



Transport Safety Investigation Regulations 2002

Statutory Rules 2002 No. ¹

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Transport Safety Investigation Act 2002*.

Dated 2002

Governor-General

By His Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]
Minister for Transport and Regional Services

DRAFT ONLY

Part 1 Preliminary

1.1 Name of Regulations

These Regulations are the *Transport Safety Investigation Regulations 2002*.

1.2 Commencement

These Regulations commence on ^date^.

1.3 Definitions

In these Regulations:

Act means the *Transport Safety Investigation Act 2002*.

crew member, in relation to a transport vehicle, means a person who has operational duties on board the transport vehicle.

operator, in relation to a transport vehicle, means a person, organisation or enterprise engaged in, or offering to engage in, a transport operation using the vehicle.

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

Part 2 Aviation

2.1 Application

- (1) This Part applies only in relation to matters involving aircraft operations.
- (2) Subject to subregulation (3), in relation to a particular aircraft, this Part applies only in relation to matters occurring during the period:
 - (a) beginning when the first person (including a crew member) to board the aircraft for the purpose of travel does so; and

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- (b) ending when the last person to disembark from the aircraft does so.
- (3) This Part also applies in relation to a death or serious injury mentioned in paragraph 2.3 (1) (a), if the death or serious injury occurs as a result of an incident occurring during the period mentioned in subregulation (2).

2.2 Definitions

In this Part:

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 or electrical system.

approved envelope, in relation to an aircraft, means the operating limitations and performance parameters approved for the safe operation of the aircraft.

Examples

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

controlled airspace means airspace within which an air traffic control service is provided.

flight crew means the crew members who are directly responsible for the flight management of an aircraft.

fuel exhaustion means an aircraft running out of useable fuel.

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

minimum altitude means the altitude specified in:

- (a) for aircraft operating in the Australian Flight Information Region — the Civil Aviation Safety Authority's Manual of Standards, as in force at the commencement of these Regulations; and
- (b) for aircraft operating outside the Australian Flight Information Region — ICAO document 4444 or the standard in force in the area where the aircraft is

operating, as in force at the commencement of these Regulations.

Drafter's note: Will ICAO document 4444 and the local standard always be the same? If not, how do you want any inconsistency to be resolved?

near collision means an incident in which an aircraft was required to manoeuvre to avoid collision with another aircraft, or where an avoidance manoeuvre would have been appropriate.

predicted performance, in relation to a take-off of an aircraft, means the performance that the aircraft would expect to achieve in the conditions applying at the time of take-off, based on flight test data for the aircraft.

Drafter's note: The definition of predicted performance is based on an expectation in relation to a particular take-off of a particular aircraft, rather than a generic predicted performance. Is that what you intended?

redundant system means 1 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.

runway incursion 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 or results in a reduction of safety for aircraft.

separation standard means the separation standard specified in:

- (a) for aircraft operating in the Australian Flight Information Region — the Civil Aviation Safety Authority's Manual of Standards, as in force at the commencement of these Regulations; and
- (b) for aircraft operating outside the Australian Flight Information Region — ICAO document 4444 or the standard in force in the area where the aircraft is operating, as in force at the commencement of these Regulations.

traffic conflict means a convergence between the flight paths of 2 aircraft, so that corrective action is required to prevent a collision or near-collision.

2.3 Immediately reportable matters (Act s 3)

- (1) The following investigable matters are prescribed for the purposes of the definition of *immediately reportable matter* in section 3 of the Act:
 - (a) subject to subregulation (3), the death of, or a serious injury to, a person on board an aircraft or in contact with an aircraft or anything attached to the aircraft or anything that has become detached from the aircraft;
 - (b) the aircraft being missing;
 - (c) the aircraft suffering serious damage or structural failure, or the existence of reasonable grounds for believing that the aircraft has suffered serious damage or structural failure;
 - (d) the aircraft being inaccessible, if there are reasonable grounds for believing that the aircraft has been seriously damaged.

