



Transport Safety Investigation Amendment Regulation 2012 (No.)¹

Select Legislative Instrument 2012 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Transport Safety Investigation Act 2003*.

Dated 2012

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Minister for Infrastructure and Transport

EXPOSURE DRAFT ONLY

1 Name of regulation

This regulation is the *Transport Safety Investigation Amendment Regulation 2012* (No.).

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Transport Safety Investigation Regulations 2003*

Schedule 1 amends the *Transport Safety Investigation Regulations 2003*.

Schedule 1 Amendments

(section 3)

[1] Regulation 1.3, definitions of *serious damage* and *serious injury*

substitute

serious damage, for a transport vehicle, means damage that:

- (a) significantly affects the structural integrity, performance or operational characteristics of the transport vehicle; and
- (b) necessitates major repairs to, or replacement of, a component of the vehicle.

serious injury means:

- (a) for Part 2—see regulation 2.2; or
- (b) for Parts 3 and 4—an injury sustained by a person that causes the person to be admitted to hospital within 7 days of the injury.

[2] **Part 2, heading**

substitute

**Part 2 Aircraft—compulsory
reporting requirements**

Division 2.1 Preliminary

[3] **Regulations 2.1 to 2.5A**

substitute

2.1 Application of Part 2

- (1) This Part applies to an investigable matter that:
 - (a) involves any of the following kinds of aircraft:
 - (i) a manned aircraft;
 - (ii) a large UAV;
 - (iii) a small UAV operated for purposes other than sport or recreation; and
 - (b) occurs during a period mentioned in subregulation (2) or (3) (a *flight period*).
- (2) The flight period of a manned aircraft:
 - (a) commences at the earlier of:
 - (i) the embarkation of the first passenger; and
 - (ii) the embarkation of the first crew member who intends to remain on board during the flight; and
 - (b) ends after the disembarkation of the last passenger or crew member to leave the aircraft.
- (3) The flight period of a UAV:
 - (a) commences when the UAV begins to move under its own power for the purpose of take-off; and
 - (b) ends at the later of:
 - (i) the moment at which the UAV comes to rest after being airborne; and

- (ii) the shutting down of the UAV's primary propulsion system.

2.2 Definitions for Part 2

In this Part:

associated with the operation of the aircraft, in relation to an occurrence, means an occurrence that relates to:

- (a) the movement of the aircraft; or
- (b) the altitude of the aircraft; or
- (c) anything used in connection with moving or guiding the aircraft.

Civil Aviation Regulations means the *Civil Aviation Regulations 1988*.

Civil Aviation Safety Regulations means the *Civil Aviation Safety Regulations 1998*.

large UAV has the meaning given by regulation 101.240 of the Civil Aviation Safety Regulations.

serious injury means an injury sustained by a person that:

- (a) causes the person to be hospitalised for a period that:
 - (i) begins within 7 days of the injury; and
 - (ii) is longer than 48 hours; or
- (b) consists of any of the following:
 - (i) a bone fracture, except a simple toe, finger or nose fracture;
 - (ii) a laceration that causes nerve, muscle or tendon damage or severe haemorrhage;
 - (iii) injury to an internal organ;
 - (iv) second or third degree burns;
 - (v) burns affecting more than 5% of the person's skin;
 - (vi) exposure to infectious substances;
 - (vii) exposure to radiation, if the exposure is a reportable incident within the meaning of Schedule 13 to the National Directory for Radiation Protection, as in force from time to time.

small UAV has the meaning given by regulation 101.240 of the Civil Aviation Safety Regulations.

UAV has the meaning given by regulation 101.240 of the Civil Aviation Safety Regulations.

Note Other words and expressions used in these Regulations are defined in subsection 3 (1) of the Act, including:

- aircraft
- ATSB
- civil transportation facility
- immediately reportable matter
- investigable matter
- OBR information
- routine reportable matter
- transport safety.

Division 2.2 Immediately reportable matters

2.3 Prescribed investigable matters

This Division prescribes certain investigable matters as immediately reportable matters for the definition of *immediately reportable matter* in subsection 3 (1) of the Act.

