

## **EXPLANATORY STATEMENT**

Issued by authority of the Deputy Prime Minister and the Minister for Infrastructure,  
Transport and Regional Development

*Transport Safety Investigation Act 2003*

*Transport Safety Investigation Amendment (Rail Transport) Regulations 2019*

### **Purpose**

The *Transport Safety Investigation Amendment (Rail Transport) Regulations 2019* (the Instrument) amend the *Transport Safety Investigation Regulations 2003* (the Principal Regulations) to revise the requirements for notifying the Australian Transport Safety Bureau (ATSB) of rail safety matters by:

- prescribing the Office of the National Rail Safety Regulator (the Regulator) as a nominated official for receiving reports of serious rail safety matters;
- authorising that if the Regulator receives a report of a rail safety matter, the Regulator may pass on the details of the report to the ATSB; and
- authorising that if the ATSB receives a report of a serious rail safety matter, the ATSB may pass on the details of the report to the Regulator.

The primary purpose of the amendments is to transfer from the ATSB to the Regulator, responsibility for receiving reports of rail accidents and serious incidents in the first instance. When the Regulator receives the report, the Regulator will pass it on immediately to the ATSB so that the ATSB can determine whether to conduct an investigation into the accident or incident under the *Transport Safety Investigation Act 2003* (the Act).

The Instrument also makes administrative amendments to the Principal Regulations.

### **Background**

#### Legislative framework

Section 18 of the Act has the effect that 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.

Section 19 of the Act further requires that if a responsible person has knowledge of an immediately reportable matter or a *routine reportable matter*, the person must, within 72 hours, give a written report of the matter to a nominated official.

Section 3 of the Act defines the expressions '*responsible person*', '*immediately reportable matter*', '*nominated official*' and '*routine reportable matter*' by referencing the Principal Regulations, which prescribe that:

- *responsible persons* for reporting rail safety matters include 'a rail transport operator, an employee of the operator or a crew member who is in control of the rail vehicle related to the matter' (regulation 4.4 of the Principal Regulations).

- *immediately reportable matter* means a matter that is a Category A notifiable occurrence, within the meaning of the Rail Safety National Law, as in force from time to time, for example accidents and incidents that cause death, serious injury or significant property damage (regulation 4.3 of the Principal Regulations).
- *routine reportable matter* means a matter that is a Category B notifiable occurrence, within the meaning of the Rail Safety National Law, as in force from time to time, for example, a derailment, collision involving rolling stock or a minor accident at a road or pedestrian crossing (regulation 4.3 of the Principal Regulations).
- *nominated official* is the ATSB for immediately reportable matters (paragraph 4.6(2)(a) of the Principal Regulations) and the Regulator is the nominated official for routine reportable matters (paragraph 4.6(2)(b) of the Principal Regulations).

Regulation 4.2 of the Principal Regulations defines ‘Rail Safety National Law’ as referring to Schedule 1 to the *Rail Safety National Law (South Australia) Act 2012*, a law of a State or Territory that corresponds to that law, or a regulation made under that law.

#### *Regulator as a nominated official*

The current legislative framework requires that all immediately reportable matters must be reported to the ATSB. All immediately reportable matters are of interest to the ATSB, however there are certain rail matters that the ATSB does not need to be notified of straight away. This includes suicides and accidents that might be more closely aligned with work health safety matters (for example, slips trips and falls at a rail platform), rather than the safe operation of a rail vehicle. The ATSB’s remit for investigations is not directed towards intentional acts and work health safety matters. Other authorities may investigate these occurrences.

While the ATSB does not need immediate notification of these matters, it is important to the ATSB’s function to improve transport safety that the information is captured centrally as soon as possible. To ensure this occurs, the Instrument amends the Principal Regulations to prescribe that the Regulator is a nominated official for receiving reports of immediately reportable matters (set out as Category A matters under the Rail Safety National Law) in the first instance.

This change aligns with the Regulator’s existing function to receive notifications in the first instance of written reports for Category A and Category B matters as set out in the Rail Safety National Law.

#### *The Regulator may pass on reports to the ATSB*

The Instrument further amends the Principal Regulations to prescribe that if the Regulator receives a report of an immediately reportable matter, the Regulator may pass on the details of the report to the ATSB. The ATSB and the Regulator will amend their existing Memorandum of Understanding to address what information will be passed on immediately to the ATSB, ensuring that the ATSB receives information

immediately about rail safety matters that the ATSB is likely to investigate.

