Process in the template.

The template suggests examples of types of random testing, appropriate volumes and timings of random testing under a DAMP, and testing methodologies.

To use the template the DAMP operator deletes, selects, and amends the types of testing and volumes and timing of random testing, and procedures as appropriate from the list.

If the DAMP operator already has random testing in place, it can:

- cross-reference to the section of its policy that already describes the process for doing random testing and the procedures used, and
- make this available to CAA when seeking approval of its DAMP.

## 7.7 The DAMP may set out other procedures and other matters

The DAMP may set out any other relevant procedures or matters.

This could include, for example, when testing will occur in the worker's day. It may be most practical for it to occur at the beginning or the end of a shift. Random testing is by its nature a check on compliance – it is not like 'just cause' testing where there's a situation that creates the need for testing.

## 7.8 The DAMP must set out testable drugs and may set permissible levels

The DAMP needs to state the drugs to be tested for and any permissible levels.<sup>9</sup>

The Act doesn't provide any direction on whether the full scope of drugs should be tested for at every test. The scope of drugs tested for could vary e.g. half of all tests could be for the full array of drugs and half for just cannabinoids. Any variation in the scope of drugs tested is a decision for the DAMP operator and should be documented before workers are selected for testing.

### ***The definition of drugs***

There is no definition of alcohol and drugs in the Act or the rules. Organisations may already have a workable definition.

CAA expects that the drugs tested will generally follow the list in the relevant Australian/New Zealand Standards and associated 'cut-off levels' for what is detectable. The relevant Australia/New Zealand Standards are:

- AS/NZS 4308:2023 *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine (and successor updates)*, and
- AS/NZS 4760:2019 *Procedure for specimen collection and the detection and quantification of drugs in oral fluid (and successor updates)*.

Drugs covered by the Standards are amphetamine-type substances, benzodiazepines, cannabis metabolites, cocaine metabolites and opiates. The Standards do not, however, preclude the addition of other drugs to be tested.

### ***Testable drugs***

The Director can direct DAMP operators, via a transport instrument, to test for certain drugs in addition to drugs that the DAMP operator specifies in their DAMP.<sup>10</sup>

At this stage the Director has not specified any drugs to be tested.

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<sup>9</sup> [Section 114\(2\)\(b\)\(i\)](#) of the Act.

<sup>10</sup> The rule that provides for testable drugs to be listed by the Director is 99.7 and the relevant Act [section is 114 \(3\)\(a\)](#)

If the Director decides to do this at a later date, there will be appropriate consultation and information provided to the sector.

For the present, applying the current Australia/New Zealand Standards for drug testing (listed above) is an acceptable means of compliance with the requirement to specify drugs that a DAMP operator is testing for.

### ***Permissible drug levels***

The Australia/New Zealand Standards have a cut off concentration below which a drug is not detected. A test result which shows no drug presence is a negative test result (for the Standard and the matching Act definition).

Although the Australia/ New Zealand Standards are not a measure of impairment it is an accepted reference point for drug presence and therefore the trigger for initial stand-down from safety-sensitive activities under the Act.

The use of the term 'permissible level' clarifies that drugs found to be present below that level are permitted and therefore is the worker has returned a negative result.

#### **Using the template – specifying drugs to test for**

Go to 2. Testable Drugs in the template.

To use the template the DAMP operator:

- Identifies what drugs they intend to test for. Generally, drugs tested will include licit, i.e. prescription and over-the-counter medicines, and restricted or illicit drugs.
- Lists the drugs they intend to test for. The wording in the template is 'Drugs to be tested include:'. This wording meets the Act requirements and provides flexibility in case DAMP operators need to consider drugs that are not currently named in the Australia/New Zealand Standards, or for which tests are not yet available.

## **7.9 Alcohol permissible level**

The Act doesn't explicitly require a DAMP to include a permissible level for alcohol. However, DAMP operators may want to set one because, if a permissible level isn't set, then the small amounts of alcohol in cough medicine, mouthwash and similar products would trigger a non-negative result.

### ***What zero tolerance means***

For safety-sensitive activities, CAA's position is the tolerance level for alcohol is zero, which equates to a permissible level of:

- 20mg/100 ml blood alcohol (0.02%), or
- for breath alcohol, 100µg/L (micrograms per litre)



For comparison, the land transport-permitted alcohol level for those over 20 is 50mg/100 ml blood alcohol (0.05%).<sup>11</sup>.

Alcohol at 0.02% concentration is the lowest level where some impairment is possible. Even at low levels, some people have altered mood and may feel pleasant effects and lowered inhibitions. There may also be a minor loss of judgement. Alcohol can also have after-effects, even when the blood alcohol level has returned to an undetectable level – the hang-over effect.

The 0.02% level would allow for low alcohol levels which may arise as part of metabolic conditions, (e.g. keto-acidosis in diabetics) and other materially insignificant alcohol blood levels from passive ingestion or fermentation.

