



**Australian Government**

**Australian Transport Safety Bureau**

## Public Consultation Paper

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# **Amendment to the Transport Safety Investigation Regulations 2021 – Exposure Draft and related matters**

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CONSULTATION PERIOD ENDS ON 7 MARCH 2022

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# Glossary

The following reference table provides a guide to acronyms or abbreviations used in this consultation paper and the proposed amendments.

Acronym	Description
AIP	aeronautical information publication, available at: <a href="https://www.airservicesaustralia.com/aip/aip.asp">https://www.airservicesaustralia.com/aip/aip.asp</a>
AMSA	Australian Maritime Safety Authority
ATSB	Australian Transport Safety Bureau
CASA	Civil Aviation Safety Authority
CASR	Civil Aviation Safety Regulations 1998, available at: <a href="https://www.legislation.gov.au/Series/F1998B00220">https://www.legislation.gov.au/Series/F1998B00220</a>
Exposure Draft	the consultation version of the proposed legislative instrument to amend the TSI Regulations, known as the Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022
ICAO	International Civil Aviation Organization
IRM	immediately reportable matter, under section 18 of the TSI Act.
ONRSR	Office of the National Rail Safety Regulator
RSNL	Rail Safety National Law, being the <i>Rail Safety National Law (South Australia) Act 2012</i> under which ONRSR is established, and equivalent legislation in each other Australian State and Territory
RRM	routine reportable matter, under section 19 of the TSI Act.
TSI Act	<i>Transport Safety Investigation Act 2003</i> , available at: <a href="https://www.legislation.gov.au/Series/C2004A01102">https://www.legislation.gov.au/Series/C2004A01102</a>
TSI Regulations	Transport Safety Investigation Regulations 2021, available at: <a href="https://www.legislation.gov.au/Series/F2021L01248">https://www.legislation.gov.au/Series/F2021L01248</a>

# Introduction

## Proposed amendments to TSI Regulations

The Australian Transport Safety Bureau (**ATSB**) is seeking views from the aviation and marine industry, and other interested stakeholders, on proposed amendments to the Transport Safety Investigation Regulations 2021 (**TSI Regulations**). The proposed amendments to the TSI Regulations are set out in the Exposure Draft for the Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022 (the **Exposure Draft**).

The Exposure Draft proposes to make the following changes to the TSI Regulations:

- For the purpose of accident and incident notification, aircraft operations are put into four categories (Category A, B, C and D) based on the types of accident and incidents they will have to report. Consistent with the Minister's Statement of Expectations to the ATSB, the greatest focus is on receiving reports where the information is most likely to be used for the greatest public safety benefit.
- Align aircraft operation categories and updating definitions consistent with flight operations rules administered by the Civil Aviation Safety Authority (**CASA**) which commenced on 2 December 2021.
- Align key concepts such as accident, serious aircraft incident and aircraft incident, as well as kinds of examples, with International Civil Aviation Organization (**ICAO**) equivalents as best as practicable.
- Removing prescriptive lists of individual kinds of incidents and defining occurrence concepts more broadly, with guidance material supplementing examples of matters to be reported.
- Clarify that certain aircraft incidents are to be reported as serious aircraft incidents, due to their relative importance in identifying safety risks.
- Clarify that occurrences during repositioning flights prior to conducting a passenger transport operation or non-passenger commercial operation are reportable as part of the planned operation.
- Prescribe additional persons who are responsible for reporting in the aviation industry (aircraft insurers and sport aviation bodies) and marine industry (pilotage service providers and vessel traffic service providers) to increase the ATSB's safety coverage.
- Improve ATSB's administration of the occurrence reporting framework by making other minor, technical or clarifying changes.

To assist readers, an unofficial compilation of the TSI Regulations incorporating the Exposure Draft amendments – as if it had commenced – is provided for reference at [Annexure 1](#).

To provide a holistic view of the proposed changes and how it might be implemented, a draft version of updates to the Aeronautical Information Publication (the **AIP**) is also enclosed (at [Annexure 2](#)). The AIP is guidance material published by Airservices Australia and the ATSB has responsibility for updating content on occurrence reporting.

In large part, it is not expected that the proposed changes will have significant impact on industry participants, which are already required to report occurrences to the ATSB by telephone and/or by written reporting. For the aviation industry, the alignment of aviation occurrence reporting terminology and concepts with CASA's flight operations rulesets will provide more, rather than less, clarity on how different kinds of aircraft operations are treated for the purposes of occurrence reporting.

The amendments are proposed to be made by 30 June 2022, which aim to provide 6 months of lead time before commencement on **1 January 2023**.

### **Proposed amendments to TSI Act**

There are two complementary proposed policy changes also being consulted which relate to potential future amendments to the *Transport Safety Investigation Act 2003* (**TSI Act**). These two proposals are not included in the Exposure Draft. Subject to decisions of the Parliament, they will be considered as part of future reforms to the TSI Act.

- The first of these proposals is to extend the reporting timeframe for written reporting following an immediately reportable matter (**IRM**) and a routine reportable matter (**RRM**) from within 72 hours to within 7 days. The genesis of this proposal is upcoming reform (anticipated July 2022) of rail sector reporting requirements in State-based legislation, progressed by the Office of the National Rail Safety Regulator (**ONRSR**).
- The second proposed change to the TSI Act is to clarify that the regulations may prescribe the means by which the written report is submitted. Presently, the TSI Act empowers the regulations to prescribe the particulars of written reports but it is unclear whether the means of their submission might also be prescribed (as is the case with similar provisions in sections 18 and 19 of the TSI Act). The purpose of this clarification to the TSI Act is to eventually enable an update to the regulations to describe how written reports must be submitted. Preferably, in the future, the regulations would prescribe electronically-compatible formats to allow ATSB systems to automatically ingest and process data.

