

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Infrastructure, Transport, Regional Development and Local Government

*Transport Safety Investigation Act 2003*

*Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022*

### **Purpose**

The *Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations) amends a number of provisions in the *Transport Safety Investigation Regulations 2021* (the TSI Regulations) to establish a revised occurrence aviation reporting framework across four aircraft operation categories that incorporate concepts consistent with civil aviation legislation and international standards. The Amendment Regulations also prescribes additional responsible persons in the aviation and marine industries who are required to provide reporting. A number of other clarifications are made to improve administration of the reporting scheme and consistent with best drafting practice.

### **Enabling legislation**

The *Transport Safety Investigation Act 2003* (the TSI Act) establishes the Australian Transport Safety Bureau (ATSB) as a statutory agency with functions set out in section 12AA, including receiving and assessing reports of transport safety matters, reportable matters and other safety information that is prescribed by the regulations.

Section 71 of the TSI 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 TSI Regulations sets out the safety occurrence reporting scheme across the aviation, marine and rail transport modes. It prescribes, among other things, the kinds of matters that must be reported to the ATSB, the kinds of responsible persons who are required to make a report, and the particulars to be included in an occurrence report.

### **Overview of the instrument**

The Amendment Regulations amend the TSI Regulations in the following manner:

- establish four categories (Category A, B, C and D) of aircraft operations based on the types of accident and incidents to be reported, where higher categories (passenger carrying and commercial operations) would have a greater reporting focus due to the greater public safety benefit that could be derived;
- ensure immediately reportable matters are consistent with those matters more likely to be considered for investigation based on ATSB methodology, while reducing the reporting requirements on industry for those matters the ATSB are less likely to consider for investigation;

- align aircraft operation categories and definitions with flight operations rules in civil aviation legislation administered by CASA which commenced in December 2021 – this includes replacing references to regular public transport and charter operations which are no longer used in the civil aviation regulatory framework;
- align key concepts such as aircraft accident, serious aircraft incident, aircraft incident, fatal injury and serious injury, with aviation international standards and recommended practices as best practicable;
- simplify reporting requirements for industry by removing prescriptive lists of individual kinds of incidents and defining occurrence concepts more broadly, with guidance material published by the ATSB to supplement examples of matters to be reported;
- clarify that certain aircraft incidents are to be reported as serious aircraft incidents, due to their relative importance in identifying safety risks;
- clarify that occurrences during repositioning flights prior to conducting a passenger transport operation (Category A) or non-passenger commercial operation (Category B) are reportable as part of the planned operation;
- prescribe additional persons who are responsible for reporting in the aviation industry (sport aviation bodies) and marine industry (pilotage service providers and vessel traffic service providers) to increase the ATSB’s safety information coverage; and
- improve ATSB’s administration of the occurrence reporting framework by making other minor, technical or clarifying changes.

## Categories of aircraft operations

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

Category	Kinds of aircraft operations covered
Section 8: Category A (passenger transport) aircraft operations	<p><b><i>What is included in Category A?</i></b></p> <p><b>(1) Passenger transport operation</b> (within the meaning of the <i>Civil Aviation Safety Regulations 1998</i> (CASR)) being an operation in an aircraft that involves the carriage of passengers<sup>1</sup>, whether or not cargo is also carried on the aircraft.</p> <ul style="list-style-type: none"> <li>• Examples include: air transport operations (scheduled or non-scheduled), balloon transport operations,<sup>2</sup> mining fly-in-fly-out operations, scenic flights/joy flights, parachuting operations, future advanced air mobility passenger carrying operations, and aerial work operations that carry passengers</li> </ul>

<sup>1</sup> A **passenger** under CASR, in relation to an aircraft, means a person who is not a crew member of the aircraft and is on board the aircraft for a flight.