A DAMP operator can set a tougher limit – e.g. 0.0 %.

If a DAMP operator sets a limit that is higher than 0.02% in its DAMP, then the DAMP operator will need to explain its reasoning, justify it, and give CAA confidence that the proposed limit is appropriate. They will also need to make it clear how the particular safety-sensitive activities could be done safely by the workers at that higher level.

Using the template – **permissible level of alcohol**

Go to 3. Alcohol in the template.

To use the template the DAMP operator:

- Sets the permissible level of alcohol (if they choose to).

## 7.10 The DAMP must include a response plan

The DAMP must include a response plan, as defined in the Act<sup>12</sup>:

**response plan** means that part of a DAMP that is concerned with actions taken by the DAMP operator in relation to a safety-sensitive worker who refuses to consent to a drug or alcohol test or whose test returns a result other than a negative result [or tampering is suspected], and includes reasonable arrangements and processes developed by the DAMP operator for—

(a) prohibiting the worker from performing a safety-sensitive activity; and

(b) permitting the worker to resume performing safety-sensitive activities, if the worker can do so safely.... [s113 and s118(2)]

The response plan sets out what the DAMP operator will do, or what will happen, if a worker:

- returns a non-negative test result of alcohol and/or drugs, or
- refuses to consent to testing, or
- is suspected of tampering.

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<sup>11</sup> NZTA: [Alcohol and drug limits | Waka Kotahi NZ Transport Agency \(nzta.govt.nz\)](https://www.nzta.govt.nz/road-use/road-use-conditions/road-use-conditions-2024/road-use-conditions-2024-01-01/)

<sup>12</sup> Section 114 (2)(c) of the Act.

The Act requires that the safety-sensitive worker be stood down until they can safely resume work, and the response plan is implemented:

If a safety-sensitive worker refuses to consent to random testing or is tested and returns a result other than a negative result [or tampering is suspected] ... the DAMP operator must—

(a) prohibit the worker from performing safety-sensitive activities until the worker is able to safely perform those activities; and

(b) implement the response plan.... [section 117 (1) and s118(2)]

CAA recommends the DAMP:

- Sets out what happens if there is an initial non-negative test result, and then a follow up procedure to confirm that result.
- Sets out the situations when a worker will be stood down and what will happen in practice.
- Sets out the process associated with notifying CAA where a worker returns a non-negative test result, refuses to consent to testing, or is suspected of tampering. Notification to CAA is mandatory and rule 99.15 outlines the information DAMP operators must provide in their notification. (*See section 10.7 of this AC below for the CAA notification process.*)

The DAMP operator may also want to consider:

- how they will meet their obligations under the Privacy Act 2020
- who is involved in decisions about the consequences for the worker
- whether different safety-sensitive activities require different response policies (e.g. workers who are holders of medical certificates)
- who pays for additional tests
- how other conditions related to work activities, and costs associated with stand-downs may be included, and
- how to signal to staff that it will use medical assessments in its response plan or cross reference to other existing employment procedures.

**Note:** CAA recommends that an organisation has access to a medical practitioner who has completed Medical Review Officer (MRO) training and has current accreditation. MRO training is provided by the Australasian Medical Review Officers Association (AMROA) or the US Medical Review Officer Certification Council (MROCC).

A DAMP operator can refer to disciplinary procedures in its DAMP. However, this is an employment matter that is not within the scope of CAA regulatory responsibility.

### ***The DAMP must cover the situations when a worker is required to be stood down from safety-sensitive activities***

A worker is required to be stood down when they return a non-negative drug or alcohol test result, refuse to consent to testing, or are suspected of tampering. Each of these situations is discussed below.

### ***A worker returns a non-negative drug test result***

Screening tests for drugs give a result while the person being tested waits. Test results that are sent to a lab take longer.

The DAMP operator should check with the provider (if they're using one) about what timeframe applies and include that in the DAMP.

If the DAMP operator does screen-level drug testing and only seeks a lab confirmation test if the result of testing is non-negative, then this needs to be clear in the DAMP. In this situation the DAMP may need to explain what would happen in the time between a non-negative screening test and the results of a confirmatory test being received. It may also be appropriate to have a policy on when a second test is done and who can request one.

The DAMP operator should consider if a medical professional can provide expertise for issues like advising on a worker's return to work. Options to consider, if available, include a medical review officer being contracted into the testing agency or contracted independently by the organisation. This may not be possible in all circumstances.

Some prescription and pharmacy drugs may cause impairment – e.g., some antihistamines may cause drowsiness, and this may trigger a review of medical fitness to do safety-sensitive activities.

Note that the medical officer can consider the amount of drug detected, if known, the medical history of the person and potential impairment effects. They are also able to recommend conditions to ensure safety outcomes.

An organisation may have a policy on workers reporting medical conditions, use of prescription or licit drugs and medical reviews as a condition of reporting for work. If this is the case, then this policy could be cross-referenced or noted in the DAMP as a relevant, but separate, policy.