- (2) The following investigable matters, in relation to a commercial passenger or freight aircraft operation, are prescribed for the purposes of the definition of *immediately reportable matter* in section 3 of the Act:
 - (a) a near collision;
 - (b) an incident in which controlled flight into terrain was narrowly avoided;
 - (c) the rejection of a take-off from a closed or occupied runway;
 - (d) a landing or attempted landing on a closed or occupied runway;
 - (e) a significant failure to achieve predicted performance during take-off or initial climb;
 - (f) a fire (even if subsequently extinguished), smoke, fumes or explosion on or in any part of the aircraft;
 - (g) an uncontained engine failure or mechanical failure resulting in the shutdown of an engine;

Drafter's note: Are the words 'resulting in the shutdown of an engine' intended to apply to both 'an uncontained engine failure' and 'mechanical failure' or only the latter?

 - (h) the use of any procedure for overcoming an emergency;

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- (i) an event requiring the use of oxygen by the flight crew;
 - (j) multiple malfunctions of aircraft systems that seriously affect the operation of the aircraft;
 - (k) the flight crew becoming incapacitated during flight;

Drafter's note: Is paragraph (k) intended to apply if a member of the flight crew is incapacitated or only if the entire flight crew is incapacitated?

- (l) fuel exhaustion, or fuel starvation, requiring the declaration of an emergency during flight;

Drafter's note: Is paragraph (l) intended to apply even if there is no actual declaration of an emergency?

- (m) undershooting, overrunning or running off the side of a runway during take-off or landing, or any other similar occurrence;
 - (n) any of the following occurrences, if the occurrence causes difficulty controlling the aircraft:
 - (i) an aircraft system failure;
 - (ii) a weather phenomenon;
 - (iii) operation outside the aircraft's approved envelope;
 - (iv) any other similar occurrence;
 - (o) failure of 2 or more related redundant systems for flight guidance and navigation;
 - (p) serious damage to any property outside the aircraft caused by contact with the aircraft or anything that has become detached from the aircraft.
- (3) For paragraph (1) (a), ***death or serious injury*** does not include:
- (a) death or serious injury resulting from natural causes (except to the flight crew); 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

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- (e) an injury that does not require hospitalisation until more than 30 days after the incident that caused the injury; or
 - (f) death occurring more than 30 days after the incident that caused the death, unless the death was caused by an injury that required hospitalisation within 30 days after the incident.

2.4 Routine reportable matters (Act s 3)

- (1) For the purposes of the definition of *routine reportable matter* in section 3 of the Act, the following investigable matters are prescribed in relation to commercial passenger or freight operations:
 - (a) an injury, other than a serious injury, to a person on board an aircraft or in contact with an aircraft or anything attached to the aircraft or anything that has become detached from the aircraft;
 - (b) the aircraft suffering minor damage or structural failure that:
 - (i) does not significantly affect the structural integrity, performance or flight characteristics of the aircraft; and
 - (ii) does not require major repair or replacement of the affected component;
 - (c) an infringement of separation standards in controlled airspace (other than a matter mentioned in paragraph 2.3 (2) (a));
 - (d) traffic conflict in controlled airspace (other than a matter mentioned in paragraph 2.3 (2) (a));
 - (e) flight below the minimum altitude, except in accordance with a normal arrival or departure procedure;
 - (f) a rejected take-off, except on a closed or occupied runway;
 - (g) a failure to achieve predicted performance during take-off or initial climb;
 - (h) malfunction of an aircraft system, if the malfunction does not seriously affect the operation of the aircraft;
 - (i) fuel starvation that does not require the declaration of an emergency;
 - (j) a runway incursion;