Note For guidance material in relation to immediately reportable matters, see ATSB's website (www.atsb.gov.au) and the Aeronautical Information Package on Airservices Australia's website (www.airservicesaustralia.com).

2.3A Immediately reportable matters—death and serious injury

The table sets out investigable matters that are immediately reportable matters if:

- (a) an occurrence associated with the operation of the aircraft takes place while a person is on board the aircraft; or
- (b) a person comes into contact with:
 - (i) the aircraft; or
 - (ii) anything that is attached to the aircraft; or
 - (iii) anything that has become detached from the aircraft;or

- (c) a person is directly exposed to jet blast, propeller blast or rotor downwash.

Item	Matter
1	The death of the person, as a result of the occurrence, within 30 days
2	The death of the person, as a result of the occurrence, if the person was admitted to hospital within 30 days of the occurrence
3	Serious injury to the person as a result of the occurrence
4	The exposure of the person to serious risk of death or serious injury as a result of the occurrence

2.3B Immediately reportable matters—aircraft damage etc.

- (1) The table sets out investigable matters that are immediately reportable matters.

Item	Matter
1	The destruction of the aircraft
2	Serious damage to the aircraft
3	The abandonment or disappearance of the aircraft
4	The exposure of the aircraft to serious risk of destruction, serious damage, abandonment or disappearance as a result of an occurrence associated with the operation of the aircraft

- (2) The aircraft is taken to be destroyed, seriously damaged, abandoned or missing if it is reasonably likely that the aircraft has been destroyed, seriously damaged or abandoned or is missing.

- (3) In this regulation:

serious damage does not include any of the following:

- (a) engine failure or damage, if the aircraft has more than one engine and:
- (i) only one engine fails or is damaged; or
 - (ii) the damage is only to the cowlings or accessories of only one of the engines;

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- (b) damage to any of the following:
- (i) a propeller;
 - (ii) a wing tip;
 - (iii) an antenna;
 - (iv) a probe;
 - (v) a vane;
 - (vi) a tyre;
 - (vii) a brake;
 - (viii) a wheel;
 - (ix) a fairing;
 - (x) a panel;
 - (xi) a landing gear door.

2.3C Immediately reportable matters—property damage etc.

- (1) The table sets out investigable matters that are immediately reportable matters if, as a result of an occurrence associated with the operation of the aircraft:
- (a) property comes into contact with:
 - (i) the aircraft; or
 - (ii) anything that is attached to the aircraft; or
 - (iii) anything that has become detached from the aircraft; or
 - (b) property is directly exposed to jet blast, propeller blast or rotor downwash.

Item	Matter
1	The destruction of the property as a result of the occurrence
2	Serious damage to the property as a result of the occurrence
3	The exposure of the property to serious risk of destruction or serious damage as a result of the occurrence

- (2) However, the destruction of, or damage to, property mentioned in items 1 and 2 of the table in subregulation (1) is not an immediately reportable matter if:
- (a) the occurrence was a lawful act; and

(b) the destruction or damage was an anticipated result of the occurrence.

(3) In this regulation:

property includes the following:

- (a) a building;
- (b) a road, railway or other infrastructure;
- (c) a vehicle.

serious damage means damage that is estimated to exceed the lesser of:

- (a) \$25 000 to costs of repair, including materials and labour; and
- (b) if the property is destroyed—fair market value.

2.3D Immediately reportable matters—other

The following are investigable matters:

- (a) a crew member broadcasting a declaration of an emergency in relation to an occurrence that compromises the safety of any person; or
- (b) the aircraft coming into such close proximity with another aircraft that an applicable separation standard is breached.

Division 2.3 Routine reportable matters

2.4 Definition for Division 2.3

In this Division:

relevant aircraft means:

- (a) a manned aircraft that:
 - (i) is classified as a private aircraft for paragraph 2 (6) (d) of the Civil Aviation Regulations; and
 - (ii) does not have a turbo jet engine; and
 - (iii) has a maximum take-off weight of less than 2 251 kg; or
- (b) a UAV mentioned in subparagraph 2.1 (1) (a) (ii) or (iii).