### ***A worker returns a non-negative alcohol test result***

If a worker returns a non-negative result, it is standard practice to do a second breath alcohol test.

After two tests have been done and the second test is non-negative, the DAMP operator should arrange a medical review. This provides the opportunity for a medical professional to consider the individual circumstances of the worker and any additional information and provide advice to the DAMP operator.

A non-negative alcohol test followed by a negative test may indicate the worker used perfume/mouthwash or that they had a declining alcohol level when they were tested.

The DAMP operator will need to consider how they'll manage stand-downs, e.g. how long a worker is stood down for.

### ***A worker refuses to consent to testing***

Refusing to consent to testing is treated the same as a non-negative result – the worker is stood down. A medical review is less likely to be part of the response.

### ***Tampering is suspected***

Tampering is defined as a suspicion that someone has consumed, administered, or supplied any substance with intent to dilute, contaminate, or otherwise alter any sample, or otherwise tampered with the testing.<sup>13</sup>

Tampering is treated the same as a non-negative result – the worker is stood down.

### ***The DAMP must set out the process for determining if it is safe for a worker to return to safety-sensitive activities***

Under section 117(1)(a) of the Act, when a response plan is triggered, the worker concerned is not allowed to do safety-sensitive activities until they are able to safely perform those activities.

The process for judging whether a worker can return to safety-sensitive activities needs to be covered in the DAMP, and note, in particular, who will be involved in the decisions.

CAA expects medical advice will be included in the assessment where it is medically related.

### ***Rehabilitation and follow-up testing may be part of the response plan***

The Act does not specify when rehabilitation should be offered, nor what it should consist of.

After a process of rehabilitation, there may be ‘no notice’ testing of a worker. This testing is different from the normal ‘random’ testing process. In addition to being targeted to the person, the procedure may test for drug levels below the New Zealand Standard’s cut-off levels, and lower than set out for random testing.

### ***CAA will decide when workers who are holders of medical certificates can resume safety-sensitive activities***

If a DAMP operator employs pilots or air traffic controllers who hold medical certificates, CAA has the final decision on when they can resume safety-sensitive activities.

#### Using the template – **Setting out the response plan**

Go to 5. Response Plan in the template.

DAMP operators do not need a separate response for each of the scenarios - the overall response plan just needs to be clear.

The template suggests steps (for example (a) to (f) for a non-negative drug test result).

To use the template the DAMP operator:

- Deletes, selects, and amends the suggested steps as appropriate, noting that:
  - notification to CAA is required and this step must be included, and
  - if there are workers who are holders of medical certificates, then the DAMP must include the relevant text about the role of CAA.

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<sup>13</sup> Section 118 of the Act

## 7.11 The DAMP must provide for administrative matters

The DAMP must provide for administrative matters as required under rule 99.

The administrative matters set out how the DAMP operator will:

- keep the DAMP up-to-date and/or make amendments before it becomes part of the exposition (99.11);
- retain records of random drug and alcohol testing (rule 99.17); and
- routinely report to the Director on random testing (rule 99.19).

### ***Updating and amending a DAMP before becoming part of an exposition***

Rule 99.11 requires that if a DAMP operator needs to update or amend their DAMP, before it becomes part of their exposition, they can do so by following the procedure for amending their system for safety management. Any proposed amendment to the DAMP that is or may be material should be provided to CAA for consideration and acceptance by the Director, *before* it may be implemented – see 10.1 for likely material amendments.

### ***Record keeping***

DAMP operators must keep a record of all random testing in accordance with the requirements under rule 99.17. The DAMP must include confirmation that the DAMP operator has a procedure in place to collect and appropriately retain these records.

### ***Routine reporting***

The transport instrument (CATI 99.19) sets out what DAMP operators must report to the Director. It requires DAMP operators to report certain information within the reporting period, with reports to be submitted each quarter via the approved form.

Using the template – **Administrative matters**

Go to 6. Administrative Matters in the template.

The template suggests text to address the required matters.

To use the template the DAMP operator:

- Deletes, selects, and amends the suggested text as appropriate.

## 8 How to make a DAMP

### 8.1 The DAMP operator can develop the DAMP themselves or use a third party

DAMP operators can develop the DAMP themselves or may choose to use a third party to write the DAMP on their behalf.

Regardless of who writes the DAMP:

- the CE of the DAMP operator organisation is accountable for the DAMP and its use
- the content of the DAMP, particularly the scope of safety-sensitive activities, workers affected and response plan, needs to be specific to and owned by the DAMP operator, and
- the CE and key staff responsible for the DAMP need to fully understand the DAMP, how it will work and who needs to do what.

### 8.2 The DAMP operator needs to engage with its workers

The rules do not direct the level of consultation that a DAMP operator needs to do when developing a DAMP. It is the operator's responsibility to meet their Health and Safety at Work Act 2015 (HSWA) worker consultation requirements.