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- (k) any of the following occurrences, if the occurrence does not cause difficulty controlling the aircraft:
 - (i) an aircraft system failure;
 - (ii) a weather phenomenon;
 - (iii) operation outside the aircraft's approved envelope;
 - (iv) any other similar occurrence;
 - (l) failure of a redundant system for flight guidance and navigation;
 - (m) failure or inadequacy of a facility used in connection with an aircraft operation, such as:
 - (i) a navigation or communication aid; or
 - (ii) an air traffic control service or general operational service; or
 - (iii) an airfield facility, including lighting or a manoeuvring, taxiing or take-off surface;
 - (n) misinterpretation by flight crew of information or instructions, including:
 - (i) the incorrect setting of a transponder code; or
 - (ii) flight on a level or route different to the level or route allocated for the flight; or
 - (iii) the incorrect receipt or interpretation of a significant radio or telephone message;
 - (o) an occurrence arising from the loading or carriage of passengers, cargo or fuel, such as:
 - (i) the loading of an incorrect quantity of fuel, if the error is likely to have a significant effect on aircraft endurance, performance, balance or structural integrity; or
 - (ii) the loading of an incorrect type of fuel or other essential liquid, or contaminated fuel or other essential liquid; or
 - (iii) the incorrect loading of passengers, baggage or cargo, if the error has a significant effect on the mass or balance of the aircraft; or
 - (iv) the carriage of dangerous goods in contravention of Commonwealth, State or Territory legislation; or

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- (v) the incorrect securing of cargo containers or significant items of cargo; or
 - (vi) the incorrect stowage of baggage or cargo, if the error is likely to cause a hazard to the aircraft or its equipment or occupants, or to impede emergency evacuation; or
 - (vii) a significant contamination of the aircraft structure, systems or equipment, arising from the carriage of baggage or cargo; or
 - (viii) the presence of an intoxicated, violent or armed passenger;
 - (p) a wildlife strike;
 - (q) any other matter (other than a matter mentioned in regulation 2.3) in relation to the operation of the aircraft that endangers, or, if not corrected, would endanger, the safety of the aircraft, its occupants or any other person.
- (2) For the purposes of the definition of ***routine reportable matter*** in section 3 of the Act, the following investigable matters are prescribed in relation to aircraft operations other than commercial passenger or freight operations:
- (a) an injury, other than a serious injury, to a crew member;
 - (b) a member of the flight crew becoming incapacitated while operating the aircraft;
 - (c) any of the following occurrences, if the occurrence does not cause difficulty controlling the aircraft:
 - (i) an aircraft system failure;
 - (ii) a weather phenomenon;
 - (iii) operation outside the aircraft's approved envelope;
 - (iv) any other similar occurrence;
 - (d) a near collision in which an aircraft was required to manoeuvre to avoid collision, or where an avoidance manoeuvre would have been appropriate;
 - (e) an infringement of separation standards in controlled airspace;
 - (f) traffic conflict in controlled airspace;
 - (g) fuel exhaustion, or fuel starvation, that compromises the safety of the aircraft;

Drafter's note: Is this intended to have a different meaning from paragraph 2.3 (2) (l)?

- (h) a wildlife strike on a licensed aerodrome;
- (i) any other matter (other than a matter mentioned in regulation 2.3) in relation to the operation of the aircraft that endangers, or, if not corrected, would endanger, the safety of the aircraft, its occupants or any other person.

2.5 Responsible persons (Act s 3)

For the purposes of the definition of ***responsible person*** in section 3 of the Act, the following persons are responsible persons in relation to reportable matters:

- (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 a aircraft maintenance engineer under the *Civil Aviation 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) an officer of the Civil Aviation Safety Authority;
- (h) the operator of an aerodrome.

