

# EXPOSURE DRAFT



EXPOSURE DRAFT

## Transport Safety Investigation Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2021

David Hurley  
Governor-General

By His Excellency's Command

Michael McCormack  
Deputy Prime Minister and Minister for Infrastructure, Transport and Regional  
Development

---

EXPOSURE DRAFT



# EXPOSURE DRAFT

---

## Contents

<b>Part 1—Preliminary</b>	1
1 Name.....	1
2 Commencement .....	1
3 Authority.....	1
4 Schedules .....	1
5 Definitions .....	1
<b>Part 2—Aircraft operations</b>	4
6 Definitions for Part 2 .....	4
7 Application of Part 2.....	7
8 Meaning of <i>below minimum altitude</i> —aircraft operating in the Australian Flight Information Region before 2 December 2021 .....	8
9 Meaning of <i>below minimum altitude</i> —aircraft operating in the Australian Flight Information Region on or after 2 December 2021 .....	8
10 Meaning of <i>below minimum altitude</i> —aircraft operating outside the Australian Flight Information Region .....	8
11 Aircraft operations—immediately reportable matters .....	9
12 Aircraft operations—routine reportable matters .....	11
13 Aircraft operations—responsible persons .....	13
14 Aircraft operations—particulars for immediate reports .....	14
15 Aircraft operations—particulars for written reports.....	14
16 Aircraft operations—nominated officials.....	16
17 Aircraft operations—reports to be given to staff member.....	16
<b>Part 3—Marine operations</b>	17
18 Definitions for Part 3 .....	17
19 Application of Part 3.....	17
20 Marine operations—immediately reportable matters .....	18
21 Marine operations—responsible persons .....	19
22 Marine operations—particulars for immediate reports .....	19
23 Marine operations—particulars for written reports .....	21
24 Marine operations—nominated officials.....	21
25 Marine operations—reports to be given to staff member .....	22
<b>Part 4—Rail transport</b>	23
26 Definitions for Part 4 .....	23
27 Application of Part 4.....	23
28 Rail transport—immediately reportable matters .....	23
29 Rail transport—routine reportable matters.....	23
30 Rail transport—responsible person .....	24
31 Rail transport—particulars for reports of reportable matters .....	24
32 Rail transport—nominated officials for reportable matters.....	25
33 Rail transport—certain reports to be given to National Rail Safety Regulator.....	25
34 Rail transport—certain reports to be given to staff member .....	25
<b>Part 5—General</b>	26
35 Delegation by the ATSB or the Chief Commissioner .....	26
36 Delegation by the Chief Executive Officer .....	26
37 Special investigators .....	26
38 Functions of ATSB .....	26
39 International obligations .....	26
40 Immediate reports .....	27
41 Written reports .....	28

# EXPOSURE DRAFT

---

42	Identity cards.....	28
43	Fees for attending before ATSB .....	28
44	Recordings that are not on-board recordings (OBRs) .....	29
45	Release of OBR information.....	30
46	Release of restricted information .....	30
47	Fees for attending coronial inquiry .....	30
<b>Schedule 1—Repeals</b>		32
	<i>Transport Safety Investigation Regulations 2003</i>	32

# EXPOSURE DRAFT

Preliminary **Part 1**

Section 1

## Part 1—Preliminary

### 1 Name

This instrument is the *Transport Safety Investigation Regulations 2021*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Transport Safety Investigation Act 2003*.

### 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) ATSB (or Australian Transport Safety Bureau);
- (b) immediately reportable matter;
- (c) investigable matter;
- (d) nominated official;
- (e) reportable matter;
- (f) responsible person;
- (g) routine reportable matter;
- (h) staff member;
- (i) transport safety matter;
- (j) transport vehicle.

In this instrument:

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

---

*Act* means the *Transport Safety Investigation Act 2003*.

*aid to navigation*: see section 18.

*aircraft system*: see section 6.

*airprox*: see section 6.

*Airservices Australia*: see section 6.

*air transport operation*: see section 6.

*approved flight envelope*: see section 6.

*Australian Flight Information Region*: see section 6.

*Australian port*: see section 18.

*Australian territory*: see section 6.

*below minimum altitude*: see sections 8, 9 and 10.

*CASA*: see section 6.

*charter operation*: see section 6.

*close quarters situation*: see section 18.

*crew member*:

- (a) in relation to a transport vehicle—means a person who has operational duties on board the transport vehicle; and
- (b) in relation to an RPA—includes a remote pilot of the RPA.

*critical rejected take-off*: see section 6.

*Department of Defence*: see section 6.

*excluded aircraft*: see subsection 7(3).

*flight crew member*: see section 6.

*flight engineer*: see section 6.

*fuel exhaustion*: see section 6.

*fuel starvation*: see section 6.

*ICAO*: see section 6.

*internal waters of Australia*: see section 18.

*interstate voyage*: see section 18.

*Marine Safety (Domestic Commercial Vessel) National Law*: see section 18.

*National Rail Safety Regulator*: see section 26.

*near-collision*: see section 6.

**operator**, in relation to a transport vehicle, means a person, organisation or enterprise operating, or offering to operate, the vehicle for the purposes of travel.

**overseas voyage**: see section 18.

**pilot**:

- (a) in relation to a ship—means a person who does not belong to, but has the conduct of, the ship; and
- (b) in relation to an aircraft—includes a remote pilot of an RPA.

**predicted performance**: see section 6.

**Rail Safety National Law**: see section 26.

**rail transport operator**: see section 26.

**redundant system**: see section 6.

**regular public transport operation**: see section 6.

**relevant air navigation**: see subsection 7(2).

**relevant marine navigation**: see subsection 19(2).

**RPA**: see section 6.

**runway incursion**: see section 6.

**separation standard**: see section 6.

**serious damage**, in relation to a transport vehicle, means:

- (a) damage that:
  - (i) significantly affects the structural integrity, performance or operational characteristics of the transport vehicle; and
  - (ii) requires major repair or replacement of the affected component or components of the transport vehicle; or
- (b) destruction of the transport vehicle.

**serious injury** means an injury that requires, or would usually require, admission to hospital within 7 days after the day when the injury is suffered.

**serious property damage**: see section 6.

**traffic collision avoidance system resolution advisory**: see section 6.

**type 1 RPA**: see section 6.

**type 2 RPA**: see section 6.

# EXPOSURE DRAFT

## Part 2 Aircraft operations

### Section 6

---

## Part 2—Aircraft operations

### 6 Definitions for Part 2

In this instrument:

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

Examples: An aircraft's flight management system, hydraulic system, electrical system, flight guidance system and navigation system.

***airprox*** means an occurrence:

- (a) in which 2 or more aircraft come into such close proximity that a threat to the safety of the aircraft exists or may exist; and
- (b) that occurs in airspace where the aircraft are not being provided with an air traffic separation service, or where separation is a pilot responsibility.

***Airservices Australia*** means the body called Airservices Australia that is established by the *Air Services Act 1995*.

***air transport operation*** means a regular public transport operation or a charter operation.

***approved flight envelope***, in relation to an aircraft, means the operating limitations and limiting atmospheric conditions applying to the aircraft, as shown in any of the following as approved, from time to time, by CASA or the appropriate authority of another country:

- (a) the aircraft's flight manual;
- (b) the aircraft's cockpit placards;
- (c) other operating documents for the aircraft.

Example: Limitations on the aircraft's centre of gravity, or its minimum or maximum speed.

***Australian Flight Information Region*** means the Australian Flight Information Region specified in the *Designated Airspace Handbook* produced by Airservices Australia, as in force from time to time.