The DAMP operator will need to consider how to meet their requirements to engage with their workers, as required under sections 58 and 59 of HSWA. Section 60 of HSWA lists the health and safety matters that are relevant – including making decisions about ways to eliminate or minimise risks. Guidance about worker engagement and participation is available on the [WorkSafe New Zealand website](#).

## 9 CAA will review and approve DAMPs

CAA's review of DAMPs will:

- Involve CAA comparing each DAMP against the requirements in the Act, rules, transport instrument and the advice in this AC.
- CAA will approve the DAMP if it meets these requirements.  
If a DAMP doesn't meet the requirements, CAA will contact the DAMP operator to seek clarification and ask that further work on the DAMP be done.
- CAA's review will generally be a desktop process, meaning that a site visit or interview will not typically be required.

### 9.1 During the transition period (5 April 2025 to 4 April 2027)

The Act notes that during the transition period (from 5 April 2025 to 4 April 2027) DAMP operators will need to submit their DAMPs to CAA for approval. This is explained in section 12 of this AC.

#### **Transitional provisions**

Current certificate holders, who are required to submit DAMPs and get them approved by 4 April 2027, and those applying for certificates prior to 5 April 2027, have to comply with Transitional Requirements.

The Act specifically describes an approval process for these 'current DAMP operators'.

### 9.2 From 5 April 2027

From 5 April 2027, the Director, via the appropriate CAA unit, will approve the content of an organisation's DAMP as part of the standard process for granting a certificate. The DAMP will be part of the exposition (or equivalent documentation) that is provided to CAA as part of the application for a renewal or amendment of a certificate under Parts 115, 119, 137, 139, 140, 141, 145, 146, 147, 148, 171, 172, 173, 174 and/or 175.

## 10 What happens once the DAMP is approved and is operational

This part of the AC covers what the DAMP operator is required to do once the DAMP is approved and in use - at the end of the transition period on 5 April 2027 for 'current operators' or after a certificate application process for new applicants.

### 10.1 The DAMP must be kept up to date

DAMP operators are expected to treat their DAMPs as living documents and part of their exposition. That means they need to review their DAMP regularly and may need to update it over time, similar to how other operational documents are updated when needed.

CAA needs to approve material changes to DAMPs. DAMP operators must judge whether the updates they make to their DAMP are a 'material change'. Minor and administrative changes, such as fixing typos, are not material changes.

Amendments that CAA considers 'material' include:

- adding or removing a drug to be part of the random testing regime, or
- significant changes to the frequency of random testing, or
- changes to the type of testing regime used, or
- significant changes in the permissible levels of a testable drug or alcohol, or
- additional safety-sensitive activities being undertaken by workers (which may, or may not, require the operator to hold additional operating certificates or additional workers to become safety-sensitive workers).

A DAMP operator can choose to have a standalone DAMP or for it to be part of the safety management system (SMS). Regardless, the process of amending it (if required) will follow that already in place for SMSs. This includes their review, if necessary, at certificate renewal.

#### ***Adding a new operating certificate***

Many organisations will hold more than one operating certificate. If an organisation already has a DAMP and is required to apply for another operating certificate, then it won't need a whole new DAMP. The DAMP operator will just need to update its DAMP (in the same way an SMS is updated) and add a copy to its exposition for the additional certificate.

An example of this would be an organisation that has a Part 119 certificate and wishes to add a Part 141 training element. It would update its DAMP to cover any new safety-sensitive activities and add a copy to its exposition for the Part 141 certificate.



## 10.2 Testing must be done in accordance with the DAMP

The DAMP operator must conduct testing, in accordance with what they've set out in their DAMP, as required by the Act:

the person who carries out the random testing must, —

(c) carry out the test only in relation to—

(i) alcohol and the testable drugs specified in the DAMP; and

(ii) the permissible levels (if any) for alcohol or testable drugs specified in the DAMP; and

(d) carry out the test in accordance with the DAMP and any requirements prescribed by the rules [section 115 (4)(c)and (d)]

## 10.3 Testing must be done by a competent person

The DAMP operator must ensure that the person who carries out testing under the DAMP is competent to do it, including by having any necessary experience or qualifications.<sup>14</sup> Whether this is a third-party provider or someone in the organisation who has been appropriately trained will depend on the arrangements that the DAMP operator has described in their DAMP.