2.6 Written reports (Act s 19)

For the purposes of section 19 of the Act, a report must contain as much of the following information as is within the knowledge of the person making the report:

- (a) the name and contact details of the person making the report;
- (b) the person's role, in relation to the aircraft concerned;
- (c) the type, model, nationality, registration marks and flight number (if any) of the aircraft;

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- (d) the name of the owner of the aircraft;
 - (e) the name and contact details of the operator of the aircraft;
 - (f) if, when the reportable matter occurred, the aircraft was under hire, the name of the hirer;
 - (g) the name, and nationality, of the pilot, and the type, and licence number, of the licence held by the pilot;
 - (h) the name, and nationality, of each other member of the flight crew (if any), and the types, and licence numbers, of the licences held by those crew members;
 - (i) the day and local time when the reportable matter occurred;
 - (j) if, when the reportable matter occurred, the aircraft was in flight:
 - (i) the place where the flight started; and
 - (ii) the place where the flight ended, or was intended to end; and
 - (iii) the purpose of the flight;
 - (k) 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;
 - (l) the number of persons on board the aircraft when the reportable matter occurred;
 - (m) if any crew members have died or been seriously injured as a result of the reportable matter, their names and nationalities;
 - (n) if any passengers have died or been seriously injured as a result of the reportable matter, their names and nationalities;
 - (o) if any other persons have died or been seriously injured as a result of the reportable matter, their names and nationalities;
 - (p) the nature of the reportable matter, including:
 - (i) its outcome or effect on the flight of the aircraft; and
 - (ii) the phase of the aircraft's flight when the matter occurred; and
 - (iii) the weather conditions; and

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- (iv) the airspace designation; and
 - (v) the altitude at which the matter occurred; and
 - (vi) if the matter occurred on, or in relation to, a runway, the runway number; and
 - (vii) if the matter involved a wildlife strike, the nature of the strike; and
 - (viii) the causes of the occurrence (if known), including any human performance issues; and
 - (ix) any safety action carried out to prevent a recurrence of the matter; and
 - (x) the nature and extent of any damage to the aircraft;
 - (q) the physical characteristics of the area where the matter occurred;
 - (r) the flight rules under which the aircraft was operating at the time of the matter;
 - (s) the type of aircraft operation the aircraft was engaged in at the time of the matter;
 - (t) if the matter resulted in a fatality, and the aircraft carried an electronic locator transmitter:
 - (i) the electronic locator transmitter's manufacturer and model; and
 - (ii) whether it is fixed or portable; and
 - (iii) its location in the aircraft; and
 - (iv) whether it is activated;
 - (u) if the aircraft's pilot has died, the pilot's date of birth, flying hours and flying hours on the same type of aircraft.

2.7 Nominated officials (Act s 20)

For the purposes of section 20 of the Act, the following persons are nominated officials:

- (a) a staff member, other than a special investigator to whom the Executive Director has delegated any of the Executive Director's powers under the Act;
- (b) an officer of the Australian Maritime Safety Authority.

Note For the meaning of *staff member*, see section 13 of the Act.

2.8 OBR information (Act s 48)

For the purposes of section 48 of the Act, recordings of oral communications made by:

- (a) an air traffic service; or
- (b) a certified air-ground radio service; or
- (c) the Australian Maritime Safety Authority;

for the purpose of directing or monitoring the progress of an aircraft are not on board recordings.

Part 3 Marine

3.1 Application

- (1) This Part applies only in relation to matters involving marine operations.
- (2) Subject to subregulation (3), in relation to a particular ship, 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 person to disembark from the ship does so.
- (3) This Part also applies in relation to a death or serious injury mentioned in paragraph 3.3 (1) (a), if the death or serious injury occurs as a result of an incident occurring during the period mentioned in subregulation (2).

3.2 Definitions

In this Part:

bridge team means the crew members who are directly responsible for the navigation and control of the ship.

Examples

The master of the ship, helmsman, lookouts, navigating officer and pilot.

disabled, in relation to a ship, means that:

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- (a) the ship is unable, for a period longer than 12 hours, to proceed under its own power; or
 - (b) the ship is unable to proceed under its own power for a shorter period and has taken on board a towline from another ship to be towed to a place of safety.

pilot means a person who does not belong to, but has the conduct of, a ship.