Note: The *Designated Airspace Handbook* could in 2021 be viewed on the Airservices Australia website (<https://www.airservicesaustralia.com>).

***Australian territory*** means:

- (a) the territory of Australia and of every external Territory; and
- (b) the territorial sea of Australia and of every external Territory; and
- (c) the air space over any such territory or sea.

***below minimum altitude***: see sections 8, 9 and 10.

***CASA*** means the Civil Aviation Safety Authority established by the *Civil Aviation Act 1988*.

***charter operation*** means an operation of an aircraft for the purpose of:



- (a) the carriage of passengers or cargo for hire or reward to or from any place, other than:
  - (i) carriage in accordance with fixed schedules to and from fixed terminals; or
  - (ii) carriage on limited category aircraft for adventure flights within the meaning of the *Civil Aviation Safety Regulations 1998*; or
- (b) the carriage, in accordance with fixed schedules to and from fixed terminals, of passengers or cargo or passengers and cargo in circumstances in which the accommodation in the aircraft is not available for use by persons generally.

***critical rejected take-off***, in relation to an aircraft, means a take-off that is interrupted or prevented by a decision initiated either by the pilot involved or the air traffic service, after the aircraft has reached, or while it is approaching, take-off speed on the runway.

***Department of Defence*** means the Department administered by the Minister administering the *Defence Act 1903*.

***excluded aircraft***: see subsection 7(3).

***flight crew member*** means a crew member who is a pilot or flight engineer assigned to carry out duties essential to the operation of an aircraft during flight time.

Note: This definition includes a remote pilot of an RPA (see the definitions of ***crew member*** and ***pilot*** in section 5).

***flight engineer*** means the holder of a flight engineer licence.

***fuel exhaustion***, in relation to an aircraft, means that the aircraft has exhausted its useable fuel.

***fuel starvation***, in relation to an aircraft, means an interruption to the fuel supply to the aircraft's engines, although there is useable fuel on board the aircraft.

***ICAO*** means the International Civil Aviation Organization referred to in the Convention on International Civil Aviation, done at Chicago on 7 December 1944.

Note: The Convention on International Civil Aviation is in Australian Treaty Series 1957 No. 5 ([1957] ATS 5) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<https://www.austlii.edu.au>).

***near-collision***, in relation to an aircraft, means an occurrence in which the aircraft was required to manoeuvre to avoid a collision with another aircraft, or where an avoidance manoeuvre would have been appropriate.

***predicted performance***, in relation to a take-off or initial climb of an aircraft, means the performance that the aircraft, or an aircraft of the same type and model, would be expected to achieve in the conditions applying at the time of take-off, based on information in the aircraft flight manual or information published by the aircraft manufacturer.

# EXPOSURE DRAFT

## Part 2 Aircraft operations

### Section 6

---

**redundant system** means one of 2 or more systems for performing a task if either of the systems alone would be sufficient, in the absence of system failure, to perform the task.

**regular public transport operation** means an operation of an aircraft:

- (a) for the purpose of transporting persons generally, or transporting cargo for persons generally; and
- (b) for hire or reward; and
- (c) in accordance with fixed schedules to and from fixed terminals over specific routes, with or without intermediate stopping places between terminals.

**relevant air navigation**: see subsection 7(2).

**RPA** (short for remotely piloted aircraft) has the same meaning as in the *Civil Aviation Safety Regulations 1998*.

**runway incursion**, in relation to an aircraft, means any intrusion of an aircraft, vehicle, person, animal or object on the ground within a runway strip or helicopter landing site that creates a collision hazard for the aircraft or results in a reduction of safety for the aircraft.

**separation standard** means the separation standard (vertical, lateral or longitudinal) specified in:

- (a) for aircraft operating in the Australian Flight Information Region—the Manual of Air Traffic Services produced by Airservices Australia and the Department of Defence, as in force from time to time; or
- (b) for aircraft operating outside the Australian Flight Information Region, and in a place where a local standard is in force—that standard, as in force from time to time; or
- (c) for aircraft operating outside the areas mentioned in paragraphs (a) and (b)—ICAO document 4444, as in force from time to time.

Note: The Manual of Air Traffic Services could in 2021 be viewed on the Air Services Australia website (<https://www.airservicesaustralia.com>).

**serious property damage**, in relation to an aircraft, means damage to property outside the aircraft that:

- (a) is caused by:
  - (i) contact with any part of the aircraft, including anything that is attached to the aircraft or that has become detached from the aircraft; or
  - (ii) direct exposure to jet blast, propeller wash or rotor downwash from the aircraft; and
- (b) that would cost at least \$25,000 to repair or replace.

**traffic collision avoidance system resolution advisory** means manoeuvring advice given to a pilot by airborne collision avoidance system equipment to avoid conflict with another aircraft.

**type 1 RPA** (short for type 1 remotely piloted aircraft) means an RPA:

- (a) that is:

- (i) a large RPA (within the meaning of the *Civil Aviation Safety Regulations 1998*); or
- (ii) an RPA for which a type certificate (within the meaning of the *Civil Aviation Safety Regulations 1998*) is in force; and
- (b) that is not an excluded RPA (within the meaning of the *Civil Aviation Safety Regulations 1998*).

**type 2 RPA** (short for type 2 remotely piloted aircraft) means an RPA that is not:

- (a) a type 1 RPA; or
- (b) an excluded RPA (within the meaning of the *Civil Aviation Safety Regulations 1998*).

## 7 Application of Part 2

- (1) Subject to subsection (3), this Part applies only in relation to matters involving the following:
  - (a) the operation of an Australian aircraft (within the meaning of the *Civil Aviation Act 1988*) in the course of relevant air navigation;
  - (b) the operation of a foreign registered aircraft (within the meaning of the *Civil Aviation Act 1988*) in the course of relevant air navigation, if the foreign registered aircraft is flying into or out of Australian territory or operating in Australian territory.
- (2) For the purposes of this instrument, **relevant air navigation** means air navigation in relation to which, under subsection 11(1) of the Act, the ATSB's powers may be exercised.
- (3) This Part does not apply to the operation of the following aircraft (**excluded aircraft**):
  - (a) an Australian defence aircraft;
  - (b) an exempt foreign aircraft;
  - (c) an RPA that is not a type 1 RPA or a type 2 RPA.
- (4) To avoid doubt, if a matter involves the operation of:
  - (a) an excluded aircraft; and
  - (b) an aircraft (the **second aircraft**) that is not an excluded aircraft;subsection (3) does not prevent the matter from being a reportable matter in relation to the second aircraft.
- (5) Subject to subsection (7), in relation to a particular manned aircraft, this Part applies only in relation to matters occurring during the period:
  - (a) beginning when the aircraft is being prepared for take-off; and
  - (b) ending when all passengers and crew members have disembarked after the flight.
- (6) Subject to subsection (7), in relation to a particular unmanned aircraft, this Part applies only in relation to matters occurring during the period:
  - (a) beginning when the aircraft is ready to move with the purpose of flight; and
  - (b) ending when the aircraft comes to rest at the end of the flight and the primary propulsion system is shut down.

# EXPOSURE DRAFT

## Part 2 Aircraft operations

### Section 8

---

- (7) This Part also applies in relation to a death or serious injury mentioned in item 1 of the table in subsection 11(1) or item 1 or 2 of the table in subsection 11(3), if the death or serious injury occurs as a result of a matter occurring during the period mentioned in subsection (5) or (6) of this section.