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

Category	Kinds of aircraft operations covered
	<p>who are not crew members.</p> <p><b>(2) Medical transport operation</b> (within the meaning of CASR) being an operation with the primary purpose of transporting medical patients, medical personnel, or supplies (blood, tissue etc), or an operation prescribed by CASA in the CASR Part 119 Manual of Standards as a medical transport operation.</p> <ul style="list-style-type: none"> <li>• Examples include: flights formerly known as air ambulance operations, Royal Flying Doctor Service flights and patient transport/transfer services using aircraft operated by State and Territory ambulance services.</li> </ul> <p><b>(3) Repositioning flights</b> prior to conducting a substantive Category A operation (passenger transport or medical transport) will also be treated as a Category A operation for the purposes of occurrence reporting.</p> <p><i>What is excluded from Category A?</i></p> <p>Category A aircraft operations will <u>not</u> include an operation in an aircraft with a special certificate of airworthiness, or a cost-sharing flight<sup>3</sup>, or operation of an aircraft (where the registered operator is an individual) that carries passengers without payment or reward.</p> <p>For example, if a scenic flight involves ‘cost-sharing’ – then any occurrences during that operation would be reportable under Category C (non-commercial) aircraft operations. It is important to note that cost-sharing is limited to an aircraft configuration of not more than 6 seats (including pilot’s seat) and requires the pilot in command to directly contribute to equal costs for the flight.</p>
Section 9: Category B (commercial non-passenger) aircraft operations	<p><i>What is included in Category B?</i></p> <p><b>(1) Operation conducted for a commercial purpose</b> – any non-passenger carrying aircraft operation that is conducted for a commercial purpose will be included in Category B. A ‘commercial purpose’ is intended to have a general meaning and includes, among other things, operations conducted for hire or reward.</p> <ul style="list-style-type: none"> <li>• Examples include: aerial work operations such as surveying, spotting, surveillance, agricultural operations, aerial photography; search and rescue operations; flying training</li> </ul>

<sup>3</sup> A **cost-sharing flight** is defined in CASR as meaning a flight conducted using an aircraft with a maximum seat configuration of not more than 6 (including the pilot’s seat), and the pilot in command is not remunerated for the flight, and the pilot in command pays an amount of direct costs of the flight at least equal to the amount paid by each other person on board equally divided, and the flight is not advertised to the general public.

Category	Kinds of aircraft operations covered
	<p>activities (such as training under a CASR Part 141 or CASR Part 142 training organisation).</p> <p><b>(2) Cargo transport operation</b> (within the meaning of CASR) being an operation of an aircraft that involves the carriage of cargo and crew only (excluding operation for the carriage of possessions of the operator, or pilot in command, for business or trade).</p> <ul style="list-style-type: none"> <li>• Examples include: air freight, air mail, and parcel/package delivery using aircraft operated by logistics companies.</li> </ul> <p><b>(3) operating Type 1 RPA</b> (defined in section 6 of the TSI Regulations and adopting CASR definitions) being a large RPA<sup>4</sup>, medium RPA<sup>5</sup> or RPA which is type certificated (and which is not an excluded RPA or micro RPA).</p> <ul style="list-style-type: none"> <li>• Examples include: package delivery using large RPA, agricultural operations, other kinds of aerial work.</li> </ul> <p><b>(4) Repositioning flights</b> prior to conducting a substantive Category B operation will also be treated as a Category B operation for the purposes of occurrence reporting.</p> <p><b><i>What is excluded from Category B?</i></b></p> <p>To avoid doubt, Category B aircraft operations do not include Category A (passenger transport) aircraft operations or Category D (type 2 RPA and certain unmanned balloons) aircraft operations.</p> <p>This means in practice, Category A operations (if applicable) take precedence for the purposes of occurrence reporting – if the operation is not Category A, then responsible persons (pilots, operators and others mentioned in section 13 of the TSI Regulations) should consider if the operation would then fall within the scope of Category B for commercial purposes (unless it would be Category D), and if not, then whether the other two remaining categories would apply.</p> <p>For example, if an operator is contracted to conduct crop spraying for a client’s farmland, this would be considered a commercial purpose (Category B). However, if an operator undertakes crop spraying on their own land, there is no commercial purpose in relation to the aircraft operation and this would be considered an operation covered under Category C (non-commercial).</p>