## 10.4 A written statement must be given to a worker prior to testing and on request

The Act requires that a written statement be given to workers:

The person who carries out the random testing of a worker must—

(a) when first approaching the worker for the purpose of random testing, **give the worker a written statement** that sets out the following:

(i) the statutory power to carry out the test:

(ii) a general description of how the test will be carried out, including how the bodily sample will be taken and how it will be analysed:

(iii) an explanation that the worker has the right to refuse consent to testing:

(iv) an explanation of the consequences if the worker refuses consent or returns a test result other than a negative result:

(v) that the worker will be informed of the test result (and approximately when that will happen):

(vi) any other matter prescribed by the rules; [section 115 (4)]

<sup>14</sup> Section 115(3) requirement

**Notes:**

- *The reference to 'bodily sample' in (ii) refers to breath for alcohol testing, and urine or saliva for drug testing.<sup>15</sup>*
- *The explanation that the worker has the right to refuse in (iii) must also include a sentence (or more) on the consequences of refusing to consent to testing.*
- *The statement in (v) must make it clear whether it is the screening test result, the confirmatory test result or both (if relevant) that the worker will be informed of<sup>16</sup>*
- *There are no additional rules affecting the written statement (referred to in (vi)).*
- *In addition to giving the worker the written statement when they are approached, the statement must also be provided to the worker on request at any time.<sup>17</sup>*

## **10.5 The worker must be asked for consent and understand the consequences of not giving it**

The Act makes it clear that a worker's consent must be sought. If a worker refuses, however, they are stood down from safety-sensitive activities.

Both the ability to refuse and the consequences need to be made clear to the worker. This needs to be done twice - in the written statement referred to in section 10.4 above, and again before testing. The second explanation can be verbal or by other means if circumstances require it – e.g. workers with reduced hearing.

before testing the worker [the person who carries out the random testing must] —

- (i) take reasonable steps to establish the worker's identity; and
- (ii) explain to the worker that the worker has the right to refuse consent; and
- (iii) explain to the worker the consequences if the worker refuses consent or returns a test result other than a negative result; and
- (iv) ask for the worker's consent to testing [section 115 (4)(b)]

The requirement to establish the worker's identity allows for the matching of the worker with the process of identifying a worker in a random way. But in some circumstances the worker may not be chosen by name, but by the fact that they are in a certain place at a certain (random) time.

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<sup>15</sup> Bodily sample is defined in the Act (s 113) as meaning any of the following: (a) biological fluid, biological tissue (whether living or not) or breath.

<sup>16</sup> This scenario is only likely if the testing procedure uses a third party that has direct access to confirmatory lab testing procedures.

<sup>17</sup> Section 115 (6).

## 10.6 The worker must be advised of the test result

The Act specifically requires the DAMP operator to give the results to the worker 'as soon as practicable':

As soon as practicable after the DAMP operator becomes aware of the result of a test, the DAMP operator must give the test result to the worker tested. [section 115 (5)]

What 'as soon as practicable' means in practice will depend on the way testing is done, and how the DAMP operator is informed. It may be minutes, or hours after testing, or some other timeframe. Under the Act, the DAMP operator does not have to find out the results before the worker<sup>18</sup>. This means it is acceptable for the person doing the testing to share the results with the worker.

## 10.7 The DAMP operator must notify the Director when required

Under the Act a DAMP operator must notify the Director:

- of any random test that is non-negative
- where a worker has refused consent to be tested, and
- where there is any suspicion of tampering.

This is ONLY for random testing required under the DAMP<sup>19</sup>. Meaning, if a worker has a non-negative test result and they are not a safety-sensitise worker, because the operator has a testing regime that encompasses all employees, CAA does not need to be notified.

If a worker refuses to consent to random testing or is tested and returns a result other than a negative result, the DAMP operator must, in accordance with any requirements of the rules, notify the Director of that fact as soon as practicable.

[section 117 (3)]

The requirements above also apply to suspected tampering because of section 118(3).<sup>20</sup>

A DAMP operator is responsible for notifying the Director 'as soon as practicable'. How soon this is depends on the circumstances. The rules do not specify a time, so it is up to the operator to determine what 'as soon as practicable' means for their operation and in the circumstances.

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<sup>18</sup> The DAMP operator is the individual who has the obligation to do the DAMP, meaning the actual certificate holder. Section 113 definition.

<sup>19</sup> There is no legislative requirement to report other forms of alcohol and drug testing to CAA (for example, testing triggered by the behaviour of a worker or post-accident testing or any additional testing an operator chooses to do). However, CAA may be involved for other reasons e.g. where the person involved is a holder of a medical certificate, or if an accident occurs.

<sup>20</sup> 'This subpart and the relevant DAMP apply as if the test returned a result other than a negative result' s118 (3).

Delays should not occur, unless there is a good reason for it.

Operators have employment legislation obligations that will need to be followed. If such processes are triggered CAA does not need to know the details, just that the operator is managing an issue (for example suspected tampering).

If CAA considers there has been an unreasonable delay, CAA may ask the DAMP operator for an explanation.

If a DAMP operator has some internal procedures which could be seen as leading to a delay in notification, these procedures should be set out in the DAMP. This ensures that the reasons for any delays are clear and enables CAA to assess whether they are reasonable.