#### **8 Meaning of *below minimum altitude*—aircraft operating in the Australian Flight Information Region before 2 December 2021**

- (1) For the purposes of this instrument, an aircraft operating in the Australian Flight Information Region before 2 December 2021 flies *below minimum altitude* in the circumstances set out in this section.
- (2) An aircraft being flown at night under the V.F.R. (within the meaning of the *Civil Aviation Regulations 1988*) flies *below minimum altitude* if the aircraft flies below the minimum altitude that the aircraft may fly at in accordance with subregulation 174B(1) of those Regulations.
- (3) An aircraft being flown under the I.F.R. (within the meaning of the *Civil Aviation Regulations 1988*) flies *below minimum altitude* if the aircraft flies below the minimum altitude that the aircraft may fly at in accordance with regulation 178 of those Regulations.

#### **9 Meaning of *below minimum altitude*—aircraft operating in the Australian Flight Information Region on or after 2 December 2021**

- (1) For the purposes of this instrument, an aircraft operating in the Australian Flight Information Region on or after 2 December 2021 flies *below minimum altitude* in the circumstances set out in this section.
- (2) An aircraft being flown at night under the VFR (within the meaning of the *Civil Aviation Safety Regulations 1998*) flies *below minimum altitude* if the aircraft flies below the minimum altitude that the aircraft may fly at in accordance with regulation 91.277 of those Regulations.
- (3) An aircraft being flown under the IFR (within the meaning of the *Civil Aviation Safety Regulations 1998*) flies *below minimum altitude* if the aircraft flies below the minimum altitude that the aircraft may fly at in accordance with regulation 91.305 of those Regulations.

#### **10 Meaning of *below minimum altitude*—aircraft operating outside the Australian Flight Information Region**

For the purposes of this instrument, an aircraft operating outside the Australian Flight Information Region flies *below minimum altitude*:

- (a) if a local standard is in force in the place where the aircraft is operating—if the aircraft flies below the altitude specified in that standard, as in force from time to time; or
- (b) if no such local standard is in force—if the aircraft flies below the altitude specified in ICAO document 4444, as in force from time to time.

## 11 Aircraft operations—immediately reportable matters

### *Aircraft operations—general*

- (1) For the purposes of the definition of *immediately reportable matter* in subsection 3(1) of the Act, the investigable matters in the following table are prescribed in relation to an operation of an aircraft (other than an excluded aircraft or a type 2 RPA).

<b>Immediately reportable matters—aircraft operations generally</b>	
<b>Item</b>	<b>Immediately reportable matter</b>
1	Subject to subsection (4), the death of, or a serious injury to: (a) a person on board the aircraft or in contact with the aircraft or anything attached to the aircraft or anything that has become detached from the aircraft; or (b) a person who has been directly exposed to jet blast
2	The aircraft being missing
3	The aircraft suffering serious damage, or the existence of reasonable grounds for believing that the aircraft has suffered serious damage
4	The aircraft being inaccessible and the existence of reasonable grounds for believing that the aircraft has been seriously damaged
5	A breakdown of separation standards, being a failure to maintain the separation standard that applies to the aircraft between the aircraft and another aircraft, so long as either or both of the aircraft are being provided with an air traffic separation service  Note: A breakdown of separation standards referred to in this item may result from an air traffic service action, a pilot action or other actions.
6	If the aircraft is a type 1 RPA—serious property damage

### *Air transport operations*

- (2) For the purposes of the definition of *immediately reportable matter* in subsection 3(1) of the Act, the investigable matters in the following table are prescribed in relation to an air transport operation (other than an operation of an excluded aircraft or a type 2 RPA).

<b>Immediately reportable matters—air transport operations</b>	
<b>Item</b>	<b>Immediately reportable matter</b>
1	Airprox
2	A near-collision involving aircraft manoeuvring on the ground
3	An occurrence in which flight into terrain is narrowly avoided
4	The rejection of a take-off from a closed or occupied runway
5	A take-off from a closed or occupied runway with marginal separation from an obstacle or obstacles
6	A landing on a closed or occupied runway
7	A significant failure to achieve predicted performance during take-off or initial climb
8	A fire (even if subsequently extinguished), smoke, fumes or an explosion on or in any part of the aircraft

# EXPOSURE DRAFT

## Part 2 Aircraft operations

### Section 11

---

**Immediately reportable matters—air transport operations**

---

<b>Item</b>	<b>Immediately reportable matter</b>
9	An uncontained engine failure
10	A mechanical failure resulting in the shutdown of an engine
11	The use of any procedure for overcoming an emergency
12	An event requiring the use of oxygen by a flight crew member
13	Malfunction of an aircraft system that seriously affects the operation of the aircraft
14	A flight crew member becoming incapacitated during flight
15	Fuel exhaustion
16	The aircraft's supply of useable fuel becoming so low (whether or not as a result of fuel starvation) that the pilot declares an emergency in flight
17	Undershooting, over-running or running off the side of a runway during take-off or landing, or any other similar occurrence
18	Any of the following occurrences, if the occurrence causes difficulty controlling the aircraft: (a) a weather phenomenon; (b) operation outside the aircraft's approved envelope
19	The failure of 2 or more related redundant systems for flight guidance and navigation
20	Serious property damage

---

*Type 2 RPA operations*

- (3) For the purposes of the definition of *immediately reportable matter* in subsection 3(1) of the Act, the investigable matters in the following table are prescribed in relation to an operation of a type 2 RPA.

---

**Immediately reportable matters—type 2 RPAs**

---

<b>Item</b>	<b>Immediately reportable matter</b>
1	Subject to subsection (4), the death of, or a serious injury to, a person on board the aircraft or in contact with the aircraft or anything attached to the RPA or anything that has become detached from the aircraft
2	Subject to subsection (4), the death of, or a serious injury to, a person who has been directly exposed to jet blast

---

*Death or serious injury*

- (4) For the purposes of item 1 of the table in subsection (1) and items 1 and 2 of the table in subsection (3), *the death of, or a serious injury to, a person* does not include:
- (a) death or serious injury resulting from natural causes (except to a flight crew member); or
  - (b) death or serious injury that is intentionally self-inflicted; or
  - (c) death or serious injury that is intentionally caused by another person; or

- (d) death or serious injury suffered by a stowaway in a part of the aircraft that is not usually accessible to crew members or passengers after take-off; or
- (e) death occurring more than 30 days after the occurrence that caused the death, unless the death was caused by an injury that required admission to hospital within 30 days after the occurrence.

## 12 Aircraft operations—routine reportable matters

### *Air transport operations*

- (1) For the purposes of the definition of *routine reportable matter* in subsection 3(1) of the Act, the investigable matters in the following table are prescribed in relation to an air transport operation (other than an operation of an excluded aircraft or a type 2 RPA).