3.3 Immediately reportable matters (Act s 3)

- (1) The following investigable matters in relation to a marine operation are prescribed for the purposes of the definition of *immediately reportable matter* in section 3 of the Act:
 - (a) subject to subregulation (2), the death of, or a serious injury to, a person on board the ship concerned or in contact with the ship or anything attached to the ship or anything that has become detached from the ship;
 - (b) the ship being lost, presumed lost or abandoned;
 - (c) the ship suffering serious damage or structural failure, or the existence of reasonable grounds for believing that the ship has suffered serious damage or structural failure;
 - (f) a fire (even if subsequently extinguished), smoke, fumes or explosion on or in any part of the ship;
 - (g) the loss of a person from the ship;
 - (h) the ship being stranded or disabled;
 - (i) the ship being involved in a collision.
- (2) For paragraph (1) (a), *death or serious injury* does not include:
 - (a) death or serious injury resulting from natural causes (except to the bridge team); 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 ship that is not usually accessible to crew members or passengers after departure; or
 - (e) an injury that does not require hospitalisation until more than 30 days after the incident that caused the injury; or

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- (f) death occurring more than 30 days after the incident that caused the death, unless the death was caused by an injury that required hospitalisation within 30 days after the incident.

3.4 Responsible persons (Act s 3)

For the purposes of the definition of *responsible person* in section 3 of the Act, the following persons are responsible persons in relation to reportable matters:

- (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 marine pilot.

3.5 Written reports (Act s 19)

For the purposes of section 19 of the Act, a report must contain as much of the following information as is within the knowledge of the person making the report:

- (a) the name and contact details of the person making the report;
- (b) the person's role, in relation to the ship concerned;
- (c) the name, IMO number and type of the ship, its flag State, classification society, tonnage and length, and brief details of the cargo (if any) being carried;
- (d) the name of the owner of the ship;
- (e) the name and contact details of the operator of the ship;
- (f) if, when the reportable matter occurred, the ship was under charter, the name of the charterer;
- (g) the name and nationality of the master;
- (h) if a pilot was on board the ship when the matter occurred, the name and nationality of the pilot;
- (i) the day and local time when the reportable matter occurred;
- (j) the place where the reportable matter occurred;
- (k) unless the reportable matter occurred at a port, the location of the ship immediately after the occurrence of the

reportable matter, including the geographical coordinates of that location;

- (l) if any crew members have died or been seriously injured as a result of the reportable matter, their names and nationalities;
- (m) if any passengers have died or been seriously injured as a result of the reportable matter, their names and nationalities;
- (n) if any other persons have died or been seriously injured as a result of the reportable matter, their names and nationalities;
- (o) the nature of the reportable matter, including a brief description of the incident;
- (p) a general statement of the causes of the incident, including operational or technical problems, or ship defects.

3.6 Nominated officials (Act s 20)

For the purposes of section 20 of the Act, the following persons are nominated officials:

- (a) a staff member, other than a special investigator to whom the Executive Director has delegated any of the Executive Director's powers under the Act;
- (b) an officer of the Australian Maritime Safety Authority.

Note For the meaning of *staff member*, see section 13 of the Act.

3.7 OBR information (Act s 48)

For the purposes of section 48 of the Act, recordings of oral communications made by a ship reporting system, a marine vessel traffic control system or the Australian Search and Rescue Coordination Centre for the purpose of directing or monitoring the progress of an ship are not on board recordings for the purposes of the Act.

Part 4 Rail

4.1 Application

- (1) This Part applies only in relation to matters:
 - (a) involving rail operations; and
 - (b) occurring on the interstate rail network.
- (2) Subject to subregulation (3), in relation to a particular rail vehicle, this Part applies only in relation to matters occurring during the period:
 - (a) beginning when the first person (including a crew member) to board the rail vehicle for the purpose of travel does so; and
 - (b) ending when the last person to disembark from the rail vehicle does so.
- (3) This Part also applies in relation to a death or serious injury mentioned in paragraph 4.3 (1) (a), if the death or serious injury occurs as a result of an incident occurring during the period mentioned in subregulation (2).