### ***The rules specify what needs to be in the notification***

Under rule 99.15 the following information must be provided in any notification to CAA:

- whether the notification concerns a result which was not negative, refusal to consent to testing, or suspected tampering
- the date of the test, refusal, or suspected tampering
- the date the DAMP operator became aware of the result of the test, the refusal, or the suspected tampering
- for a non-negative result, whether a drug or alcohol was detected and, if a drug, which drug
- the safety-sensitive activity the relevant worker performs
  - Note: the reference to “safety-sensitive activities” is in the context of the person being identified as a “safety-sensitive worker”. It is a role description not a description of daily duties.
- a contact person for the DAMP operator, and their contact details, and
- if the individual is the holder of a medical certificate<sup>21</sup>, the individual’s name and individual client number.

### ***CAA can ask for more information to clarify understanding***

Rule 99.15 (d) allows CAA to ask for a limited amount of additional information. The request must be reasonable. CAA will contact the DAMP operator (CE or other contact person) if additional information is required.

### ***CAA may follow up notifications***

The Act requirements to notify the Director provide an assurance function. CAA is informed that a DAMP operator is managing a situation.

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<sup>21</sup>Referred to as a ‘licence holder’ in rule 99.15

CAA will follow up in situations where the safety-sensitive worker who is tested is a holder of a medical certificate. CAA may also follow up in other situations if they have underlying concerns, e.g. repeat notifications, or if CAA needs more information to understand the situation.

### ***Two notifications are required for a holder of a medical certificate***

The Act has a separate notification process for individuals that hold medical certificates who need to report changes in their medical condition to the Director.<sup>22</sup> There may, therefore, be two separate notifications required if a non-negative test under the 2023 Act is also considered a change (including a suspected change) in medical condition and the individual is a holder of a medical certificate.

## **10.8 The response plan must be implemented when needed**

The Act specifically requires the response plan to be implemented after any random test that is non-negative, any refusal of consent to be tested, or any suspicion of tampering.

The detail of a response plan, including the consequences of the stand-down of workers, is covered in section 7.10 of this AC.

## **10.9 The DAMP operator must keep records**

The Act enables the rules to specify record keeping requirements:

The following must be done as prescribed under the rules:

- (a) the keeping of records in relation to matters done under, or relevant to, the DAMP [section 114 (4) (a)]

Rule 99.17(a) requires that records are kept of:

- the name of each worker tested<sup>23</sup>
- the safety-sensitive activity the worker does
- the time and date of the relevant test, and when the DAMP operator received the results
- the results of the test (or that the worker refused to consent), and
- whether tampering was suspected and if so why.

The aim of the relevant rules is to require a DAMP operator to have all the information they might need to report to CAA. It is not a list of all the information that CAA seeks, and the DAMP operator

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<sup>22</sup> Includes 'suspected change' See section 27C(1) in the 1990 Act and carried over in the 2023 Act in the Schedule 2 clause 8 requirement.

<sup>23</sup> CAA will only see the name of the worker where they hold a medical licence – in all other situations CAA will receive anonymised data

can choose to keep more information (taking the Privacy Act 2020 and other relevant obligations into account).

CAA is not concerned whether DAMP operators keep test results on employees' files, or not. That is an organisational decision, guided by employment and privacy legislation. However, it is important that test results are held in a secure location.

Where a third party is undertaking the testing then they may hold records. The DAMP operator will need to ensure the third party keeps records securely – this can be managed via contractual or other arrangements.

The DAMP operator must also ensure that records are retained for at least five years from the date of testing (as per rule 99.17 (c)).

### **10.10 The DAMP operator must provide regular reports to CAA**

A DAMP operator is required to report to CAA regularly.

Rule 99.19 and the associated civil aviation transport instrument (CATI 99.19<sup>24</sup>) sets out what reporting is required.

A DAMP operator must comply with the relevant transport instrument, including any succeeding transport instrument, as if it was a rule. They must provide a report, for the reporting period (quarterly), on:

- the number of safety-sensitive workers the DAMP applies to
- the safety-sensitive activities covered by the testing carried out
- the number of drug tests carried out
- the number of alcohol tests carried out
- the number of drug tests that returned a negative result
- the number of alcohol tests that returned a negative result
- the number of confirmatory drug tests that were positive
- the number of confirmatory alcohol tests that were positive
- the number of instances where the worker refused consent to be tested
- the number of instances of suspected tampering
- the number of tests abandoned, and
- how workers were selected for testing in accordance with the DAMP.

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<sup>24</sup> To be updated when the transport instrument is finalised.

The information reported to CAA is to be depersonalised. No individual names are required. The focus for CAA is understanding trends and general compliance against the approved DAMPs. It is not about analysing individual results.

If information is received in a way that individuals can be identified (e.g. because of an organisation being so small) then CAA will store the information securely and ensure it is not shared.