<b>Routine reportable matters—air transport operations</b>	
<b>Item</b>	<b>Routine reportable matter</b>
1	An injury, other than a serious injury, to: <ul style="list-style-type: none"> <li>(a) a person on board the aircraft or in contact with the aircraft or anything attached to the aircraft or anything that has become detached from the aircraft; or</li> <li>(b) a person who has been directly exposed to jet blast</li> </ul>
2	The aircraft suffering damage that compromises or has the potential to compromise the safety of the flight but is not serious damage
3	Flight below minimum altitude
4	A ground proximity warning system alert
5	A critical rejected take-off, except on a closed or occupied runway
6	A runway incursion in relation to the aircraft
7	Any of the following occurrences, if the occurrence compromises or has the potential to compromise the safety of the flight: <ul style="list-style-type: none"> <li>(a) a failure to achieve predicted performance during take-off or initial climb;</li> <li>(b) malfunction of an aircraft system, if the malfunction does not seriously affect the operation of the aircraft;</li> <li>(c) fuel starvation that does not require the declaration of an emergency</li> </ul> Note: Aircraft systems include flight guidance and navigation systems.
8	Any of the following occurrences, if the occurrence compromises or has the potential to compromise the safety of the flight but does not cause difficulty controlling the aircraft: <ul style="list-style-type: none"> <li>(a) a weather phenomenon;</li> <li>(b) operation outside the aircraft's approved flight envelope</li> </ul>
9	Failure or inadequacy of a facility used in connection with the air transport operation, such as: <ul style="list-style-type: none"> <li>(a) a navigation or communication aid; or</li> <li>(b) an air traffic control service or general operational service; or</li> <li>(c) an airfield facility, including lighting or a manoeuvring, taxiing or take-off surface</li> </ul>
10	Misinterpretation by a flight crew member of information or instructions, including: <ul style="list-style-type: none"> <li>(a) the incorrect setting of a transponder code; or</li> <li>(b) flight on a level or route different from the level or route allocated for the flight; or</li> <li>(c) the incorrect receipt or interpretation of a significant radio, telephone or electronic text</li> </ul>

# EXPOSURE DRAFT

## Part 2 Aircraft operations

### Section 12

---

---

#### Routine reportable matters—air transport operations

---

Item	Routine reportable matter
	message
11	Breakdown of coordination, being an occurrence in which traffic-related information flow within the air traffic service system is late, incorrect, incomplete or absent
12	Failure of air traffic services to provide adequate traffic information to a pilot in relation to other aircraft  Note: The information may have been incomplete, incorrect, late or absent.
13	A traffic collision avoidance system resolution advisory being given to the pilot of the aircraft
14	An occurrence arising from the loading or carriage of passengers, cargo or fuel, such as: (a) the loading of an incorrect quantity of fuel, if the loading of the incorrect quantity is likely to have a significant effect on aircraft endurance, performance, balance or structural integrity; or (b) the loading of an incorrect type of fuel or other essential fluid, or contaminated fuel or other essential fluid; or (c) the incorrect loading of passengers, baggage or cargo, if the incorrect loading has a significant effect on the mass or balance of the aircraft; or (d) the carriage of dangerous goods in contravention of Commonwealth, State or Territory legislation; or (e) the incorrect securing of cargo containers or significant items of cargo; or (f) the incorrect stowage of baggage or cargo, if the incorrect stowage is likely to cause a hazard to the aircraft or its equipment or occupants, or to impede emergency evacuation; or (g) a significant contamination of the aircraft structure, systems or equipment, arising from the carriage of baggage or cargo; or (h) the presence of a violent or armed passenger
15	A collision with an animal, including a bird

---

#### *Aircraft operations other than air transport operations*

- (2) For the purposes of the definition of ***routine reportable matter*** in subsection 3(1) of the Act, the investigable matters in the following table are prescribed in relation to an aircraft operation (other than air transport operation or an operation of an excluded aircraft or a type 2 RPA).

---

---

#### Routine reportable matters—aircraft operations other than air transport operations

---

Item	Routine reportable matter
1	An injury, other than a serious injury, to a person on board the aircraft
2	A flight crew member becoming incapacitated while operating the aircraft
3	Airprox
4	An occurrence in which flight into terrain is narrowly avoided
5	The use of any procedure for overcoming an emergency
6	An occurrence that results in difficulty controlling the aircraft, including any of the following occurrences: (a) an aircraft system failure;

---



# EXPOSURE DRAFT

---

**Routine reportable matters—aircraft operations other than air transport operations**

---

<b>Item</b>	<b>Routine reportable matter</b>
	(b) a weather phenomenon; (c) operation outside the aircraft's approved flight envelope
7	Fuel exhaustion
8	The aircraft's supply of useable fuel becoming so low (whether or not as a result of fuel starvation) that the safety of the aircraft is compromised
9	A collision with an animal, including a bird, on a certified aerodrome (within the meaning of the <i>Civil Aviation Safety Regulations 1998</i> )

---

*Type 2 RPA operations*

- (3) For the purposes of the definition of ***routine reportable matter*** in subsection 3(1) of the Act, the investigable matters in the following table are prescribed in relation to an operation of a type 2 RPA.

---

**Routine reportable matters—type 2 RPA operations**

---

<b>Item</b>	<b>Routine reportable matter</b>
1	The aircraft being missing
2	The aircraft suffering serious damage, or the existence of reasonable grounds for believing that the aircraft has suffered serious damage
3	The aircraft being inaccessible and the existence of reasonable grounds for believing that the aircraft has been seriously damaged
4	Serious property damage
5	A breakdown of separation standards, being a failure to maintain the separation standard that applies to the aircraft between the aircraft and another aircraft, so long as either or both of the aircraft are being provided with an air traffic separation service

---

## 13 Aircraft operations—responsible persons

For the purposes of the definition of ***responsible person*** in subsection 3(1) of the Act, the following persons are responsible persons in relation to reportable matters to which this Part applies:

- (a) a crew member of the aircraft concerned;
- (b) the owner or operator of the aircraft;
- (c) a person performing an air traffic control service in relation to the aircraft;
- (d) a person performing a dedicated aerodrome rescue or firefighting service in relation to the aircraft;
- (e) a person who:
  - (i) is licensed as an aircraft maintenance engineer under the *Civil Aviation Regulations 1988* or the *Civil Aviation Safety Regulations 1998*; and
  - (ii) does any work in relation to the aircraft;
- (f) a member of the ground handling crew in relation to the aircraft;
- (g) a member of the staff of the Civil Aviation Safety Authority;

# EXPOSURE DRAFT

## Part 2 Aircraft operations

### Section 14

---

- (h) the operator of an aerodrome;
- (i) a recreational aviation administration organisation (within the meaning of Part 61 of the *Civil Aviation Safety Regulations 1998*);
- (j) an ASAO (within the meaning of the *Civil Aviation Safety Regulations 1998*).

### 14 Aircraft operations—particulars for immediate reports

- (1) For the purposes of subsections 18(1) and (2) of the Act, the particulars in the following table are prescribed in relation to an immediately reportable matter of a kind referred to in section 11 of this instrument.

---

Aircraft operations—particulars for immediate reports	
Item	Particular
1	The type, model, nationality, registration marks and flight number (if any) of the aircraft the subject of the immediately reportable matter
2	The kind of aircraft operation that the aircraft was engaged in at the time of the immediately reportable matter
3	The name and contact details of the operator of the aircraft
4	The nature of the immediately reportable matter
5	A description of any damage to the aircraft or any other property
6	A description of any dangerous goods on board the aircraft
7	Whether a person died, or was seriously injured, as a result of the immediately reportable matter
8	Where the immediately reportable matter occurred (including a description of the location, or the geographical coordinates)
9	The aircraft's place of departure and destination
10	The day and local time when the immediately reportable matter occurred
11	A description of the following in relation to the immediately reportable matter: <ul style="list-style-type: none"><li>(a) what happened;</li><li>(b) how and why it happened</li></ul>

---

- (2) When making the report, the responsible person must give the nominated official:
- (a) the responsible person's name; and
  - (b) a method of contacting the person that will enable the person to be promptly contacted for an inquiry into the matter.

Example: A telephone number or other form of electronic communication.

### 15 Aircraft operations—particulars for written reports

- (1) For the purposes of subsections 19(1) and (4) of the Act and subject to subsection (2) of this section, the particulars in the following table are prescribed in relation to an immediately reportable matter of a kind referred to in section 11 of this instrument or a routine reportable matter of a kind referred to in section 12 of this instrument.