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

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

Category	Kinds of aircraft operations covered
<p>Section 10: Category C (non-commercial) aircraft operations</p>	<p><b><i>What is included in Category C?</i></b></p> <p><b>(1) Operation of an aircraft that is <u>not</u> Category A, Category B or Category D</b> – this broad description has the aim of covering non-commercial operations (with a pilot on board) generally. This means Category C includes recreational flying, general aviation, and flights where the pilot shares equally in costs with passengers (cost-sharing).</p> <ul style="list-style-type: none"> <li>• Examples include: flying activities at local aero clubs, solo flying, community service flights, gliding activities.</li> </ul> <p><b><i>What is excluded from Category C?</i></b></p> <p>The purpose of Category C is to cover every kind of remaining aircraft operation (with a pilot on board) that is not excluded from the aviation occurrence reporting framework under subsection 7(3) of the TSI Regulations.</p> <p>Subsection 7(3) provides that Part 2 (aircraft operations) of the TSI Regulations do not apply to ‘excluded aircraft’ – being an Australian defence aircraft, an exempt foreign aircraft, or an RPA that is not type 1 RPA or type 2 RPA. The Amendment Regulations also extend the exclusions listed in subsection 7(3) to model aircraft, small balloons and light balloons and tethered balloons.</p>
<p>Section 11: Category D (type 2 RPA and certain unmanned balloons) aircraft operations</p>	<p><b><i>What is included in Category D?</i></b></p> <p><b>(1) operating type 2 RPA</b> (defined in section 6 of the TSI Regulations) being an RPA that is not a type 1 RPA, not an excluded RPA, and not a micro RPA.</p> <p><b>(2) operating a medium balloon</b> (defined in Part 101 of CASR) being an unmanned free balloon with, among other things, a payload with combined mass of at least 4kg but less than 6kg.</p> <p><b>(3) operating a heavy balloon</b> (defined in Part 101 of CASR) being an unmanned free balloon with, among other things, a payload with combined mass of at least 6kg.</p> <ul style="list-style-type: none"> <li>• Examples include: commercial and non-commercial operation of a very small RPA (more than 250g but under 2kg) such as the DJI Phantom 4 or a small RPA (more than 2kg but under 25kg) such as the DJI Agras MG-1. Unmanned balloons capable of reaching stratospheric heights would also be included in Category D.</li> </ul>

Category	Kinds of aircraft operations covered
	<p><i>What is excluded from Category D?</i></p> <p>Category D covers a subset of unmanned aircraft operations that are not already covered under earlier categories. If the aircraft operation is not using a type 2 RPA, medium balloon or heavy balloon, then Category D would not apply.</p>

The framework established in sections 8 to 11 clarify that occurrences during repositioning flights for the purpose of conducting Category A aircraft operations must be reported as a Category A (passenger carrying) aircraft operation, and similarly for Category B (commercial non-passenger) aircraft operations. The rationale for including Category A and Category B repositioning flights is to ensure that occurrences for those operations with greater public safety impact and interest are included in categories that provide proper visibility of safety matters leading up to conduct of the substantive operation. The requirement for reporting occurrences during repositioning flights does not apply to Category C (non-commercial) aircraft operations or Category D (type 2 RPA and certain unmanned balloons) aircraft operations.

### **Kinds of reportable matters**

The amended reporting framework, based on categories of aircraft operations, will facilitate ease of understanding what would be reportable as an immediately reportable matter (IRM) or routine reportable matter (RRM) to better align with the ATSB’s investigation methodology and reduce reporting anomalies. The following table summarises the different categories of aircraft operations with associated IRM and RRM to be reported.

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

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

## Consultation

Between 2019 and 2022, a total of three consultation rounds were undertaken by the ATSB on the subject matter covered by the Amendment.

In January 2022, for the third and final consultation round, the ATSB corresponded with 65 organisations across the aviation, marine and rail modes, and promoted a 5-week consultation process with release of an exposure draft and guidance materials via media release, social media and information sessions (in person and online). A total of 40 responses by survey and written correspondence were received from individuals, operators, government agencies and peak industry associations. The responses were broadly supportive of the changes and further discussions were held with respondents on key areas to refine policy input which were incorporated into the Amendment.

The ATSB was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the *Legislation Act 2003* (the Legislation Act). This consultation drew on the knowledge of persons having expertise in fields relevant to the changes that were proposed and ensured that persons likely to be affected by the instrument had an adequate opportunity to comment on the content.

### **Regulation Impact Statement**

The vast majority of persons (individuals or organisations) required to provide the ATSB with an occurrence report already do so under the existing TSI Regulations. It takes approximately five minutes to complete an occurrence reporting form on the ATSB website. The Amendment Regulation re-assigns levels of reporting to different kinds of aircraft operations – the consequence being that some enhanced reporting requirements are required for operations where there is greater public safety benefit (such as passenger transport operations), and a commensurately lower reporting responsibility for operations where there is greater assumed risk (such as private flying and sport and recreation operations).

In November 2021, the Office of Best Practice Regulation was consulted and considered that the changes would be unlikely to have more than a minor regulatory impact (OBPR21-01167). A Regulation Impact Statement was not required.

### **Incorporation by reference**

In accordance with paragraph 15J (2) (c) of the Legislation Act, the Amendment Regulations apply, adopt or incorporate matters contained in other instruments or writing as in force from time to time.