The ATSB thanks readers of this consultation paper, the Exposure Draft and the draft AIP updates for their interest and participation in the legislative-making process.

# Overview of the proposed changes and policy rationale

## Background

The TSI Regulations commenced on 30 September 2021 and replaced the Transport Safety Investigation Regulations 2003 which was due to sunset. Besides continuing the safety occurrence reporting framework for aviation, marine and rail matters, it also introduced reporting requirements for certain remotely piloted aircraft, aligned terminology and types of marine incidents with the updated *Navigation Act 2012* (previously the *Navigation Act 1912*), and restructured provisions in accordance with best drafting practice.

This consultation round builds on two prior select consultation rounds on substantively similar matters in November 2019 and April 2021, and for which the policy has not fundamentally changed and earlier industry feedback indicated broad support. The consultation paper has the purpose of assisting readers of the Exposure Draft by providing an outline of the proposed amendments and identifying the key issues. The ATSB will collate responses from stakeholders and use feedback to refine the proposed amendments.

## Issue 1: Re-categorisation of aircraft operations (aviation)

On 2 December 2021, civil aviation safety legislation was amended to re-categorise different kinds of aviation activities and introduced new flight operations rules. The TSI Regulations will be updated to cross-reference operational concepts set out in the Civil Aviation Safety Regulations 1998 (**CASR**).

Under Part 2 of the current TSI Regulations, air transport operations (regular public transport operations and charter operations) have the most significant reporting responsibilities. Some other passenger carrying operations such as air ambulance operations (medical transport operations) and private business flights carrying employees (mining fly-in fly-out operations) and parachuting operations do not fit the current definition of 'air transport operations'. For the purposes of IRMs and RRM, four new categories of aviation operations will be established:

- Category A (passenger transport) aircraft operations;
- Category B (commercial non-passenger) aircraft operations;
- Category C (non-commercial) aircraft operations; and
- Category D (type 2 RPA and certain unmanned balloons) aircraft operations.

The re-categorisation of aircraft operations (clause 28 of the Exposure Draft) will ensure that the greatest reporting responsibility attaches to occurrences during operations that present the greatest risk to the travelling public and highest level of public interest (Category A), while lower reporting requirements attach to aircraft operations that involve comparatively lower safety risks (Category D).

## Categories of aircraft operations

Each of the categories mentioned will cover the following kinds of aircraft operations:

Category	Kinds of aircraft operations covered
<p>Category A (passenger transport) aircraft operations</p> <p>[new section 8]</p>	<p><b><i>What is included in Category A?</i></b></p> <p><b>(1) Passenger transport operation</b> (within the meaning of CASR) being an operation in an aircraft that involves the carriage of passengers<sup>1</sup>, whether or not cargo is also carried on the aircraft.</p> <p>Examples include: air transport operations (scheduled or non-scheduled), balloon transport operations,<sup>2</sup> mining fly-in-fly-out operations, scenic flights/joy flights, parachuting operations, future RPA passenger carrying operations, and aerial work operations that carry passengers who are not crew members.</p> <p><b>(2) Medical transport operation</b> (within the meaning of CASR) being an operation with the primary purpose of transporting medical patients, medical personnel, or supplies (blood, tissue etc), or an operation prescribed by CASA in the Part 119 Manual of Standards as a medical transport operation.</p> <p>Examples include: flights formerly known as air ambulance operations, Royal Flying Doctor Service flights and patient transport/transfer services using aircraft operated by State and Territory ambulance services.</p> <p><b>(3) Repositioning flights</b> prior to conducting a substantive Category A operation (passenger transport or medical transport) will also be treated as a Category A operation for the purposes of occurrence reporting.</p> <p><b><i>What is excluded from Category A?</i></b></p> <p>Category A aircraft operations will <u>not</u> include an operation in an aircraft with a special certificate of airworthiness, or a cost-sharing flight<sup>3</sup>, or operation of</p>

<sup>1</sup> A **passenger** under CASR, in relation to an aircraft, means a person who is not a crew member of the aircraft and is on board the aircraft for a flight. (Note: a **crew member** is also defined in the CASR as, among other things, meaning a person on the aircraft who is authorised by the operator to conduct a specific function; or who is giving or receiving instruction or being tested for a qualification).

<sup>2</sup> A **tethered balloon** is not a **Part 131 aircraft** under regulation 131.005 of CASR, and therefore a tethered balloon operation carrying passengers (for example, a helium gas balloon used as a tethered sightseeing platform) is not a **balloon transport operation** under regulation 131.010 of CASR. However, a tethered balloon operating carrying passengers would be considered a **passenger transport operation** within the meaning of CASR and therefore included in Category A.