# EXPOSURE DRAFT

---

**Aircraft operations—particulars for written reports**

---

<b>Item</b>	<b>Particular</b>
1	The name and contact details of the person making the report
2	The person's role in relation to the aircraft concerned
3	The type, model, nationality, registration marks and flight number (if any) of the aircraft
4	The name of the owner of the aircraft
5	The name and contact details of the operator of the aircraft
6	If the aircraft was under hire when the reportable matter occurred, the name of the hirer
7	The name and nationality of the pilot, and the type and licence number of the licence held by the pilot
8	The name and nationality of each other flight crew member (if any), and the type and licence number of the licence held by each of them
9	The day and local time when the reportable matter occurred
10	If, when the reportable matter occurred, the aircraft was in flight: (a) the place where the flight started; and (b) the place where the flight ended, or was intended to end; and (c) the purpose of the flight
11	Unless the reportable matter occurred at an airport, the location of the aircraft immediately after the occurrence of the reportable matter, including the geographical coordinates of that location
12	The number of persons on board the aircraft when the reportable matter occurred
13	The nature of the reportable matter, including: (a) its outcome or effect on the flight of the aircraft; and (b) the phase of the aircraft's flight when the matter occurred; and (c) the weather conditions; and (d) the airspace designation; and (e) the altitude at which the matter occurred; and (f) if the matter occurred at, or in relation to, an airport—the name of the airport; and (g) if the matter occurred on, or in relation to, a runway—the runway number; and (h) if the matter involved a collision with an animal, including a bird—the nature of the collision; and (i) the causes of the occurrence (if known), including any human performance issues; and (j) any safety action carried out to prevent a recurrence of the matter; and (k) the nature and extent of any damage to the aircraft
14	The physical characteristics of the area where the reportable matter occurred (e.g. the terrain, vegetation cover, and existence and location of any buildings, runways or aerodromes)
15	The flight rules under which the aircraft was operating at the time of the reportable matter
16	The kind of aircraft operation the aircraft was engaged in at the time of the reportable matter
17	If the matter resulted in a death or serious injury, and the aircraft carried an emergency locator transmitter—whether the emergency locator transmitter was fixed or portable and whether it was activated at the time the immediately reportable matter occurred
18	If the aircraft's pilot has died:

---

# EXPOSURE DRAFT

## Part 2 Aircraft operations

### Section 16

---

**Aircraft operations—particulars for written reports**

---

<b>Item</b>	<b>Particular</b>
	(a) the pilot's date of birth; and
	(b) the pilot's total flying hours on all aircraft and flying hours on the same type of aircraft
19	If any crew members have died or been seriously injured as a result of the reportable matter—how many, and their names and nationalities
20	If any passengers have died or been seriously injured as a result of the reportable matter—how many, and their names and nationalities
21	If any other persons have died or been seriously injured as a result of the reportable matter—how many, and their names and nationalities

---

- (2) For the purposes of subsections 19(1) and (4) of the Act, a report that is only for a matter mentioned in item 15 of the table in subsection 12(1) of this instrument or item 9 of the table in subsection 12(2) of this instrument (a collision with an animal, including a bird) must contain as many of the following particulars as are within the knowledge of the person making the report:
- (a) the name and contact details of the person making the report;
  - (b) the day and local time when the reportable matter occurred;
  - (c) the nature of the reportable matter, including:
    - (i) if the matter occurred at, or in relation to, an airport, the name of the airport, and if it occurred on, or in relation to, a runway, the runway number; and
    - (ii) the nature and extent of any damage to the aircraft;
  - (d) any other information that the person making the report considers appropriate.

### 16 Aircraft operations—nominated officials

For the purposes of section 20 of the Act, the following persons are nominated officials in relation to reportable matters to which this Part applies:

- (a) a staff member;
- (b) a member of the staff of the Australian Maritime Safety Authority.

Note: For the meaning of *staff member* in paragraph (a), see subsection 3(1) of the Act.

### 17 Aircraft operations—reports to be given to staff member

- (1) Subject to subsection (2), if a report under section 18 or 19 of the Act is given to a nominated official mentioned in paragraph 16(b) of this instrument, the nominated official must, as soon as is practicable, pass on the report to a nominated official mentioned in paragraph 16(a) of this instrument.
- (2) Subsection (1) does not apply if the nominated official who receives the report under section 18 or 19 of the Act believes, on reasonable grounds, that a responsible person has already given, or will give, a report under that section to a nominated official mentioned in paragraph 16(a) of this instrument.

## Part 3—Marine operations

### 18 Definitions for Part 3

In this instrument:

*aid to navigation* has the same meaning as in the *Navigation Act 2012*.

*Australian port* has the same meaning as in the *Navigation Act 2012*.

*close quarters situation* has the same meaning as in the *Navigation Act 2012*.

*internal waters of Australia* has the same meaning as in the *Seas and Submerged Lands Act 1973*.

*interstate voyage*, in relation to a ship, means a voyage (other than an overseas voyage) in the course of which the ship travels between:

- (a) at least 1 port in a State and at least 1 port in another State; or
- (b) at least 1 port in a State and at least 1 port in a Territory; or
- (c) at least 1 port in a Territory and at least 1 port in another Territory.

*Marine Safety (Domestic Commercial Vessel) National Law* has the meaning given by section 17 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

*overseas voyage* has the same meaning as in the *Navigation Act 2012*.

*relevant marine navigation*: see subsection 19(2).

### 19 Application of Part 3

- (1) This Part applies only in relation to matters involving the following:
  - (a) the operation of a regulated Australian vessel (within the meaning of the *Navigation Act 2012*) in the course of relevant marine navigation;
  - (b) the operation of a foreign vessel (within the meaning of that Act) in the course of relevant marine navigation, if the foreign vessel is:
    - (i) in an Australian port; or
    - (ii) entering or leaving an Australian port; or
    - (iii) in the internal waters of Australia; or
    - (iv) in the territorial sea of Australia;
  - (c) the operation of a domestic commercial vessel (within the meaning of the *Marine Safety (Domestic Commercial Vessel) National Law*) on an interstate voyage.

Note: Subject to subsection (3), this Part does not apply to matters involving the operation of an Australian defence ship or an exempt foreign ship (see subsection 22(2) of the Act, and the definition of *exempt transport vehicle* in subsection 3(1) of the Act).

- (2) For the purposes of this instrument, *relevant marine navigation* is:
  - (a) marine navigation conducted in the course of trade or commerce with other countries or among the States; or

# EXPOSURE DRAFT

## Part 3 Marine operations

### Section 20

---

- (b) marine navigation:
  - (i) outside Australia; or
  - (ii) within a Territory, or to or from a Territory; or
  - (iii) within a Commonwealth place, or to or from a Commonwealth place; or
  - (iv) on a ship owned or operated by a constitutional corporation or Commonwealth entity.

Note: For *outside Australia*, see subsection 11(5) of the Act.

- (3) To avoid doubt, if a matter involves the operation of:
  - (a) a ship (the *first ship*) mentioned in subsection (1); and
  - (b) a ship not mentioned in subsection (1);subsection (1) does not prevent the matter from being a reportable matter in relation to the first ship.
- (4) Subject to subsection (6), in relation to a particular ship that has a crew, this Part applies only in relation to matters occurring during the period:
  - (a) beginning when the first person to board the ship for the purpose of performing duties as a crew member does so; and
  - (b) ending when the last crew member to disembark from the ship does so.
- (5) Subject to subsection (6), in relation to a particular ship that does not have a crew, this Part applies only in relation to matters occurring during the period:
  - (a) beginning when the ship is ready to move with the purpose of conducting a voyage; and
  - (b) ending when the ship comes to rest at the end of the voyage and the primary propulsion system is shut down.
- (6) This Part also applies in relation to a death or injury mentioned in item 1 or 10 of the table in section 20 if the death or injury occurs as a result of a matter occurring during the period mentioned in subsection (4) or (5) of this section.