Under the terms of the existing arrangement between the ATSB and the Regulator, the ATSB will continue to receive data from all reports made to the Regulator, which assists the ATSB with research and analysis and determining which matters are most likely to provide the greatest safety lessons through an ATSB investigation.

### **Consultation**

The ATSB consulted all sectors of the rail industry and rail industry stakeholders, including the Regulator and the Australasian Railway Association (the peak body for the rail industry), on the Instrument.

The consultation undertaken by the ATSB included agreement with the Regulator on the proposed policy to amend the Principal Regulations and exposing the draft of the Instrument to rail industry stakeholders for comment.

Feedback from rail industry stakeholders was supportive.

### **Regulatory Impact Statement**

The Office of Best Practice Regulations has exempt the amendments from the requirements of a Regulatory Impact Statement, reference number 24174.

## **Explanation of the Provisions**

### Section 1

This section cites the Instrument as the *Transport Safety Investigation Amendment (Rail Transport) Regulation 2019*.

### Section 2

This section provides that the whole of the Instrument commences on 1 July 2019.

### Section 3

This section provides that the Instrument is made under the *Transport Safety Investigation Act 2003*.

### Section 4

This section has the effect that provisions of the *Transport Safety Investigation Regulations 2003* are amended or repealed as set out in the applicable items in Schedule 1 to the Instrument.

## Schedule 1 – Amendments

### *Transport Safety Investigation Regulations 2003*

#### Item 1

Item 1 inserts a new note to regulation 1.3 (Definition) of the *Transport Safety Investigation Regulations 2003* (Principal Regulations) to highlight that a number of expressions used in the Principal Regulations are defined in the *Transport Safety Investigation Act 2003* (the Act), including the expressions ‘staff member’, ‘transport safety matter’ and ‘investigable matter’.

#### Item 2

Item 2 inserts the expressions ‘National Rail Safety Regulator’, ‘Rail Safety National Law’ and ‘rail transport operator’ to regulation 1.3 (Definition) of the Principal Regulations. These expressions are then defined by referencing regulation 4.2 (Definitions) of the Principal Regulations, which defines expressions that are specific to Part 4 (Rail transport) of the Principal Regulations.

#### Item 3

Item 3 is an administrative amendment to the form of the heading to regulation 4.2 (Definition) of the Principal Regulations. The revised heading clarifies that regulation 4.2 (Definitions for part 4) defines expressions that are specific to Part 4 (Rail transport) of the Principal Regulations.

#### Item 4

Item 4 is an administrative amendment to ensure that, in line with modern drafting practices, the definition section refers to the entire Principal Regulation rather than to the specific part of the Principal Regulations.

#### Item 5

Item 5 inserts and defines the expression ‘National Rail Safety Regulator’ to mean the National Rail Safety Regulator, or an Acting National Rail Safety Regulator, appointed under the Rail Safety National Law.

#### Item 6

Item 6 inserts a note to the revised definition of ‘Rail Safety National Law’ in regulation 4.2 (Definitions) of the Principal Regulations to clarify that, in 2019, a regulation made under Rail Safety National Law is known as the Rail Safety National Law National Regulations.

#### Item 7

Item 7 repeals the expression and definition of ‘Regulator’ in regulation 4.2 (Definitions) of the Principal Regulation, which has been replaced by the expression ‘National Rail Safety Regulator’ in item 5 of Schedule 1 to the Instrument. The repeal of the expression ‘Regulator’ and substitution of the expression ‘National Rail Safety

Regulator’ relates only to the form, and not the substance, of the definition of the body that carries out the functions of the National Rail Safety Regulator under the National Rail Safety Law.

#### Item 8

Item 8 repeals regulation 4.3 (Reportable matters defined) of the Principal Regulations, which defines the expressions ‘immediately reportable matter’ and ‘routine reportable matter’, to mean the matters that are required to be reported immediately or within 72 hours, respectively, under the Rail Safety National Law. All Category A matters (for example, accidents and incidents that cause death, serious injury or significant property damage) are required to be reported immediately, and followed up with a written report within 72 hours, under the Rail Safety National Law. All Category B matters (for example, a derailment, collision involving rolling stock or a minor accident at a road or pedestrian crossing) must be reported in writing within 72 hours under the National Rail Safety Law

Item 8 also inserts two separate regulations, 4.3 (Rail transport – immediately reportable matters) and 4.3A (Rail transport – routine reportable matters) to define the expressions ‘immediately reportable matter’ and ‘routine reportable matter’ respectively. The inserted regulation 4.3 defines an ‘immediately reportable matter’ as a Category A matter within the meaning of the National Rail Safety Law. The inserted regulation 4.3A defines a ‘routine reportable matter’ as a Category B matter, within the meaning of the National Rail Safety National Law.