<sup>3</sup> A **cost-sharing flight** is defined in CASR as meaning a flight conducted using an aircraft with a maximum seat configuration of not more than 6 (including the pilot's seat), and the pilot in command is not remunerated for the flight, and the pilot in command pays an amount of direct costs of the flight at least

Category	Kinds of aircraft operations covered
	<p>an aircraft (where the registered operator is an individual) that carries passengers without payment or reward.</p> <p>For example, if a scenic flight involves “cost-sharing” – then any occurrences during that operation would be reportable under Category C (non-commercial) aircraft operations. It is important to note that cost-sharing is limited to an aircraft configuration of not more than 6 seats (including pilot’s seat) and requires the pilot in command to directly contribute to equal costs for the flight. Community service flights (within the meaning given by CASA regulatory instruments) would be considered under Category C (non-commercial) aircraft operations.</p>
<p>Category B (commercial non-passenger) aircraft operations</p> <p>[new section 9]</p>	<p><b>What is included in Category B?</b></p> <p><b>(1) Operation conducted for a commercial purpose</b> – any non-passenger carrying aircraft operation (with a pilot on board) that is conducted for a commercial purpose will be included in Category B. A “commercial purpose” is intended to have a general meaning and includes, among other things, operations conducted for hire or reward.</p> <p>Examples include: aerial work operations such as surveying, spotting, surveillance, agricultural operations, aerial photography; search and rescue operations; flying training activities (such as training under a Part 141 or Part 142 training organisation).</p> <p><b>(2) Cargo transport operation</b> (within the meaning of CASR) being an operation of an aircraft that involves the carriage of cargo and crew only (excluding operation for the carriage of possessions of the operator, or pilot in command, for business or trade).</p> <p>Examples include: air freight, air mail, and parcel/package delivery using aircraft operated by logistics companies.</p> <p><b>(3) operating Type 1 RPA</b> (defined in section 6 of the TSI Regulations and adopting CASR definitions) being a large RPA<sup>4</sup>, medium RPA<sup>5</sup> or RPA which is type certificated (and which is not an excluded RPA or micro RPA).</p> <p>Examples include: package delivery using large RPA, agricultural operations, other kinds of aerial work.</p>

equal to the amount paid by each other person on board equally divided, and the flight is not advertised to the general public.

<sup>4</sup> A **large RPA** is defined in regulation 101.022 of CASR as meaning an RPA with gross weight over 150kg.

<sup>5</sup> A **medium RPA** is defined in regulation 101.022 of CASR as meaning an RPA of more than 25kg but not more than 150kg.



Category	Kinds of aircraft operations covered
	<p><b>(4) Repositioning flights</b> prior to conducting a substantive Category B operation will also be treated as a Category B operation for the purposes of occurrence reporting.</p> <p><b><i>What is excluded from Category B?</i></b></p> <p>To avoid doubt, Category B aircraft operations do not include Category A (passenger transport) aircraft operations or Category D (type 2 RPA and certain unmanned balloons) aircraft operations.</p> <p>This means in practice, Category A operations (if applicable) take precedence for the purposes of occurrence reporting – if the operation is not Category A, then responsible persons (pilots, operators and others mentioned in section 13 of the TSI Regulations) should consider if the operation would then fall within the scope of Category B for commercial purposes, and if not, then whether the other two remaining categories would apply.</p> <p>For example, if an operator is contracted to conduct crop spraying for a client’s farmland, this would be for a commercial purpose (Category B). However, if an operator undertakes crop spraying on their own land, there is no commercial purpose in relation to the aircraft operation and this would be an operation covered under Category C (non-commercial).</p>
<p>Category C (non-commercial) aircraft operations</p> <p>[new section 10]</p>	<p><b><i>What is included in Category C?</i></b></p> <p><b>(1) Operation of an aircraft that is <u>not</u> Category A, Category B or Category D</b> – this broad description has the aim of covering non-commercial operations (with a pilot on board) generally. This means Category C will include recreational flying, general aviation, and flights where the pilot shares equally in costs with passengers (cost-sharing).</p> <p>Examples include: flying activities at local aero clubs, solo flying, community service flights, gliding activities.</p> <p><b><i>What is excluded from Category C?</i></b></p> <p>The purpose of Category C is to cover every kind of remaining aircraft operation (with a pilot on board) that is not excluded from the aviation occurrence reporting framework under subsection 7(3) of the TSI Regulations.</p> <p>Subsection 7(3) provides that Part 2 (aircraft operations) of the TSI Regulations do not apply to “excluded aircraft” – being an Australian defence aircraft, an exempt foreign aircraft, or an RPA that is not type 1 RPA or type 2 RPA. The Exposure Draft</p>

Category	Kinds of aircraft operations covered
	(clause 26) will also extend the list of excluded aircraft to model aircraft, small (unmanned) balloons and light (unmanned) balloons.
Category D (type 2 RPA and certain unmanned balloons) aircraft operations  [new section 11]	<p><b><i>What is included in Category D?</i></b></p> <p><b>(1)</b> operating <b>type 2 RPA</b> (defined in section 6 of the TSI Regulations) being an RPA that is not a type 1 RPA, not an excluded RPA, and not a micro RPA.</p> <p><b>(2)</b> operating a <b>medium balloon</b> (defined in Part 101 of the CASR) being an unmanned free balloon with, among other things, a payload with combined mass of at least 4kg but less than 6kg.</p> <p><b>(3)</b> operating a <b>heavy balloon</b> (defined in Part 101 of the CASR) being an unmanned free balloon with, among other things, a payload with combined mass of at least 6kg.</p> <p>Examples include: commercial and non-commercial operation of a very small RPA (more than 250g but under 2kg) such as the DJI Phantom 4 or a small RPA (more than 2kg but under 25kg) such as the DJI Agras MG-1. Unmanned balloons capable of reaching stratospheric heights would also be included.</p> <p><b><i>What is excluded from Category D?</i></b></p> <p>Category D covers a subset of unmanned aircraft operations that are not already covered under earlier categories. If the aircraft operation is not using a type 2 RPA, medium balloon or heavy balloon, then Category D does not apply.</p>

The proposed changes clarify that occurrences during repositioning flights for the purpose of conducting Category A aircraft operations must be reported as a Category A (passenger carrying) aircraft operation; and similarly for Category B (commercial non-passenger) aircraft operations. The rationale for including Category A and Category B repositioning flights is to ensure that occurrences for those operations with greater public safety impact and interest are included in categories that provide proper visibility of safety issues leading up to conduct of the substantive operation.