Paragraph 14(1)(a) of the Legislation Act provides, among other things, that a legislative instrument may apply, adopt or incorporate provisions of an Act or a Commonwealth disallowable legislative instrument, with or without modification, as in force in a particular time or as in force from time to time.

Subsection 3(2) of the TSI Act also provides, among other things, that regulations made for the purposes of the definition of ***immediately reportable matter*** or ***routine reportable matter*** may prescribe the matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing as in force from time to time.

The principles of incorporation by reference are engaged in the following sections of the Amendment Regulations:

- section 17 which amends the definition of ***Airservices Australia*** in section 6 of the TSI Regulations by reference to the *Air Services Act 1995*;
- section 21 which inserts a definition of ***declaration of emergency*** in section 6 of the TSI Regulations by reference to phraseology used in the Aeronautical Information Publication (AIP), being MAYDAY, PAN PAN and DESTRESFA;
- section 30 which adds, to the list of excluded aircraft in subsection 7(3) of the TSI Regulations, a ‘model aircraft’, ‘small balloon’, ‘light balloon’ and ‘tethered balloon’ each being defined terms in the CASR;



- section 35 which defines:
  - for section 8 of the TSI Regulations – **Category A (passenger transport) aircraft operation** by reference to ‘passenger transport operation’ and ‘medical transport operation’ which are defined terms in the CASR;
  - for section 9 of the TSI Regulations – **Category B (commercial non-passenger) aircraft operation** by reference to ‘cargo transport operation’ which is a defined term in the CASR;
  - for section 11 of the TSI Regulations – **Category D (type 2 RPA and certain uncrewed balloons) aircraft operations** by reference to ‘medium balloon’ and ‘heavy balloon’ which are defined terms in the CASR;
- section 36 which adds, to the list of responsible persons in section 13 of the TSI Regulations, a ‘sport aviation body’ which is a defined term in the CASR;
- section 39 which inserts in a table in section 15 of the TSI Regulations, for the purpose of prescribing a particular in a written report, a reference to an ‘Aviation Reference Number’ which is a defined term in the CASR;
- section 43 which adds, to the list of responsible persons in section 21 of the TSI Regulations, a ‘pilotage provider’ and a ‘vessel traffic service authority’ both being defined terms in the *Navigation Act 2012*.

The documents applied, adopted or incorporated are described below, together with a description of how they may be obtained.

#### Aeronautical Information Publication (AIP)

The AIP is part of the Aeronautical Information Package published by Airservices Australia in its role as an Aeronautical Information Service provider under air services legislation to disseminate information on safe air navigation. The AIP is primarily used by flight crew to assist air navigation and operational planning activities. The AIP is copyright of Airservices Australia but is freely available online via: [www.airservicesaustralia.com/aip/aip.asp](http://www.airservicesaustralia.com/aip/aip.asp).

#### References to other Commonwealth, State and Territory legislation

Civil aviation legislation such as the *Civil Aviation Safety Regulations 1998* that is mentioned or cross-referenced in operative provisions in the TSI Regulations may be accessed on the Federal Register of Legislation.

Other legislation such as the *Navigation Act 2012* are also accessible on the Federal Register of Legislation.

### **Commencement and making**

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out in Attachment A.

The whole of the instrument commences on 1 January 2023.

### **Statement of Compatibility with Human Rights**

A statement of Compatibility with Human Rights is at Attachment B.

***Details of the Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022***

**Part 1 – Preliminary**

Section 1 – Name

This section provides that the name of this instrument is the *Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022*.

Section 2 – Commencement

This section provides for the instrument to commence on 1 January 2023.

Section 3 – Authority

This section provides that the instrument is made under the *Transport Safety Investigation Act 2003* (the Act).

Section 71 of the Act empowers the Governor-General to 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 Act also establishes the Australian Transport Safety Bureau (ATSB) as a statutory agency.

Schedule 4 – Schedules

This section amends and repeals each instrument specified in the Schedule as set out.

**Schedule 1 – Amendments**

Section 1 – section 5 definitions of aircraft accident, aircraft incident and aircraft incident (external)

Section 5 of the *Transport Safety Investigation Regulations 2021* (the Regulations) has the purpose of being an index to definitions used throughout the Regulations.

This amendment inserts signposted definitions for ‘aircraft accident’, ‘aircraft incident’ and ‘aircraft incident (external)’ which are substantively located in Part 2 – Aircraft operations of the Regulations.