4.2 Definitions

In this Part:

interstate rail network means the network specified in the Code of Practice for the Defined Interstate Rail Network, published by the Department of Transport and Regional Services, as in force at the commencement of these Regulations.

locomotive crew, in relation to a rail vehicle, means the crew members who are directly responsible for the control and movement of the rail vehicle.

railway control service means the provision of information and directions to crew members of rail vehicles to ensure safe and efficient operation of rail vehicle movements.

running move derailment means a derailment occurring in the normal forward movement of a rail vehicle after it has completed any marshalling and pre-journey examination.

4.3 Immediately reportable matters (Act s 3)

- (1) The following investigable matters in relation to a rail vehicle operation are prescribed for the purposes of the definition of *immediately reportable matter* in section 3 of the Act:
 - (a) Subject to subregulation (2), the death of, or a serious injury to, a person on board the rail vehicle or in contact with the rail vehicle or anything attached to the rail vehicle or anything that has become detached from the rail vehicle;
 - (b) a collision between the rail vehicle and a person or vehicle at a level crossing, including a pedestrian crossing;
 - (c) a collision between the rail vehicle and another rail vehicle or an obstruction;
 - (d) a running move derailment of the rail vehicle.
- (2) For paragraph (1) (a), *death or serious injury* does not include:
 - (a) death or serious injury resulting from natural causes (except to the locomotive crew); 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 rail vehicle that is not usually accessible to crew members or passengers after departure; or
 - (e) an injury that does not require hospitalisation until more than 30 days after the incident that caused the injury; or
 - (f) death occurring more than 30 days after the incident that caused the death, unless the death was caused by an injury that required hospitalisation within 30 days after the incident.

4.4 Responsible persons (Act s 3)

For the purposes of the definition of *responsible person* in section 3 of the Act, the following persons are responsible persons in relation to reportable matters:

- (a) a crew member of the rail vehicle concerned;

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- (b) the owner or operator of the rail vehicle;
 - (c) a person performing a railway control service in relation to the rail vehicle;
 - (e) a person who does any maintenance work in relation to the rail vehicle.

4.5 Written reports (Act s 19)

For the purposes of section 19 of the Act, a report must contain as much of the following information as is within the knowledge of the person making the report:

- (a) the name and contact details of the person making the report;
- (b) the role of the person making the report, in relation to the rail vehicle;
- (c) details of the rail vehicles involved;
- (d) the name of the owner of the rail vehicle;
- (e) the name and contact details of the operator of the rail vehicle;
- (f) if, when the reportable matter occurred, the rail vehicle was under hire, the name of the hirer;
- (g) the name of the driver, and the type, and licence number, of the licence held by the driver;
- (h) the place where the reportable matter occurred;
- (i) the day and local time when the reportable matter occurred;
- (j) if any crew members have died or been seriously injured as a result of the reportable matter, their names and nationalities;
- (k) if any passengers have died or been seriously injured as a result of the reportable matter, their names and nationalities;
- (l) if any other persons have died or been seriously injured as a result of the reportable matter, their names and nationalities;
- (m) the nature of the reportable matter, including a brief description of the incident;

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- (n) a general statement of the causes of the incident, including operational or technical problems, or rail vehicle, track or other infrastructure defects.

4.6 Nominated officials (Act s 20)

For the purposes of section 20 of the Act, the following persons are nominated officials:

- (a) a staff member, other than a special investigator to whom the Executive Director has delegated any of the Executive Director's powers under the Act;
- (b) an employee of a State or Territory rail accreditation or regulatory authority.

Note For the meaning of *staff member*, see section 13 of the Act.

4.7 OBR information (Act s 48)

For the purposes of section 48 of the Act, recordings of oral communications made by a rail traffic control service provider for the purpose of directing or monitoring the progress of an rail vehicle are not on board recordings for the purposes of the Act.