The requirement for reporting occurrences during repositioning flights does not apply to Category C (non-commercial) aircraft operations or Category D (type 2 RPA and certain unmanned balloons) aircraft operations.

## Kinds of reportable matters

To explore how each of the categories are associated with different kinds of reportable matters (occurrences), the following table shows the kinds of IRMs (telephone as soon as reasonably practicable and written report within 72 hours) and RRM (written report within 72 hours) covered.

Category	Immediately reportable matters	Routine reportable matters
Category A (passenger transport) aircraft operations [new section 11A]	The following kinds of occurrences must be reported as IRMs: <ul style="list-style-type: none"> <li>• aircraft accident;</li> <li>• serious aircraft incident or incident to be reported as a serious aircraft incident;</li> <li>• loss of separation standard between aircraft;</li> <li>• declaration of an emergency in relation to the aircraft; and</li> <li>• serious property damage incident (external).</li> </ul>	The following kinds of occurrences must be reported as RRM: <ul style="list-style-type: none"> <li>• aircraft incident; and</li> <li>• aircraft incident (external).</li> </ul>
Category B (commercial non-passenger) aircraft operations [new section 11B]	The following kinds of occurrences must be reported as IRMs: <ul style="list-style-type: none"> <li>• aircraft accident;</li> <li>• loss of separation standard between aircraft; and</li> <li>• serious property damage incident (external).</li> </ul>	The following kinds of occurrences must be reported as RRM: <ul style="list-style-type: none"> <li>• serious aircraft incident or incident to be reported as a serious aircraft incident;</li> <li>• declaration of an emergency in relation to the aircraft;</li> <li>• aircraft incident; and</li> <li>• aircraft incident (external).</li> </ul>

Category	Immediately reportable matters	Routine reportable matters
Category C (non-commercial) aircraft operations [new section 11C]	The following kinds of occurrences must be reported as IRMs: <ul style="list-style-type: none"> <li>• aircraft accident – limited to fatal aircraft-related injuries, serious aircraft-related injuries or missing aircraft;</li> <li>• loss of separation standard between aircraft; and</li> <li>• serious property damage incident (external).</li> </ul>	The following kinds of occurrences must be reported as RRM: <ul style="list-style-type: none"> <li>• aircraft accident other than reportable as an IRM;</li> <li>• serious aircraft incident or incident to be reported as a serious aircraft incident;</li> <li>• declaration of an emergency in relation to the aircraft; and</li> <li>• aircraft incident (external).</li> </ul>
Category D (type 2 RPA and certain unmanned balloons) aircraft operations [new section 11D]	The following kinds of occurrences must be reported as IRMs: <ul style="list-style-type: none"> <li>• aircraft accident – limited to fatal aircraft-related injuries or serious aircraft-related injuries; and</li> <li>• serious property damage incident (external).</li> </ul>	The following kinds of occurrences must be reported as RRM: <ul style="list-style-type: none"> <li>• aircraft accident other than reportable as an IRM; and</li> <li>• loss of a separation standard between aircraft.</li> </ul>

Broadly, the above changes aim to facilitate ease of understanding of what is and what is not reportable (as an IRM or an RRM) to reduce incidences of non-reporting or under reporting of incidents. The changes also aim to reduce over-reporting of events that the ATSB does not classify as transport safety matters. It will better align the framework with ICAO Annex 13 standards and recommended practices.

In summary, the changes outlined above will have the outcome of re-focusing and re-baselining the safety reporting framework on aircraft operations that have the highest risk or potential to deliver the greatest public benefit through systemic improvements to transport safety. This is balanced with a commensurately lower reporting burden for other kinds of aircraft operations. The changes will ensure the ATSB can better meet the Minister’s Statement of Expectations by prioritising of its safety investigation resources.

## Issue 2: Definitions of aircraft accident, serious aircraft accident and incident (aviation)

In the current TSI Regulations, the concept of “accident” is not used and an incident is not defined. The TSI Act defines “accident” as meaning an investigable matter involving a transport vehicle where, as a result of an occurrence associated with operation of the vehicle, a person has died or suffered serious injury, the vehicle is destroyed or seriously damaged, or any property is destroyed or seriously damaged.

To better align with widely adopted ICAO concepts and standards, the ATSB will adopt the substance of equivalent definitions in *Annex 13 – Aircraft Accident and Incident Investigation*, which clarifies how the terms “aircraft accident”, “serious aircraft incident”, “aircraft incident” and “aircraft incident (external)” relate to different kinds of occurrences. These terms only apply for the purposes of Part 2 (aircraft operations) of the TSI Regulations and are used to delineate which occurrences are IRMs or RRM for the purposes of reporting under each of the four categories of aircraft operations.