2.4A Prescribed investigable matters

This Division prescribes certain investigable matters as routine reportable matters for the definition of *routine reportable matter* in subsection 3 (1) of the Act.

2.4B Routine reportable matters—collisions with animals

Any collision between the aircraft and an animal is a routine reportable matter.

2.4C Routine reportable matters—other

- (1) An investigable matter other than a matter prescribed in regulation 2.4B is a routine reportable matter if:
 - (a) the investigable matter is not an immediately reportable matter for Division 2.2; and
 - (b) the investigable matter involves a failure to eliminate, minimise or effectively manage risk of a kind set out in subregulation (2); and
 - (c) the safety of the operation of the aircraft is, or could be, affected by the failure to eliminate, minimise or effectively manage the risk; and
 - (d) if the aircraft is a relevant aircraft—a circumstance in subregulation 2.4D (1) applies.
- (2) For paragraph (1) (b), the risk is the risk of:
 - (a) the death of a person; or
 - (b) injury to a person; or
 - (c) illness of a person; or
 - (d) damage to, or failure of, a component of the aircraft; or
 - (e) damage to property.
- (3) To determine whether there has been a failure to eliminate, minimise or effectively manage risk, regard must be had to the following criteria:
 - (a) the likelihood of an occurrence mentioned in paragraphs (2) (a) to (e);
 - (b) the seriousness of the occurrence;
 - (c) good industry practice;

- (d) applicable safety requirements under a law of the Commonwealth, a State or a Territory;
- (e) guidance material on safety approved by a regulatory authority under a law of the Commonwealth, a State or a Territory;
- (f) any applicable safety management system adopted by an aircraft operator.

(4) In this regulation:

safety management system means a document exhibiting a systematic approach to managing safety, including by setting out the necessary organisational structures, accountabilities, policies and procedures.

Note For guidance on determining whether there has been a failure to eliminate, minimise or effectively manage risk, consult ATSB's website (www.atsb.gov.au) and the Aeronautical Information Package on Airservices Australia's website (www.airservicesaustralia.com).

2.4D Relevant aircraft—circumstances

- (1) For paragraph 2.4C (1) (d), the circumstances are the following:
 - (a) a runway incursion;
 - (b) a collision between the aircraft and a wire suspended above the ground;
 - (c) fuel exhaustion or fuel starvation;
 - (d) failure of an aircraft system;
 - (e) the failure or inadequacy of anything related to an aerodrome used by the aircraft, including any of the following:
 - (i) lighting;
 - (ii) a runway, taxiway or apron area;
 - (iii) signs and markings;
 - (f) the failure or inadequacy of a civil transportation facility, including any of the following, used by the aircraft:
 - (i) a navigation aid;
 - (ii) a radar service;
 - (iii) an air traffic service provided by Air Traffic Services.

(2) In this regulation:

aircraft system means a part of the aircraft that consists of an integral network of related and inter-controlled devices designed to perform a specific function.

Examples

1 The aircraft's flight management system, hydraulic system, electrical system, flight guidance system and navigation system.

2 A UAV's ground control system and associated communication system.

air traffic service means a service of a kind mentioned in Annex 11 to the Convention on International Civil Aviation done at Chicago on 7 December 1944, other than a certified air/ground radio service at an aerodrome.

Air Traffic Services means any of the following in its capacity as a provider of an air traffic service:

- (a) Airservices Australia;
- (b) the Defence Force;
- (c) an ATS provider within the meaning of regulation 172.015 of the Civil Aviation Safety Regulations.

fuel exhaustion means the aircraft's consumption of the totality of its useable fuel.

fuel starvation means an interruption to the fuel supply to the aircraft's engines despite the presence of useable fuel on board the aircraft.

runway incursion means the presence of a person or thing within the protected area of a surface designated for the landing and take-off of aircraft, if the person or thing:

- (a) does not have an appropriate clearance; or
- (b) hinders the operation of the aircraft.