Part 5 General

5.1 Special investigators (Act s 14)

To be eligible to be appointed as a special investigator, a person must satisfy one or more of the following conditions:

- (a) 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 by the Executive Director;
- (b) the person must have safety investigation experience or qualifications in the relevant mode of transport;
- (c) the person must:
 - (i) be a person whose occupation is in the relevant transport industry; or

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- (ii) have training or qualifications relevant to the matter being investigated.

Drafter's note: As the list of possible subjects for training or qualifications contained in the instructions is not exhaustive, and particular items in the list may not always be relevant to a particular matter, it is better not to include it in the Regulations.

5.2 International obligations (Act s 17)

The following international agreements are identified for the purposes of section 17 of the Act:

- (a) the Convention on International Civil Aviation, concluded at Chicago on 7 December 1944;
- (b) the Convention on the International Maritime Organization, concluded at Geneva on 6 March 1948;
- (c) the International Convention for the Safety of Life at Sea, 1974;
- (d) the International Convention on Load Lines, 1966, as set out in Schedule 4 to the *Navigation Act 1912*.

Drafter's note: The Code for the Investigation of Marine Casualties and Incidents does not appear to be an international agreement as defined in the Bill. However, I have included the IMO Convention, which presumably imposes an obligation to comply with Codes determined by the IMO.

5.3 Immediate reports (Act s 18)

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.

5.4 Identity cards (Act s 29)

For 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 13 of the Act;
- (e) the identity card number;
- (f) the card's expiry date;
- (g) instructions for the return of the card if found;
- (h) the penalties under section 29 of the Act for misuse of the card.

5.5 Fees for attending before Executive Director

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

skill or knowledge, the person is entitled to the following amount of fees:

- (a) if the person is remunerated in his or her occupation by wages, salary or fees — an amount equal to the amount of wages, salary or fees lost because of his or attendance, up to a maximum amount of \$1 000 for each day of attendance;
 - (b) in any other case:
 - (i) \$100 for each full day of attendance; and
 - (ii) \$13.33 per hour of attendance on each day on which the person is not required to attend for the full day.
- (4) Subject to subregulations (5) and (6), the person is also entitled to reasonable allowances for:
- (a) transport between the person's usual place of residence and the place where he or she attends before the Executive Director; and
 - (b) if the person is required to be absent overnight from his or her usual place of residence — meals and accommodation.
- (5) For paragraph (4) (b), in determining a reasonable allowance for meals and accommodation, the Secretary must have regard to the rates determined from time to time for public service employees by the Department of Employment and Workplace Relations.
- (6) A person is entitled to an allowance under subregulation (4) only if, before booking his or her transport and accommodation, the person seeks approval from the Executive Director for the travel to attend before the Executive Director.

5.6 Release of OBR information (Act s 51)

The Executive Director may disclose OBR information that is, or contains, personal information only if the Executive Director is required to do so by an international agreement mentioned in regulation 5.2.

5.7 Release of restricted information (Act s 61)

- (1) The Executive Director may disclose restricted information that is, or contains, personal information if the Executive Director is required to do so by an international agreement mentioned in regulation 5.2.
- (2) The Executive Director may also disclose restricted information that is, or contains, personal information to a relevant body if:
 - (a) the information is not, and 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 to a staff member under paragraph 32 (1) (b), 36 (3) (a) or 36 (4) (a) of the Act; and
 - (b) the 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 information will help the relevant body to carry out a statutory obligation.
- (3) In this regulation:

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

5.8 Fees for attending coronial inquiry

- (1) For section 67 of the Act, 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 staff member's salary and allowances for the period of his or her attendance at the inquiry.
- (2) A fee under subregulation (1) must be paid within 30 days after the day of the inquiry.

Drafter's note: The instructions for this regulation did not appear to fully reflect clause 67 of the Bill, which provides for

payment of a fee to the Commonwealth, and is more limited than clause 32. I have attempted to extract as much of the instructions as reflects the empowering provision.

Note

1. Notified in the *Commonwealth of Australia Gazette* on 2002.

DRAFT ONLY