Recognising that the occurrence reporting framework applies to three modes of transportation (aviation, marine and rail), the concepts which align with ICAO will be narrowed to only apply to aircraft and an aviation context. The key occurrence definitions used for Part 2 (aircraft operations) of the TSI Regulations will be:

- **aircraft accident** (clause 13 of the Exposure Draft) – meaning where a person suffers a fatal aircraft-related injury<sup>6</sup> or a serious aircraft-related injury<sup>7</sup>, or if the aircraft sustains damage or structural failure (with exceptions<sup>8</sup>), or if the aircraft is missing or is completely inaccessible.
- **serious aircraft incident** (clause 25 of the Exposure Draft) – meaning an incident involving circumstances indicating that there was a high probability of an aircraft accident. The concept is paired with “incidents to be reported as a serious aircraft incident” which are incidents that may or may not meet the definition of serious aircraft incident, but must be reported as if it were a serious aircraft incident.
- **serious property damage incident (external)** (clause 23 of the Exposure Draft) – which adopts the existing definition of “serious property damage” (separately being repealed) to clarify that the incident involves damage to property outside the aircraft. The threshold for that damage is \$25,000 for repair or replacement.
- **aircraft incident** (clause 13 of the Exposure Draft) – meaning any occurrence that is associated with the operation of an aircraft and affects, or could affect, the safety of the operation of the aircraft.
- **aircraft incident (external)** (clause 13 of the Exposure Draft) – meaning an aircraft incident that originates from an external source outside the aircraft, including infrastructure, flying and other objects, animals or birds.

It should also be noted that certain incidents, whether or not substantively meeting the definition of serious aircraft incident, will be required to be reported as a serious aircraft incident for the purposes of the aviation occurrence reporting framework. The list of 20 such incidents, drawn from ICAO Annex 13 (its Attachment C), is inserted in

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<sup>6</sup> A **fatal aircraft-related injury** is included in clause 17 of the Exposure Draft. The definition is consistent with ICAO Annex 13.

<sup>7</sup> A **serious aircraft-related injury** is included in clause 21 of the Exposure Draft. The definition is consistent with ICAO Annex 13.

<sup>8</sup> Note: These exceptions are consistent with ICAO Annex 13.

a new section 6A and includes incidents such as incapacitation of a flight crew member or an event requiring emergency use of oxygen by a flight crew member.

The AIP will be updated to include examples and guidance on occurrences that would be considered, under the amended TSI Regulations, as aircraft accidents, serious aircraft incidents, aircraft incidents and aircraft incidents (external). In particular, using the AIP as guidance material to list the kinds of incidents to be reported will provide an operational document, used by industry, that can be updated more easily and in a more timely manner than amending the TSI legislation.

### **Issue 3: Responsible persons (aviation and marine)**

The TSI Regulations currently prescribe a list of responsible persons with the obligation to report reportable matters (that is, IRMs and RRM) to the ATSB. The prescribed list of responsible persons includes, for example, pilots and crew members of the aircraft concerned or a master or person in charge of a ship.

#### **Aviation industry – responsible persons**

For the aviation industry – the proposed amendments will add sport aviation bodies (within the meaning of the CASR) and insurers of aircraft to the list of responsible persons on the basis that these organisations will have localised knowledge of occurrences that may be under reported or not reported.

Some peak associations (sport aviation bodies) already facilitate occurrence reporting, on behalf of their members, to the ATSB and would already satisfy the proposed change (in this regard, the amendment would formalise existing arrangements). For other peak associations, reporting to the ATSB could be facilitated: (1) on behalf of members; or more simply, (2) requiring members to acknowledge (on club forms or post-flight documents) they have submitted any occurrence reporting to the ATSB. In the first case, the sport aviation body would be in the position of responsible person reporting to the ATSB; in the second case, the sport aviation body would be able to take advantage of existing exceptions from reporting (under subsections 18(2) and 19(2) of the TSI Act) on the grounds of reasonable belief that another responsible person (the pilot) has already reported the matter or will as soon as reasonably practicable do so.

It is expected that insurers can adopt similar approaches already implemented by sport aviation bodies in administrative dealings with aircraft owners when owners make an insurance claim for aircraft damage, hull loss and similar claims. In this situation, aircraft owners have knowledge of an occurrence (the IRM or RRM) and are required to report to the ATSB. The role of the insurer, under the proposed changes, is to facilitate reporting to the ATSB or, more likely, the second approach mentioned above where insurance claim documents require owners to acknowledge that they have submitted, or will soon submit, any occurrence report to the ATSB associated with a damage claim. This will remind the first responsible person (the owner) with localised knowledge of the occurrence to comply with their reporting obligations, and also would discharge the insurer's obligation (the second responsible person) to submitting a report.

#### **Marine industry – responsible persons**

For the marine industry – the Australian Maritime Safety Authority (**AMSA**) is a nominated official to receive occurrence reports, which is then transmitted to the ATSB. This arrangement will continue. In practice, the ATSB does not directly receive occurrence reporting from the marine industry but through AMSA.

It is proposed that a pilotage provider (within the meaning of the *Navigation Act 2012*) and a vessel traffic service authority (within the meaning of the *Navigation Act 2012*) also be prescribed as responsible persons. This is to cover occurrences which would otherwise not be reported because a ship leaves port and no other relevant entity with knowledge of the occurrence would be in a position to report to the ATSB (via AMSA). Conceptually, a vessel traffic service authority is similar to an air traffic service provider (already prescribed as a responsible person for aviation reportable matters) and a pilotage provider is unique to the marine industry in that the pilotage provider has specific knowledge to assist the ship travel through local waters.

## **Purpose**

The purpose of prescribing additional persons is not to create significant new regulatory imposts on industry (a number of organisations already forward reports and similar safety information to the ATSB). Rather, it is expected that implementing these reporting obligations could be administratively handled by ensuring that the responsible person (such as the pilot of an aircraft or operator of a ship) with first in time knowledge and closer proximity to the occurrence has already reported the occurrence to the ATSB. This means that current exceptions under the TSI Act continue to apply, where a responsible person is not obliged to report if they reasonably believe another responsible person has already reported the matter to the ATSB. Reasonable belief needs to be substantiated and the examples mentioned above are guidance on methods that could be adopted to close reporting gaps.