Division 2.4 Responsible persons

2.5 Prescribed responsible persons

For definition of **responsible person** in subsection 3 (1) of the Act, the following persons are prescribed:

- (a) a crew member of the aircraft;

- (b) an owner or operator of the aircraft;
- (c) a person who provides an air traffic service on behalf of Air Traffic Service for the aircraft;
- (d) a person who:
 - (i) is a provider of an aerodrome rescue and firefighting service for Subpart 139.H of the Civil Aviation Safety Regulations; and
 - (ii) provides the service for the aircraft;
- (e) a licensed aircraft maintenance engineer under the Civil Aviation Regulations or the Civil Aviation Safety Regulations who does any work in relation to the aircraft;
- (f) a member of the ground handling crew for the aircraft;
- (g) a member of the staff of the Civil Aviation Safety Authority;
- (h) the operator of an aerodrome used by the aircraft;
- (i) a controller of a UAV within the meaning of regulation 101.240 of the Civil Aviation Safety Regulations;
- (j) a recreational aviation administration organisation recognised by the Civil Aviation Safety Authority.

Division 2.5 Compulsory reporting

2.5A Immediate reports

- (1) For subsection 18 (1) of the Act, the following particulars are prescribed:
 - (a) the type, model, nationality, registration marks and flight number (if any) of the aircraft;
 - (b) the type of aircraft operation that the aircraft was engaged in at the time of the immediately reportable matter;
Note Types of operation are classified in the Civil Aviation Regulations and the Civil Aviation Safety Regulations.
 - (c) the name and contact details of:
 - (i) the operator of the aircraft; and
 - (ii) the owner of the aircraft;
 - (d) the nature of the immediately reportable matter, including:
 - (i) whether a person died or was seriously injured;

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- (ii) whether there was damage to the aircraft or property and, if so, a description of the damage;
 - (iii) if the immediately reportable matter involved the presence of dangerous goods onboard the aircraft—a description of the goods;
 - (e) where the immediately reportable matter occurred, including a description of the location or the geographical coordinates;
 - (f) the aircraft's place of departure and destination;
 - (g) the day and local time when the immediately reportable matter occurred;
 - (h) a description of:
 - (i) what occurred; and
 - (ii) how and why it occurred (if known).
- (2) When making the report, the responsible person must give the nominated official:
- (a) the person's name; and
 - (b) the best method of contacting the person.

[4] Regulation 2.6, heading

substitute

2.6 Written reports

[5] Subparagraph 2.6 (1) (m) (viii)

substitute

- (viii) the factors that contributed to the occurrence (if known), including any human performance issues; and

[6] Subregulation 2.6 (2)

omit

that is only for a matter mentioned in paragraph 2.4 (1) (o) or (2) (i) (a collision with an animal, including a bird)

insert

that concerns a collision with an animal for regulation 2.4B

[7] Regulation 2.7, heading

substitute

2.7 Nominated officials

[8] After regulation 2.8

insert

Division 2.6 Miscellaneous

[9] Regulation 2.9, heading

substitute

2.9 OBR information

[10] Part 3, heading

substitute

Part 3 Ships—compulsory reporting requirements

[11] **Part 4, heading**

substitute

Part 4 **Rail vehicles—compulsory reporting requirements**

[12] **Regulation 5.3**

substitute

5.3 International obligations

For subsections 12AD (1) and (2) of the Act, Australia's obligations are to comply with the following:

- (a) Articles 26, 37 and 38 of the Convention on International Civil Aviation, done at Chicago on 7 December 1944, in so far as those Articles relate to aviation safety investigations, and Annex 13 to that Convention;
- (b) regulation 21 of Chapter I of the Annex to the International Convention for the Safety of Life at Sea, done at London on 1 November 1974 (*SOLAS*);
- (c) the requirement in regulation 6.1 of Chapter XI-1 of the Annex to SOLAS to fully comply with the provisions of Part II of the Casualty Investigation Code;
- (d) regulation 6.2 of Chapter XI-1 of the Annex to SOLAS;
- (e) Article 23 of the International Convention on Load Lines, done at London on 5 April 1966;
- (f) Article 21 of the Timor Sea Treaty between Australia and East Timor, done at Dili on 20 May 2002;
- (g) Article 94 (7) of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.