## 11 CAA can do Director Testing

The Act enables CAA to do Director testing, i.e. testing safety-sensitive workers according to the DAMP operator's DAMP by a Director-appointed inspector:

- (1) The Director may carry out drug or alcohol testing of 1 or more safety-sensitive workers of a DAMP operator
- (2) Director testing, —
  - (a) to the extent reasonably practicable in the circumstances, must be carried out without advance notification to the DAMP operator or to the workers selected for testing; and
  - (b) may be carried out at any reasonable time and in any reasonable circumstances the Director considers appropriate; and
  - (c) may be carried out only if the worker consents to be tested; and
  - (d) must be carried out by an inspector.

[section 116(1)]

Director means the person who is for the time being the Director of Civil Aviation under section 31 of the Act (meaning they are appointed by the board of CAA) [sections (5) and (31)]

**Note:** Director testing doesn't have to be random and can occur at any time once the DAMPs are approved and operational. Since Director testing does not come into effect until 2027, CAA is still developing how Director testing will work in practice.

### 11.1 A DAMP operator must implement their response plan following Director testing if needed

If Director testing occurs and a worker refuses to consent to testing, or is tested and returns a non-negative result, or is suspected of tampering then:

- the Director must notify the DAMP operator as soon as practicable
- the DAMP operator must follow the same procedure as if the worker had been tested randomly at the initiative of the DAMP operator:

- (1) ..... if the Director notifies the DAMP operator under subsection (2), the DAMP operator must—
  - (a) prohibit the worker from performing safety-sensitive activities until the worker is able to safely perform those activities; and
  - (b) implement the response plan.
- (2) If a worker refuses to consent to Director testing or is tested and returns a result other than a negative result, the Director must notify the worker's DAMP operator of that fact as soon as practicable.

[section 117 (1) and (2) ]



The requirements above also apply to suspected tampering because of section 118(3).<sup>25</sup>

## 11.2 DAMP test results can only be used in prosecution in limited situations

The DAMP operator will get test results from random drug and alcohol testing, and from Director testing.

The Act limits how test results can be used. This is to ensure that a DAMP operator does not use test results in a way that breaches a person's rights. The Act does allow test results to be considered in prosecutions of any offences, but only under the Act or HSWA:

Test results obtained by a DAMP operator from carrying out random testing or by the carrying out of Director testing under [section 116](#) [the Act section that provides for Director testing] are not admissible in any criminal proceedings other than the prosecution of an offence under—

- (a) this Act; or
- (b) the Health and Safety at Work Act 2015. [section 119]

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<sup>25</sup> 'This subpart and the relevant DAMP apply as if the test returned a result other than a negative result' s118 (3).

## 12 What happens in the transition period (5 April 2025 to 4 April 2027)

There is a two-year transition period for the DAMP provisions in the Act – from 5 April 2025 to 4 April 2027.

### 12.1 Organisations that hold aviation documents on 5 April 2025

#### ***A DAMP needs to be submitted to CAA for approval in a certain timeframe***

During the transition period, existing holders of aviation documents with workers conducting safety-sensitive activities ('current DAMP operators') must submit a DAMP for approval.

The date by which DAMP operators must submit their DAMPs to CAA for approval is set out in rule 99.9. There will be two groups – those with certificates in:

- Group 1 submit their DAMPs to CAA before, or on, 30 September 2025
- Group 2 submit their DAMPs to CAA before or on 30 June 2026.

If an organisation holds more than one aviation document on 5 April 2025, the earlier of the submission dates applies.

| Group 1 – submit DAMP by<br>30 September 2025  | Group 2 – submit DAMP by 30 June 2026  |
|--|--|
| Part 115 Adventure Aviation  | Part 137 Agriculture Aircraft Operations   |
| Part 119 Air Operators: 121 & 125 airline air operators  | Part 119 Air Operators: 135 airline air operators and general aviation air operators.              |
| Part 145 Aircraft Maintenance Organisations - supporting 121 and 125 air operators                                   | Part 145 Aircraft Maintenance Organisations supporting <u>other than</u> 121 and 125 air operators |
| Part 139 Aerodromes (Tier 1 - with security enhanced areas) <sup>26</sup>  | Part 139 Aerodromes ( <u>not</u> Tier 1)   |
| Parts 171 & 172 Aeronautical Telecommunication Services, and Air Traffic Service Organisations                       | Part 141 Aviation Training Organisations   |
| Parts 173 & 175 Instrument Flight Procedure Service Organisations and Aeronautical Information Service Organisations | Part 146 Aircraft Design Organisations   |
|  | Part 147 Maintenance Training Organisations  |
|  | Part 148 Aircraft Manufacturing Organisations  |
|  | Part 174 Aviation Meteorological Services  |

<sup>26</sup> The aerodromes designated Tier 1 under the 2023 Act are the one with security-enhanced areas. The only airport that will have Tier 1 designation and doesn't currently have international flights is Invercargill.

**Note:** Under rule 99.9, current DAMP operators can also choose to submit DAMPs early, for example when they seek to renew operating certificates if this occurs before the date above.