With more accurate datasets, the ATSB's safety analysis functions and, subsequently, safety products to industry and the wider public will directly improve industry operational, resourcing and financial considerations.

## **Issue 4: Clarifications, minor and technical changes (aviation)**

A number of definitions and concepts will be repealed, and others introduced to align with civil aviation safety legislation. Terms to be repealed, since they would be incorporated or dealt with in other ways in the proposed amendments, include the definitions for: airprox, air transport operation (which comprises out-dated references to regular public transport operation and charter operation), below minimum altitude, critical rejected take-off, near-collision, serious property damage and traffic collision avoidance system resolution advisory. Some of the underlying concepts will be moved to incident descriptions in the AIP (refer to AIP updates at [Annexure 1](#)).

New concepts to be introduced include "declaration of an emergency" (by a flight crew member of an aircraft or by an air traffic service provider), using the new term "serious property damage incident (external)" to more accurately refer to damage caused to property outside the aircraft, and adopting concepts used in the CASR such as "passenger transport operation", "medical transport operation", "cargo transport operation" and "sport aviation body". Standardising these terms and concepts with civil aviation safety legislation, particularly after commencement of new flight operations rules on 2 December 2021, will ensure there is harmonisation of operational concepts with reportable matters to the ATSB, to reduce, as much as practicable, the compliance burden under two (complementary) sets of safety legislation administered by the ATSB and by CASA.

To avoid doubt, the proposed amendments will add exclusions for the following aircraft in Part 2 (aircraft operations) of the TSI Regulations and will therefore not be required to report any occurrence: model aircraft, small balloons and light balloons (each within the meaning given by Part 101 of the CASR). These kinds of aircraft present comparatively lower safety risk exposure in how they are operationally regulated.

- Model aircraft is defined in regulation 101.023 of CASR and means an aircraft (other than a balloon or kite) that does not carry a person – being an aircraft operated for sport or recreation and having a gross weight of not more than 150kg; or if the aircraft is operated in connection with educational, training or research purposes by a school or higher education provider and does not have a gross weight of more than 7kg. Typically, model aircraft are “drone” users who are flying as a hobby.
- Small balloon is defined in regulation 101.145 of CASR and means an unmanned free balloon has a diameter of 2 metres or less at launch and is not carrying a payload (or if carrying a payload, with a combined mass of not more than 50g).
- Light balloon is defined in regulation 101.145 of CASR and means an unmanned free balloon that has a combined mass of more than 50g but less than 4kg; or a balloon with a diameter greater than 2 metres at launch but not carrying a payload (or if carrying a payload, with a combined mass of not more than 50g).

While not mentioned in the Exposure Draft, it is also intended that the final legislative instrument amending the TSI Regulations will exclude kites, and tethered balloons without persons on board (that is, no passengers and no crew on the aircraft), from reporting. A tethered balloon is not a free balloon. If a tethered balloon were to no longer become tethered – by operational intent or otherwise – then small (free) and light (free) balloons would continue to be excluded from reporting; but medium (free) and heavy (free) balloons would be required to report occurrences under Category D.

To be clear, certain kinds of vehicles continue to be excluded because they are not considered aircraft. These vehicles include: rockets, parachutes<sup>9</sup> and hovercraft.

The Exposure Draft also makes two other changes that improve understanding the aviation occurrence reporting framework:

- A new section 12 – this provision clarifies that if it is unclear whether a particular occurrence is to be reported as an RRM or an IRM (for example, because the occurrence may meet the definitions of both aircraft accident and serious aircraft incident), then for the purposes of reporting, the occurrence is to be treated as an IRM. In practice, the ATSB expects that occurrences would be reported as the higher of two (or more) potential groupings.
- A new item 8A in the table in section 15 – this provision prescribes that one of the particulars to be provided in written reporting is the Aviation Reference Number (**ARN**) of a pilot or flight crew member, if they have an ARN issued by CASA. The ATSB has previously received enquiries on whether a licence number is an ARN or some other kind of reference number. It has also received written reports that often include licence numbers and ARNs, ARNs but not licence numbers, and other variations. The provision clarifies that both licence numbers and ARNs (if one has been issued) are to be included in written reporting.

While not covered in the Exposure Draft, it is also further proposed that references to concepts such as “manned” or “unmanned” aircraft (such as section 7 of the TSI Regulations) will be substituted with gender-neutral concepts such as “crewed” or

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<sup>9</sup> Parachutes do not generally create lift and, for that reason, parachutes are not considered aircraft – therefore, parachutists using a parachute are implicitly excluded from reporting requirements. On the other hand, an aircraft carrying parachutists (passengers) would be included in Category A.



“uncrewed”, subject to any limitations by cross-reference to existing civil aviation legislation. The AIP, being guidance material, will use the concepts of crewed and uncrewed.

The ATSB does not anticipate any need for a transitional scheme or transitional provisions for the changes to the occurrence reporting framework. It is anticipated that the current reporting framework under the TSI Regulations would end on 31 December 2022 and the new occurrence reporting framework (with new concepts of Categories A, B, C and D associated with different occurrences as IRMs or RRM) will commence on 1 January 2023.

In addition to aiming to provide industry with a 6 month lead time after making of the legislative changes (by 30 June 2022), the ATSB may update its online reporting forms and other administrative details to assist a smooth commencement date of 1 January 2023. To the extent there is any data misalignment between CASA’s flight operations rulesets and the ATSB’s occurrence reporting framework until the TSI Regulations are amended (between 2 December 2021 and 1 January 2023), ATSB and CASA will collaborate to identify any significant anomalies. The ATSB also welcomes industry feedback on areas where there may be reporting discrepancies.