### 20 Marine operations—immediately reportable matters

- (1) For the purposes of the definition of *immediately reportable matters* in subsection 3(1) of the Act, the investigable matters in the following table are prescribed in relation to an operation to which this Part applies.

---

Immediately reportable matters—marine operations	
Item	Immediately reportable matter
1	A death of, or injury to, a person associated with the operation or navigation of a ship
2	The loss or presumed loss of a ship
3	A collision of a ship with another ship
4	A collision of a ship with an object
5	The grounding, sinking, flooding or capsizing of a ship
6	A fire on board a ship
7	A loss of stability of a ship that affects the safety of the ship
8	The structural failure of a ship

---

# EXPOSURE DRAFT

---

**Immediately reportable matters—marine operations**

---

<b>Item</b>	<b>Immediately reportable matter</b>
9	A close quarters situation
10	An event that results in, or could have resulted in: (a) the death of, or injury to, a person on board a ship; or (b) the loss of a person from a ship; or (c) a ship becoming disabled and requiring assistance
11	The fouling or damaging by a ship of: (a) any pipeline or submarine cable; or (b) any aid to navigation

---

- (2) However, in relation to a ship that is a foreign vessel (within the meaning of the *Navigation Act 2012*) and that is in the territorial sea of Australia in the course of innocent passage, an investigable matter in the table in subsection (1) is prescribed only if the matter:
- (a) has affected, or is likely to affect, the safety of navigation; or
  - (b) involves a collision with, or the fouling or damaging of, any facility, installation, navigational aid, pipeline or submarine cable.

## 21 Marine operations—responsible persons

For the purposes of the definition of *responsible person* in subsection 3(1) of the Act, the following persons are responsible persons in relation to reportable matters involving a ship:

- (a) the master of the ship, or the person in charge of the ship;
- (b) the owner or operator of the ship;
- (c) an agent of the owner or operator of the ship;
- (d) a pilot who has duties on board the ship.

## 22 Marine operations—particulars for immediate reports

For the purposes of subsections 18(1) and (2) of the Act, the particulars in the following table are prescribed in relation to an immediately reportable matter of a kind referred to in section 20 of this instrument.

---

**Marine operations—particulars for immediate reports**

---

<b>Item</b>	<b>Particular</b>
1	Vessel name
2	Flag (if applicable)
3	IMO Number (if applicable)
4	Unique identifier (if applicable)
5	Master
6	Operator or company name
7	Responsible person
8	Contact details

---

# EXPOSURE DRAFT

## Part 3 Marine operations

### Section 22

---

---

**Marine operations—particulars for immediate reports**

---

**Item Particular**

---

- |    |   |
|----|---|
| 9  | If the vessel is a Domestic Commercial Vessel:<br>(a) class; and<br>(b) operational area  |
| 10 | The following details of the incident:<br>(a) the date;<br>(b) the time (local and UTC);<br>(c) the voyage start and finish point;<br>(d) a description of the location of the incident;<br>(e) the latitude and longitude of the incident  |
| 11 | Which of the following vessel activities were being undertaken at the time of the incident:<br>(a) underway;<br>(b) berthing/unberthing;<br>(c) berthed;<br>(d) towing;<br>(e) anchored;<br>(f) fishing/unloading;<br>(g) loading/unloading;<br>(h) being towed;<br>(i) other (specify)   |
| 12 | Whether a pilot was on board  |
| 13 | Whether cargo was on board  |
| 14 | Any of the following consequences:<br>(a) injury;<br>(b) illness;<br>(c) death;<br>(d) medical evacuation;<br>(e) man overboard without a lifejacket;<br>(f) man overboard wearing a lifejacket;<br>(g) presumed loss of a person;<br>(h) equipment/machinery failure;<br>(i) damage;<br>(j) loss of cargo/dangerous goods;<br>(k) leakage/spillage of dangerous goods;<br>(l) contact with something other than a vessel;<br>(m) collision with another vessel;<br>(n) MARPOL issues;<br>(o) fire/smoke;<br>(p) grounding;<br>(q) disabled;<br>(r) foundering/sinking;<br>(s) flooding;<br>(t) near miss/dangerous occurrence; |
- 
-



---

---

**Marine operations—particulars for immediate reports**

---

**Item Particular**

---

(u) other (specify)

---

15 A description of the incident

---

## 23 Marine operations—particulars for written reports

For the purposes of subsections 19(1) and (4) of the Act, the particulars in the following table are prescribed in relation to an immediately reportable matter of a kind referred to in section 20 of this instrument.

---

---

**Marine operations—particulars for written reports**

---

**Item Particular**

---

1 The particulars set out in the table in section 22 of this instrument

---

2 Weather at the time of the incident

---

3 Visibility at the time of the incident

---

4 The numbers of each of the following on board:

(a) crew;

(b) passengers;

(c) other people

---

5 Details of any of the following consequences of the incident (including details of the person affected):

(a) injury;

(b) illness;

(c) death;

(d) medical evacuation;

(e) man overboard without a lifejacket;

(f) man overboard wearing a lifejacket;

(g) presumed loss of a person

---

6 Details as to why the person reporting the incident thinks that the incident occurred

---

7 Details of what has been done to prevent the incident from reoccurring

---

8 Details of the person completing the report, including contact details

---

## 24 Marine operations—nominated officials

For the purposes of section 20 of the Act, the following persons are nominated officials in relation to reportable matters to which this Part applies:

(a) a staff member;

(b) a member of the staff of the Australian Maritime Safety Authority.

Note: For the meaning of *staff member* in paragraph (a), see subsection 3(1) of the Act.

# EXPOSURE DRAFT

## Part 3 Marine operations

### Section 25

---

#### **25 Marine operations—reports to be given to staff member**

##### *Reports under the Act*

- (1) Subject to subsection (2), if a report under section 18 or 19 of the Act is given to a nominated official mentioned in paragraph 24(b) of this instrument, the nominated official must, as soon as is practicable, pass on the report to a nominated official mentioned in paragraph 24(a) of this instrument.
- (2) Subsection (1) does not apply if the nominated official who receives the report under section 18 or 19 of the Act believes, on reasonable grounds, that a responsible person has already given, or will give, a report under that section that relates to the same incident to a nominated official mentioned in paragraph 24(a) of this instrument.

##### *Reports under the Navigation Act 2012*

- (3) Subject to subsection (4), if a report under section 185 or 186 of the *Navigation Act 2012* is given to a nominated official mentioned in paragraph 24(b) of this instrument, the nominated official may pass on the report to a nominated official mentioned in paragraph 24(a) of this instrument.
- (4) Subsection (3) does not apply if the nominated official who receives the report under section 185 or 186 of the *Navigation Act 2012* believes, on reasonable grounds, that a responsible person has already given, or will give, a report under section 18 or 19 of the Act that relates to the same incident to a nominated official mentioned in paragraph 24(a) of this instrument.

## Part 4—Rail transport

### 26 Definitions for Part 4

In this instrument:

**National Rail Safety Regulator** means the National Rail Safety Regulator, or an Acting National Rail Safety Regulator, appointed under the Rail Safety National Law.