Section 2 –section 5 repeal of definitions

This amendment repeals the signposted definitions of ‘airprox’, ‘air transport operation’ and ‘below minimum altitude’ in section 5 of the Regulations since these concepts are no longer used. The concept of ‘air transport operation’ (which previously referred to regular public transport operation and charter operation) is replaced with the concept of ‘passenger transport

operation’ within the meaning of the *Civil Aviation Safety Regulations 1998* (CASR) and separately used as a component of a Category A aircraft operation.

### Section 3 – section 5 definition of categories of aircraft operations

This amendment inserts signposted definitions in section 5 of the Regulations for each of the new categories of aircraft operations for reporting. These categories are:

- Category A (passenger transport) aircraft operation – defined in a new section 8;
- Category B (commercial non-passenger) aircraft operation – defined in a new section 9;
- Category C (non-commercial) aircraft operation – defined in a new section 10; and
- Category D (type 2 RPA and certain uncrewed balloons) aircraft operation – defined in a new section 11.

### Section 4 – section 5 definition of charter operation

This amendment repeals the definition of ‘charter operation’, which is no longer a concept used in civil aviation legislation.

### Section 5 – section 5 definition of crew member

This amendment repeals and substitutes the definition of ‘crew member’ in the Regulations so that it clarifies who is a crew member in relation to a remotely piloted aircraft (an RPA) and an uncrewed balloon – being persons who are not on board the aircraft but have operational control of the aircraft. A crew member for any other transport vehicle means a person who has operational duties while on board the transport vehicle – whether an aircraft, marine vessel (a ship) or rolling stock (a train).

### Section 6 – section 5 definition of critical rejected take off

This amendment repeals the definition of ‘critical rejected take-off’, which will be covered as a serious aircraft incident in a new section 6A of the Regulations (inserted by section 29) or as a reportable serious aircraft incident as an aborted take-off on a closed, engaged or unassigned runway under paragraph 6A(2)(d).

### Section 7 – section 5 definition of declaration of an emergency and fatal aircraft-related injury

This amendment inserts two new signposted definitions in section 5 of the Regulations:

- declaration of an emergency – defined in section 6 of the Regulations; and
- fatal aircraft-related injury – defined in section 6 of the Regulations.

Both definitions are consistent with international standards and recommended practices.

#### Section 8 – section 5 definition of near-collision

This amendment repeals the definition of ‘near-collision’, which previously meant 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. The occurrence has been included as a reportable serious aircraft incident under paragraph 6A(2)(a) which uses a substantially similar concept, consistent with standards and recommended practices given by the International Civil Aviation Organization (ICAO) in Annex 13 – Aircraft Accident and Incident Investigation (Annex 13) to the Convention on International Civil Aviation which is accessible at: <https://www.icao.int/safety/airnavigation/aig/pages/documents.aspx>.

#### Section 9 – section 5 definition of operator

This amendment clarifies that the definition of ‘operator’ should not be limited only to a transport vehicle for the purposes of travel. A transport vehicle is defined under section 3 of the Act as meaning, generally, an aircraft, ship or rail vehicle. However, there are certain transport vehicles which are not used for travel in the context of carrying passengers – for example, remotely piloted aircraft or uncrewed balloons. The absence of a travel component should not preclude an operator from being covered under the reporting framework and for that reason, the definition removes reference to travel.

#### Section 10 – section 5 definition of regular public transport operation

This amendment repeals the definition of ‘regular public transport operation’, which is no longer a concept used in civil aviation legislation. To avoid industry confusion, it is also removed from the occurrence reporting framework.

#### Section 11 – section 5 insertion of definitions

This amendment inserts in section 5 of the Regulations several signposted definitions in relation to serious aircraft incidents and related injury. The definitions for ‘reportable serious aircraft incident’ and ‘serious aircraft-related injury’ are set out in section 6 of the Regulations. The definition of ‘serious aircraft incident’ is set out in a new subsection 6A(1) of the Regulations.

#### Section 12 – section 5 definition of serious property damage

This amendment repeals the definition of ‘serious property damage’ from section 5 of the Regulations, being a concept which has been replaced with the concept of ‘serious property damage incident (external)’ substantively set out in section 6 of the Regulations.

#### Section 13 – section 5 definition of serious property damage incident (external)

This amendment inserts a signposted definition in section 5 of the Regulations for ‘serious property damage incident (external)’ pointing to section 6 of the Regulations.

#### Section 14 – section 5 definition of traffic collision avoidance system resolution advisory

This amendment repeals the definition of ‘traffic collision avoidance system resolution advisory’ from section 5 of the Regulations. This kind of occurrence will usually be included in as a reportable serious aircraft incident relating to a near collision as a resolution advisory requires an avoidance manoeuvre.