## **Issue 5: Changing written reporting timeframes from within 72 hours to within 7 days (aviation, marine and rail)**

Under the TSI Act, a responsible person with knowledge of an IRM is required to report to a nominated official (prescribed in the TSI Regulations as a staff member of the ATSB, or AMSA or the Office of the National Rail Safety Regulator (**ONRSR**)) via telephone as soon as practicable, followed by written reporting within 72 hours. A responsible person with knowledge of an RRM is only required to give a written report of the matter within 72 hours.

ONRSR is progressing reforms to 4 elements of its State-based regulatory framework with an anticipated commencement date of 1 July 2022. One of the areas of reform is the proposal to change references to the 72 hour written reporting requirement in the Rail Safety National Law (**RSNL**) to a period of 7 days for Category A (conceptually equivalent to IRMs) and Category B (conceptually equivalent to RRM). The change is proposed on the basis that increased reporting timeframes will likely improve the quality of information received via written reporting and minimise the need for subsequent reports when more details are available.

The RSNL operates in a complementary manner to the Commonwealth TSI Act. This means that any references to reporting periods are drawn from the TSI Act. To give effect to ONRSR’s reforms, section 19 of the TSI Act, dealing with written reporting for both IRMs and RRM, would need to be amended to substitute the reference to “within 72 hours” to a reference to “within 7 days”.

The ATSB’s position is that it requires written reporting in a timely manner to make decisions as to whether safety investigators are deployed in response to an occurrence. The ATSB supports, in-principle, a revised timeframe of 7 days for written reporting (but no longer than 7 days) on the basis that it balances timeliness of information received with the quality and detail of information provided.

There may be advantages with a longer reporting timeframe (but no more than 7 days) since it may provide responsible persons (such as operators) with additional time to finalise technical inspections after an occurrence and to include those details in a written report to the ATSB – rather than submit what information they may have within

the 72 hour limit and then being asked by the ATSB to provide further technical information. It is also expected that a 7 day reporting timeframe will ease reporting burdens for sport aviation bodies who have, in previous consultation rounds, informed the ATSB of their reliance on volunteer resourcing.

The ATSB expects that existing inter-agency reporting sharing arrangements between ATSB and AMSA, and between ATSB and ONRSR, would not be affected by this proposal. To be clear, this means rail occurrences will continue to be reported through ONRSR; marine occurrences will continue to be reported through AMSA; and aviation occurrences will continue to be directly reported to the ATSB.

The ATSB acknowledges that the proposal has already been extensively consulted by ONRSR with the rail industry as part of state-based reforms. The purpose of inviting comment on Issue 5 is to formally seek, as part of the Commonwealth consultation process for changes to federal legislation, feedback from the rail industry supportive of this change. In addition, the ATSB welcomes feedback from aviation and marine industry on views as to whether the proposal to extend written reporting timeframes from within 72 hours to within 7 days would also be supported for those modes of transportation.

If the proposal is broadly supported, subject to government approval, an amendment to the TSI Act (in the manner described above) would need to be undertaken to implement this policy change. If the proposal is only supported by some transportation modes but not others, the proposed changes would follow accordingly.

The ATSB is responsible for administering the TSI Act (primary legislation) and TSI Regulations (subordinate legislation). However, an amendment to primary legislation must be sponsored by the ATSB's portfolio Department. The amendment to the TSI Act will be a future project separate to the ATSB's regulation (subordinate legislation) changes set out in the Exposure Draft.

## **Issue 6: Prescribing the format for written reports or approved data transfer mechanism (aviation, marine and rail)**

Under subsection 18(1) of the TSI Act, the ATSB may prescribe the means, via the TSI Regulations, for a person to report an IRM to a nominated official. For an IRM, section 40 of the TSI Regulations prescribes this means by telephone, or if telephone communication is not reasonably available, by another form of telecommunication or radio communication. However, it is not clear under subsection 19(1) of the TSI Act, whether the ATSB has an equivalent power to prescribe the means, via the TSI Regulations, of how written reports are to be provided to the ATSB.

Presently, a minority of written reporting is submitted via the ATSB's occurrence reporting notification forms (and similarly through other web-based forms on AMSA and ONRSR websites). Written reports can be in any format, including text reports in PDF format that are emailed, and occasionally hand-written statements. These formats require manual data entry, which slows down the processing rate, resulting in notification information not being available to the ATSB and industry in a timely manner, including the publicly available national aviation occurrence database.

Additionally, these formats can also compromise the integrity of the data and may also require follow-up by the ATSB to collect any data missing from the original report. Defining the format of a written report maximises the value of the data for statistical analysis and reporting.

In line with government policy, and to ensure the ATSB can keep pace with increases in reporting as transport activity continues to grow (in particular, in the RPA industry), the ATSB is proposing to limit the means (including the format) through which written reports are submitted to the ATSB.

It is proposed that the ATSB be empowered to limit the format of written reports to:

- an online (internet browser-based) reporting form on its website; and
- approved automated data transfer mechanisms (such as XML schema<sup>10</sup>) from an operator's safety management system that can allow ATSB data systems to ingest and process large volumes of data – increasing resourcing efficiencies and data accuracy.

This proposal will require a future amendment to the TSI Act and a further amendment to the TSI Regulations.

It is not expected that the written reporting burden will be onerous – on current data, a web report for a single incident will take an average of 5 minutes to complete. Once an automated data transfer mechanism is approved, an automated daily feed of IRM and RRM data can then be provided to the ATSB and will further reduce double handling by responsible persons.