The amendments relate only to the form, and not the substance, of the definition of an immediately reportable matter and routine reportable matter.

#### Item 9

Item 9 is an administrative amendment to the form of the heading to regulation 4.4 (Responsible person defined) of the Principal Regulations to line up with modern drafting practices. The substituted heading, ‘*4.4 Rail Transport – responsible person*’ more accurately indicates that the substance of that regulation relates to the prescribed persons that are required to report rail transport matters. The absence of the words ‘Rail transport’ in the repealed heading does not assist a reader in knowing that the substance of the regulation is restricted to rail transport only.

#### Item 10

Item 10 is an administrative amendment to ensure that, in line with modern drafting practices, the heading to regulation 4.5 (Particulars for reports of reportable matters) of the Principal Regulations more accurately describes the matter prescribed in that regulation. The substituted heading, ‘*4.5 Rail Transport – particulars for reports of reportable matters*’ more accurately indicates that the substance of that regulation relates to prescribed particulars for reportable rail transport matters.

#### Item 11

Item 11 repeals subregulation 4.5(1) of the Principal Regulations, which prescribes

that the particulars that a responsible person must include when reporting a rail safety matter are the particulars prescribed under the Rail Safety National Law. The Rail Safety National Law authorises the Regulator to publish reporting requirements for reporting notifiable occurrences to the Regulator.

Item 11 substitutes a new subregulation 4.5(1) to prescribe the particulars that a responsible person must include when reporting rail safety matters under the Act. The substituted subregulation 4.5(1) has the effect that the following particulars are prescribed for the purposes of making a report under sections 18 and 19 of the Act:

- the information that is required to be provided under the Rail Safety National Law as in force from time to time; or
- if, from time to time, any information is not required to be provided under the Rail Safety National Law, the particulars that are set out in subregulation 4.5(2) must be included when making a report. These include, for example, the name, contact details and role of the responsible person that is making the report, the identifying details of the rail vehicle and the nature of the reportable matter.

Item 11 relates only to the form of subregulation 4.5(1) of the Principal Regulations and not the substance. The difference is that the repealed subregulation 4.5(1) refers to ‘prescribed particulars’ under the Rail Safety National Law, whereas the substituted subregulation 4.5(1) refers to ‘information that is required to be provided’ under the Rail Safety National Law’. The amendments provide consistency of language across the Principal Regulations and the Rail Safety National Law.

#### Item 12

Item 12 omits certain redundant words in subregulation 4.5(2) of the Principal Regulations and substitutes other words to complete the sentence. Item 11 inserts subregulation 4.5(1), which has words to the effect that the matters prescribed in subregulation 4.5(2) are applicable in the event that there is no information required to be reported under the Rail Safety National Law. As such, the words that are omitted by item 12 are redundant.

The amendments relate only to the form of subregulation 4.5(2) of the Principal Regulations, and not to the substance, to reduce the redundant words in that subregulation and substitutes new subregulations 4.6, 4.7 and 4.8 into the Principal Regulations.

#### Item 13

Item 13 repeals the current regulations 4.6 (nominated officials for receiving reports), 4.7 (Staff member to pass report on to the Regulator) and 4.8 (Regulator to pass report on to staff member) of the Principal Regulations.

#### ***Repealed, and substituted, regulation 4.6***

The repealed regulation 4.6 (nominated official for receiving reports) of the Principal Regulations has the effect that a staff member of the ATSB is the only nominated

official for receiving reports under section 18 of the Act and the Regulator is the only nominated official for receiving written reports under section 19 of the Act.

Item 13 repeals regulation 4.6 of the Principal Regulations and substitutes a new subregulation 4.6(a), which has the effect that both the ATSB and the Regulator are nominated officials for receiving reports under section 18 of the Act. Educational material to rail industry stakeholders about implementation of the changes to the reporting scheme will make it clear that the expectation is that all responsible persons for reporting rail safety matters are required to make only one report to the Regulator. This will also be consistent with the requirements of the Rail Safety National Law.

The substituted subregulation 4.6(b) maintains that the Regulator is the only nominated official for receiving written reports of Category B rail safety matters under section 19 of the Act.

#### ***Repealed, and substituted, regulation 4.7***

The repealed regulation 4.7 (Staff member to pass report on to Regulator) of the Principal Regulations has the effect that if a staff member of the ATSB receives a report of a Category A matter under section 18 of the Act, the staff member must pass on the details of the report to the Regulator.