**Rail Safety National Law** means:

- (a) the Rail Safety National Law set out in Schedule 1 to the *Rail Safety National Law (South Australia) Act 2012 (SA)*; or
- (b) a law of a State or Territory that corresponds to that law; or
- (c) a regulation made under a law mentioned in paragraph (a) or (b).

Note: For paragraph (c), in 2021, these regulations were known as the Rail Safety National Law National Regulations.

**rail transport operator** has the meaning given by subsection 4(1) of the Rail Safety National Law.

### 27 Application of Part 4

This Part applies to an investigable matter if:

- (a) it is a matter over which the ATSB has jurisdiction; and
- (b) the Rail Safety National Law applies to the railway where the matter happened.

Note: See subsection 11(3) of the Act for the ATSB's jurisdiction in relation to rail transport.

### 28 Rail transport—immediately reportable matters

For the purposes of the definition of **immediately reportable matter** in subsection 3(1) of the Act, investigable matters that are Category A notifiable occurrences, within the meaning of the Rail Safety National Law, as in force from time to time, are prescribed.

Note: For what is a Category A notifiable occurrence, see paragraph 57(1)(a) of the Rail Safety National Law National Regulations.

### 29 Rail transport—routine reportable matters

For the purposes of the definition of **routine reportable matter** in subsection 3(1) of the Act, investigable matters that are Category B notifiable occurrences, within the meaning of the Rail Safety National Law, as in force from time to time, are prescribed.

Note: For what is a Category B notifiable occurrence, see paragraph 57(1)(b) of the Rail Safety National Law National Regulations.

# EXPOSURE DRAFT

## Part 4 Rail transport

### Section 30

---

#### 30 Rail transport—responsible person

- (1) This section is made for the purposes of the definition of *responsible person* in subsection 3(1) of the Act.
- (2) The following persons are *responsible persons* in relation to reportable matters to which this Part applies:
  - (a) the rail transport operator, or an employee of the operator, of the rail infrastructure or rolling stock that is involved in the reportable matter;
  - (b) the crew member who is in control of the rail vehicle when the rail vehicle is involved in the reportable matter.

#### 31 Rail transport—particulars for reports of reportable matters

- (1) For the purposes of sections 18 and 19 of the Act, the following particulars are prescribed in relation to a report:
  - (a) if information is required to be provided under the Rail Safety National Law, as in force on 1 July 2021, for the purpose of providing the report to the National Rail Safety Regulator about a notifiable occurrence—the information so required;
  - (b) if information is not so required—the particulars set out in subsection (2) of this section.
- (2) For the purposes of paragraph (1)(b), the particulars are set out in the following table.

Rail transport—particulars for reports	
Item	Particular
1	The name, contact details and role of the responsible person making the report
2	Identifying details of the rail vehicle
3	The name and contact details of the owner of the rail vehicle
4	The name and contact details of the rail transport operator of the rail vehicle
5	If the rail vehicle was under hire when the reportable matter occurred—the name and contact details of the hirer
6	The name and contact details of the driver of the rail vehicle
7	The place where the reportable matter occurred
8	The day and local time when the reportable matter occurred
9	If anyone died or was seriously injured as a result of the reportable matter: <ol style="list-style-type: none"><li>(a) for a written report—the names of those persons; and</li><li>(b) the number of those persons who were crew members; and</li><li>(c) the number of those persons who were passengers; and</li><li>(d) the number of other persons</li></ol>
10	The nature of the reportable matter, including a brief description of what happened
11	A general statement of the probable cause of the reportable matter (for example, operational or technical problems, or rail vehicle, track or other infrastructure defects)

## **32 Rail transport—nominated officials for reportable matters**

For the purposes of subsection 20(1) of the Act:

- (a) the following are the nominated officials in relation to immediately reportable matters, to which this Part applies, that are reported under section 18 of the Act:
  - (i) the National Rail Safety Regulator;
  - (ii) a staff member; and
- (b) the National Rail Safety Regulator is the nominated official in relation to routine reportable matters and immediately reportable matters, to which this Part applies, that are reported under section 19 of the Act.

## **33 Rail transport—certain reports to be given to National Rail Safety Regulator**

If a responsible person gives a report to a staff member under section 18 of the Act, the staff member may, as soon as practicable after receiving the report, give the report to the National Rail Safety Regulator.

## **34 Rail transport—certain reports to be given to staff member**

If a responsible person gives a report to the National Rail Safety Regulator under section 18 or 19 of the Act, the Regulator may, as soon as practicable after receiving the report, give the report to a staff member.

# EXPOSURE DRAFT

## Part 5 General

### Section 35

---

## Part 5—General

### 35 Delegation by the ATSB or the Chief Commissioner

For the purposes of subsections 63B(2) and 63C(5) of the Act:

- (a) to be delegated powers under the Act, a person must satisfy at least one of the following criteria:
  - (i) the person must have experience or technical expertise in relation to the relevant mode of transport and, in particular, the transport vehicle or infrastructure involved in, or associated with, matters being investigated;
  - (ii) the person must have safety investigation experience or safety investigation qualifications;
  - (iii) the person's occupation must be in the relevant transport industry;
  - (iv) the person must have experience or technical expertise relevant to the matter being investigated; and
- (b) if the power to be delegated is a power under Division 2 or 3 of Part 5 of the Act—the person must also have received appropriate training and briefing.

### 36 Delegation by the Chief Executive Officer

For the purposes of subsection 63D(3) of the Act, knowledge of, and experience in implementing, the requirements of the *Public Governance, Performance and Accountability Act 2013* and the *Public Service Act 1999* are prescribed as criteria.

### 37 Special investigators

For the purposes of section 63E of the Act, a person must satisfy at least one of the criteria mentioned in paragraph 35(a) of this instrument.

### 38 Functions of ATSB

For the purposes of paragraph 12AA(1)(a) of the Act, the following safety information is prescribed:

- (a) information obtained or generated under the REPCON scheme established under section 7 of the *Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012*;
- (b) information obtained or generated under Subpart 13.K of Part 13 of the *Civil Aviation Safety Regulations 1998*.

### 39 International obligations

- (1) For the purposes of subsections 12AD(1) and (2) of the Act, the following international agreements are identified:

- (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 investigation, and Annex 13 to that Convention;
- (b) the following provisions of the International Convention for the Safety of Life at Sea, done at London on 1 November 1974:
  - (i) Regulation 21 of Chapter I of the Annex to the Convention;
  - (ii) Regulation 6 of Chapter XI-1 of the Annex to the Convention;
- (c) Article 23 of the International Convention on Load Lines, done at London on 5 April 1966;
- (d) the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea, done at New York on 6 March 2018;
- (e) Article 94(7) of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note 1: The Convention on International Civil Aviation is in Australian Treaty Series 1957 No. 5 ([1957] ATS 5) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<https://www.austlii.edu.au>).

Note 2: The International Convention for the Safety of Life at Sea is in Australian Treaty Series 1983 No. 22 ([1983] ATS 22) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<https://www.austlii.edu.au>).

Note 3: The International Convention on Load Lines is in Australian Treaty Series 1968 No. 23 ([1968] ATS 23) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<https://www.austlii.edu.au>).

Note 4: The Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea is in Australian Treaty Series 2019 No. 16 ([2019] ATS 16) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<https://www.austlii.edu.au>).

Note 5: The United Nations Convention on the Law of the Sea is in Australian Treaty Series 1994 No. 31 ([1994] ATS 31) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<https://www.austlii.edu.au>).