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<sup>10</sup> An XML schema is a description of the structure of an XML document, including what fields it contains and what data type each field requires. It can be used to automatically validate a data file using standard software available for all major operating systems.

# How to comment and provide feedback

The purpose of this consultation policy paper is to seek comment from aviation and marine industry participants, as well as other interested stakeholders, on the proposed amendments before finalising the Exposure Draft. Once the content of the Exposure Draft is settled, subject to government approval, the amendments are expected to be made by **30 June 2022** with an intended commencement date of **1 January 2023**.

The aim is to provide industry a lead time of 6 months to become familiar with the new reporting requirements before these requirements commence.

The ATSB considers that the proposed amendments – primarily focused on aviation matters (Part 2 of the TSI Regulations) and a smaller component on marine matters – form a necessary part of improving transport safety, investigation and data analysis. This consultation paper enables the views of industry stakeholders to be considered in refining the scope of the amendments.

The ATSB welcomes feedback on:

## **Aviation matters**

- > Issue 1: Revision of categories of aircraft operations – the aim of which is to require all aircraft operations involving the travelling public to report a wider range of occurrences.
- > Issue 2: Aligning concepts and terminology with CASA legislation and ICAO standards.
- > Issue 3: Prescribing additional responsible persons in the recreational aviation sector (sport aviation bodies) and insurers of aircraft.
- > Issue 4: Other clarifications, minor and technical changes
- > Using the AIP as a guide for kinds of aircraft incidents to be reported to the ATSB (each example in the AIP would still be required to be within the scope of the relevant legislative definitions).

## **Marine matters**

- > Issue 3: Prescribing additional responsible persons who are pilotage providers and vessel traffic service authorities (within the meaning of the *Navigation Act 2012*).

## **General matters (aviation, marine and rail)**

- > Issue 5: Subject to a future TSI Act amendment – changing when written reports are required to be made, from within 72 hours to within 7 days.
- > Issue 6: Subject to a future TSI Act amendment – changing how written reports must be submitted, in a format or using a data transfer method approved by the ATSB.
- > Anticipated regulatory impact and other compliance costs (noting that a significant majority of existing reporting obligations will continue but will be re-categorised).
- > The proposed date of making the amendments by 30 June 2022 and commencing the new requirements on 1 January 2023.

The ATSB will review all responses but may not be able to provide individual responses to address each of the submissions received. It will acknowledge all responses and publish a summary of industry feedback before taking further steps to finalise the Exposure Draft.

## Submission addresses

Submissions may be directed to the ATSB in two ways:

### Online survey (preferred)

Submissions can be addressed to the ATSB through an online survey link provided on the ATSB's website landing page for this project.

The online survey will provide a mix of guided questions and free text input to assist readers to complete their responses.

### Written correspondence

Readers can also complete a questionnaire substantially similar to the online survey and send their response to:

By email: [consultation@atsb.gov.au](mailto:consultation@atsb.gov.au)

By mail: Attn: Legal, Governance and International  
Australian Transport Safety Bureau  
PO BOX 967  
Civic Square ACT 2608

## The closing date for submissions is 7 March 2022

Each submission should specify:

- > the name of the individual or organisation making the submission; and
- > contact details of the individual or organisation (such as a telephone number, postal address or email address).

A submitter may claim confidentiality over their name or contact details (see '**Publication of submissions**' below) or may make a submission anonymously or through use of a pseudonym (see '**Privacy**' below).

## Publication of submissions

The ATSB will not publish or disclose any submissions or any information that is marked confidential, unless required by law to do so.

## Release of submissions where required by law

Any submission provided to the ATSB is subject to a request for release, and may be released, under the *Freedom of Information Act 1982* (unless an exemption applies) or shared with other Australian Government agencies and certain other parties.

The ATSB may also be required to release submissions for other reasons, including for the purpose of parliamentary processes or where otherwise required by law (for example, to comply with a court order or subpoena). While the ATSB seeks to consult submitters of confidential information before that information is provided to another party, the ATSB cannot guarantee that confidential information will not be released through these or other legal means.

## Privacy

The *Privacy Act 1988* (**Privacy Act**) imposes obligations on the ATSB in relation to the collection, security, quality, access, use and disclosure of personal information. The ATSB is committed to respecting your right to privacy and protecting your personal information in accordance with the Privacy Act and our policies and procedures.

The ATSB may only collect personal information if it is reasonably necessary for, or directly related to, one or more of its functions or activities. The purposes for which personal information is being collected (such as the names and contact details of submitters) are to:

- > Contribute to the transparency of the consultation process by clarifying, where appropriate, whose views are represented by a submission;
- > Enable the ATSB to contact submitters where follow-up is beneficial for the purposes of feedback discussion or to notify them of related matters (except where submitters indicate they do not wish to be notified of such matters).

The ATSB will not use the personal information collected for any other purpose, unless the submitter has provided their consent or the ATSB is otherwise permitted to do so under the Privacy Act and in accordance with the ATSB's privacy policy.

If a submitter wishes to make a submission anonymously or through use of a pseudonym, they may do so but are reminded that it may affect how the submission is analysed and considered by the ATSB. .

Further information on the Privacy Act and the ATSB's privacy policy is available at <https://www.atsb.gov.au/utilities/privacy/>. The privacy policy contains details about how an individual may access personal information about them that is held by the ATSB, and seek the correction of such information. It also explains how an individual may complain about a breach of the Privacy Act and how the ATSB will deal with such a complaint.

# Annexures

**Annexure 1:** Unofficial compilation of the TSI Regulations (as amended)

**Annexure 2:** Draft updates to the Aeronautical Information Publication