Item 13 repeals regulation 4.7 of the Principal Regulations and substitutes a new regulation 4.7, which has the effect that if a staff member of the ATSB receives a report of a Category A matter, the staff member *may* pass on the details of the reported Category A matter to the Regulator. A Memorandum of Understanding between the Regulator and the ATSB will include policy expectations to guide how the ATSB is able to pass on reports of Category A matters to the Regulator.

#### ***Repealed, and substituted, regulation 4.8***

The repealed regulation 4.8 (Regulator to pass report on to staff member) of the Principal Regulations has the effect that if the Regulator receives a report a Category A matter, the Regulator must pass on the details of the report to a staff member of the ATSB.

Item 13 repeals regulation 4.8 of the Principal Regulations and substitutes a new regulation 4.8 which has the effect that if the Regulator receives a report of a Category A or Category B matter, the Regulator *may* pass on the details of the Category A or Category B matter to the ATSB. A Memorandum of Understanding between the Regulator and the ATSB will include policy expectations to guide how the Regulator is able to pass on reports of both Category A and Category B matters to the ATSB.

#### ***Sharing of reports between the ATSB and the Regulator***

The ATSB and the Regulator will amend their existing Memorandum of Understanding to address what information will be immediately passed on by the Regulator to the ATSB, ensuring that the ATSB receives information about the safety matters that the ATSB is likely to investigate. The Memorandum of Understanding will also address what information will be passed on by the ATSB to the Regulator.



The legislative framework paragraphs above outline the definitions for ‘immediately reportable matters’ under section 18 of the Act (Category A matters), routine reportable matters under section 19 of the Act (Category B matters) and the reporting requirements under sections 18 and 19 of the Act.

***Role of the ATSB as a joint nominated official for Category A report***

As explained above, due to the interaction between the Rail Safety National Law and the Act, a responsible person that chooses to report a Category A matter to the ATSB under section 18 of the Act must always also report that Category A matter to the Regulator. As such, the practical impact of the substituted subregulation 4.6(a) is that responsible persons will be able to choose to make only one report of a Category A matter to the Regulator, without being required to report the same matter to the ATSB.

Notwithstanding that in practice the Regulator will be the sole recipient of Category A reports, the ATSB is also necessarily listed as a nominated official in order to fill any reporting gaps, including a situation where a responsible person is not able to report the Category A matter to the Regulator for any reason.

**Item 14**

Item 14 is an administrative amendment to ensure that, in line with modern drafting practices, the heading to regulation 4.9 of the Principal Regulations more accurately describes the matters prescribed in that regulation. The repealed heading to regulation 4.9 refers to ‘On-board recording (OBR)’ whereas the substance of regulation 4.9 is with respect to matters that are not considered OBR. Therefore, the heading to regulation 4.9 is amended to refer to ‘Rail transport – kinds of recordings that are not on-board recordings’.

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

*Transport Safety Investigation Amendment (Rail Transport) Regulations 2019*

The Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Overview of the Legislative Instrument

Section 71 of the *Transport Safety Investigation Act 2003* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Transport Safety Investigation Regulations 2003* (the Principal Regulations) prescribe matters required to give effect to provisions in the Act, including for receiving and assessing reports of rail safety information.

The *Transport Safety Investigation Amendment (Rail Transport) Regulations 2019* (the Instrument) amend the Principal Regulations to revise the requirements for reporting rail safety matters to the Australian Transport Safety Bureau (ATSB) by:

- prescribing the Office of the National Rail Safety Regulator (the Regulator) as a nominated official for receiving reports of serious rail safety matters;
- authorising that if the Regulator receives a report of a rail safety matter, the Regulator may pass on the details of the report to the ATSB; and
- authorising that if the ATSB receives a report of a serious rail safety matter, the ATSB may pass on the details of the report to the Regulator.

The Instrument amends the Principal Regulations to achieve the agreed policy outcome for the Regulator to receive reports of serious rail matters first before passing them to the ATSB.

The ATSB and the Regulator will use a Memorandum of Understanding as a vehicle to address what information will be passed on to the ATSB, ensuring that the ATSB only immediately receives information about rail safety matters that the ATSB is likely to investigate.

### Human rights implications

The Instrument does not impact any of the applicable rights or freedoms recognised and declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. In essence, the Instrument amends the requirements for reporting rail safety matters by directing members of the rail transport industry to report all rail safety matters to the Regulator in the first instance, instead of the ATSB.

### Conclusion

The Instrument is compatible with human rights as it does not impose any limitations on, or interfere with, any human rights.