- (2) For the purposes of subsection 12AD(3) of the Act, Part III of the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident, adopted by resolution MSC.255(84) of the Maritime Safety Committee of the Assembly of the International Maritime Organization, is identified.

Note: The Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident could in 2021 be viewed on the International Maritime Organization's website (<https://www.imo.org>).

## 40 Immediate reports

For the purposes of subsection 18(1) of the Act, if a responsible person has knowledge of an immediately reportable matter, the person must report it to a nominated official as soon as is reasonably practicable by telephone or, if telephone communication is not reasonably available, by another form of telecommunication or radio communication.

# EXPOSURE DRAFT

## Part 5 General

### Section 41

---

#### 41 Written reports

For the purposes of subsection 19(4) of the Act, the following means are prescribed:

- (a) email in plain, computer-readable text;
- (b) electronic lodgement using the internet;
- (c) data transfer in a format approved by the ATSB.

#### 42 Identity cards

For the purposes of paragraph 29(2)(a) of the Act, an identity card issued to a person must be in a form that sets out the following information:

- (a) the person's name;
- (b) if the person is an employee of a Department or Agency—the name of the Department or Agency;
- (c) if the person is a special investigator—that fact;
- (d) the powers that have been delegated to the person under section 63B, 63C or 63D of the Act;
- (e) the identity card number;
- (f) the expiry date of the identity card;
- (g) instructions for the return of the identity card if found.

#### 43 Fees for attending before ATSB

- (1) For the purposes of subsection 32(7) of the Act, a person who attends before the ATSB in accordance with a requirement under subsection 32(1) of the Act is entitled to be paid fees and allowances in accordance with this section.
- (2) If the person is required to attend because of the person's professional, scientific or other special skill or knowledge, the person is entitled to be paid the following amount of fees:
  - (a) if the person is remunerated in the person's occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees lost because of the person's attendance, up to a maximum amount of \$1,000 for each day on which wages, salary or fees are lost because of the attendance;
  - (b) in any other case:
    - (i) \$500 for each full day of attendance; and
    - (ii) \$66.67 for each hour, or part of an hour, of attendance on each day on which the person is not required to attend for the full day, up to a maximum of \$500.
- (3) If the person is required to attend for a reason other than because of the person's professional, scientific or other special skill or knowledge, the person is entitled to be paid the following amount of fees:
  - (a) if the person is remunerated in the person's occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees lost because of the person's attendance, up to a maximum amount of \$1,000 for each day on which wages, salary or fees are lost because of the attendance;
  - (b) in any other case:
    - (i) \$100 for each full day of attendance; and



- (ii) \$13.33 for each hour, or part of an hour, of attendance on each day on which the person is not required to attend for the full day, up to a maximum of \$100.
- (4) Subject to subsections (5) and (6), the person is also entitled to be paid reasonable allowances for:
  - (a) transport between the person's usual place of residence and the place where the person attends before the ATSB; and
  - (b) if the person is required to be absent overnight from the person's usual place of residence—meals and accommodation.
- (5) For the purposes of paragraph (4)(b), in determining a reasonable allowance for meals and accommodation, the Chief Commissioner must have regard to the rates (if any) determined from time to time for public service employees by the Australian Public Service Commission.
- (6) A person is entitled to be paid an allowance under subsection (4) only if, before booking the person's transport and accommodation, the person seeks approval from the Chief Commissioner for the travel to attend before the ATSB.

## 44 Recordings that are not on-board recordings (OBRs)

### *Aircraft*

- (1) For the purposes of subsection 48(3) of the Act, a recording is not an OBR for the purposes of the Act if the recording is:
  - (a) an oral communication recorded by an air traffic service or a certified air/ground radio service (within the meaning of the *Civil Aviation Safety Regulations 1998*) for the purpose of directing or monitoring the progress of an aircraft; or
  - (b) an oral communication recorded by the Australian Maritime Safety Authority.

### *Ships*

- (2) For the purposes of subsection 48(3) of the Act, a recording is not an OBR for the purposes of the Act if the recording is:
  - (a) an oral communication recorded by a ship reporting system or a marine vessel traffic control system for the purpose of directing or monitoring the progress of a ship; or
  - (b) an oral communication recorded by the Australian Maritime Safety Authority.

### *Rail transport*

- (3) For the purposes of subsection 48(3) of the Act, a recording is not an OBR for the purposes of the Act if the recording is a recording of oral communications made by a rail traffic control service provider for the purpose of directing or monitoring the progress of a rail vehicle.

# EXPOSURE DRAFT

## Part 5 General

### Section 45

---

#### 45 Release of OBR information

For the purposes of subsection 51(2) of the Act, the ATSB may disclose to any person OBR information that is, or contains, personal information only if the ATSB is required to do so by an international agreement or code mentioned in section 39 of this instrument.

#### 46 Release of restricted information

- (1) For the purposes of subsection 61(2) of the Act and subject to subsection (2) of this section, the ATSB may disclose to any person restricted information that is, or contains, personal information only if the ATSB is required to do so by an international agreement mentioned in section 39 of this instrument.
- (2) For the purposes of subsection 61(2) of the Act, the ATSB may disclose to a relevant body restricted information that is, or contains, personal information if:
  - (a) the restricted information does not include:
    - (i) a copy or record of a statement (oral or written) obtained from any person by a staff member in the course of an investigation; or
    - (ii) information contained in a document that is produced under paragraph 32(1)(b), 36(3)(a) or 36(4)(a) of the Act; or
    - (iii) information or records mentioned in paragraph (i), (j) or (k) of the definition of *restricted information* in subsection 3(1) of the Act; and
  - (b) the restricted information is provided solely for the purpose of:
    - (i) transport safety data sharing; or
    - (ii) reporting or investigation of a transport safety matter; or
    - (iii) conducting a coronial inquiry; and
  - (c) the restricted information will help the relevant body to carry out a statutory obligation.

Note: See the *Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012* for disclosure of information mentioned in subparagraph (a)(iii).

- (3) In this section:

*relevant body* has the meaning given by section 45 of the Act.

#### 47 Fees for attending coronial inquiry

- (1) For the purposes of subsection 67(2) of the Act and subject to subsection (2) of this section, if a staff member attends a coronial inquiry, the State or Territory concerned is liable to pay to the Commonwealth a fee equal to the sum of:
  - (a) the staff member's salary for the period of the staff member's attendance at, and any necessary travel to and from, the inquiry; and
  - (b) any reasonable costs incurred by the staff member and payable by the Commonwealth for transport between the staff member's usual place of residence and the place where the staff member attends the inquiry; and
  - (c) if the staff member is required to be absent overnight from staff member's usual place of residence—any reasonable costs incurred by the staff member and payable by the Commonwealth for meals and accommodation; and

- (d) if:
  - (i) the Commonwealth incurs any legal expenses in relation to the attendance, including for the provision of legal representation at the inquiry; and
  - (ii) the Chief Commissioner is satisfied that it is appropriate to seek reimbursement for those expenses from the State or Territory concerned;the amount of those expenses.
- (2) The maximum fee payable to the Commonwealth under paragraph (1)(a) in respect of a staff member's salary is:
  - (a) \$1,000 for each full day of attendance; or
  - (b) \$133.33 for each hour, or part of an hour, of attendance on each day on which the person is not required to attend for the full day, up to a maximum of \$1,000.
- (3) A fee under subsection (1) must be paid within 30 days after the day of the inquiry.

# EXPOSURE DRAFT

Schedule 1 Repeals

---

## Schedule 1—Repeals

### *Transport Safety Investigation Regulations 2003*

#### **1 The whole of the instrument**

Repeal the instrument.