### ***The DAMP operator will need to consider employment agreements***

It is important for a DAMP operator to signal the possibility of random testing to an affected worker (employee or engaged contractor – see section 8.2 of this AC). The Act assumes that employment contracts (with employees) and service agreements (with those directly contracted) will be amended, if they don't already have relevant references to random testing for drugs and alcohol.<sup>27</sup>

The Act provides for this in the transitional provisions.

When a current DAMP operator is an employer in an existing employment agreement....

The [ DAMP] operator may include in the agreement a provision that allows the operator to carry out random testing of a worker in accordance with the DAMP approved by the Director...

[Schedule 1 clause 31 11]

Director means the person who is for the time being the Director of Civil Aviation under section 31 of the Act (meaning they are appointed by the board of CAA).... [sections (5) and (31)]

### ***The DAMP will become operational at its implementation date***

DAMPs prepared and submitted in the transition period (up to 4 April 2027) need an implementation date that is agreed with CAA.<sup>28</sup>

5 April 2027 is the latest date that a DAMP can be implemented.

CAA's policy is that all DAMPs that are approved prior to 5 April 2027 will have the same implementation date of 5 April 2027. That means that the provision of the Act that applies to an approved DAMP (for example notifying CAA of results that are not negative) applies to all approved DAMPs after 5 April 2027.

## **12.2 Organisations that hold aviation documents on 5 April 2025 and have existing procedures that meet (or partially meet) their DAMP requirements**

Some current DAMP operators will already have drug and alcohol management procedures and be undertaking alcohol and drug testing (for example Part 115 operators, also discussed in section 6 of this AC).

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<sup>27</sup> Note Transitional Provisions [Schedule 1, cl 31](#) references the Employment Relations Act 2000.

<sup>28</sup> Schedule 1 clause 26(2)

If the organisation already has safety-sensitive workers that are subject to existing drug and alcohol policies and testing, then the organisation needs to determine if their existing policies and practices meet what is required under the Act.

The organisation should consider:

- differences in the scope of their existing policies and what a DAMP must cover

***Note:** The group of workers subject to the Act's DAMP requirements may be a sub-set of the workforce covered by existing policies. The operator may need to maintain two lists of workers. Only safety-sensitive workers, which meet the Act definition, would trigger the Act requirements to notify CAA under section 117 and require reporting under rule 99.19 and the associated transport instrument.*

- checking their existing drug and alcohol policies against the [DAMP template](#) for differences and gaps
- the value of providing for a DAMP chapter in existing policies to clearly show how the legal requirements are being met, and
- separating out the procedures for random testing (which is the focus of a DAMP) and pre-employment testing, testing for reasonable cause, and post incident/accident testing.

### **12.3 Organisations that seek a renewal during the transition period**

During the transition period, under clause 30 of Schedule 1 of the Act, the renewal decision is to be made without regard to the organisation's DAMP obligations. This means normal renewal processes continue during the transition period.<sup>29</sup>

### **12.4 Organisations that are new and apply for an aviation document during the transition period**

Rule 99.5(c) allows for a short grace period for new applicants. They do not need to have their DAMP approved until 4 April 2027 – aligning with current DAMP operator requirements. This recognises that an applicant who receives a certificate on 6 April 2025 is potentially at a disadvantage compared to someone who received a certificate on 4 April 2025.

### **12.5 What happens after the transition period ends (from 5 April 2027)**

After the transition period (i.e. from 5 April 2027):

- approved DAMPs will be considered as part of the organisation's exposition or equivalent documentation, and

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<sup>29</sup> Refer to Schedule 1, clause 30 which specifically provides that 'if the DAMP operator applies during the transition period for a renewal of the operator's aviation document, the renewal must be decided without regard to the operator's obligations to develop and submit a DAMP...'

- any new applicant will be expected to include a DAMP in their exposition or other equivalent material, with their application for a certificate, and
- Director testing may occur.

## 13 Other Resources

### ***CAA can provide further information and answer questions***

CAA is available to answer queries from current certificate holders as they consider if they are DAMP operators and as they develop their DAMPs. Operators can either email the mailbox for the team they usually work with, or check the [Contact Us](#) page on the CAA website, for the most appropriate contact.

### ***There are other sources of information available***

Medical matters GAP booklet - [Download a digital copy or order a printed copy here.](#)



CAA Medical information sheet on responsibilities **to advise CAA** [CAA MIS 004] [link here](#).

CAA Medical info sheet on **Recreational drugs** [CAA MIS 013] [link here](#)

CAA Medical info sheet on **Alcohol consumption** and medical aviation safety [link here](#)

**Mental Health:** Alcohol and other drugs section of CAA Medical Manual Section 3.9.2 [link here](#)

**General Directions Exceptions** for Temporary Medical Conditions [link here](#) *Note, alcohol and drugs are not listed as one of the exception*

[AC115-1, Adventure Aviation - Operator Certification](#)

[AC100-1, Safety Management](#)

<https://www.standards.govt.nz/>

<https://www.worksafe.govt.nz/>