#### Section 15 – section 6 definitions of aircraft accident, aircraft incident and aircraft incident (external)

Section 6 of the Regulations sets out definitions which are relevant to the interpretation of Part 2 – Aircraft operations of the Regulations.

While the Act defines an accident in general terms, the Regulations do not establish a clear meaning of what is an aircraft accident or aircraft incident, notwithstanding common aviation industry usage of these concepts and associated safety analysis undertaken by the ATSB.

This amendment sets out the definition for an ‘aircraft accident’ and ‘aircraft incident’ – consistent with ICAO Annex 13 – as well as a definition for an ‘aircraft incident (external)’.

An aircraft is involved in an ‘aircraft accident’ in five separate kinds of circumstances.

- Two circumstances involve a person suffering a ‘fatal aircraft-related injury’ (inserted by section 21) or a ‘serious aircraft-related injury’ (inserted by section 25) – both as a result of the person being in the aircraft or having direct contact with any part of the aircraft or its jet blast.
- A circumstance where the aircraft has sustained damage or structural failure where its performance is adversely affected and there would normally need to be major repair work – for example, if structural damage results in the aircraft depressurising or if it cannot be pressurised is an aircraft accident. However, an engine failure, single engine damage, and other kinds of damage mentioned in the definition is excluded from the definition of ‘aircraft accident’.
- A circumstance where the aircraft is missing.
- A circumstance where the aircraft is completely inaccessible.

An aircraft is involved in an ‘aircraft incident’ where there is an occurrence associated with the operation of the aircraft and that occurrence affects or could affect the safety of the operation of the aircraft. Importantly, the degree to which an occurrence ‘affects or could affect’ the safety of the operation of the aircraft should be understood to mean occurrences that, if not corrected, could endanger the aircraft or its occupants. Put another way, if the event, without correction, does not endanger the aircraft or its occupants, then the occurrence is not intended to be an ‘aircraft incident’ and is not reportable to the ATSB.

An ‘aircraft incident’ is generally defined and is intended to have a broad coverage of incidents. Some groupings include:

- aircraft control incidents – including a hard landing, airframe overspeed, stall warning, incorrect configuration, weather events (such as icing, turbulence or lightning strikes), unstable approach and a wheels up landing.
- airspace-related incidents – including loss of separation standard, airborne collision alert system warnings, near collision, other separation issues;
- aircraft loading incidents – including incorrect loading of the aircraft that adversely affected or could have affected the aircraft weight, balance, performance, structural integrity or flight characteristics;
- cabin safety incidents – including flight crew incapacitation, depressurisation, cabin injuries, unrestrained occupants or objects during flight;
- fire, smoke and fumes – including smells or odours not generally associated with normal aircraft operations, such as from dangerous goods, oil and electrical smells or fumes;
- flight preparation or navigation incidents – such as loss of position, flight below safe altitude, and visual flight rules into instrument meteorological conditions;
- fuel-related incidents – such as fuel contamination, fuel leak, fuel starvation and low fuel;
- ground proximity warning incidents – such as a warning or alert from a terrain avoidance and warning system;
- ground operations incidents – such as foreign object damage, and tools or equipment left inside an engine that are found during pre-flight preparation;
- mechanical-related incidents – including landing gear faults, damage to windows or doors (excluding internal doors), or inadvertent detachment of objects from an airborne aircraft.

Further operational details of various kinds of aircraft incidents are located in Chapter 13 of the AIP, published by Airservices Australia and publicly available at:

<https://www.airservicesaustralia.com/aip/aip.asp>.

An aircraft is involved in an ‘aircraft incident (external)’ if the aircraft incident itself originated from infrastructure, flying or other objects, or animals or birds. This concept is created to capture better data to understand emerging or trend safety risk at locations where other aircraft have experienced similar external incidents. For example, this concept is intended to include if aircraft safety has been compromised due to failure or inadequacy of navigation aids, air traffic communications, and aerodrome infrastructure used for aircraft operations including runway lighting, signs and markings. It is also intended to include collision with birds (birdstrike) or animals (animal strike) whether or not the collision occurred while the aircraft is in flight, taking off, landing or taxiing on a runway. Interference

from other environmental factors such as laser pointer lights, insect nests in pitot tubes, weather balloons or yacht masts are also included in the scope of the definition.

#### Section 16 – section 6 definition of airprox

This amendment repeals the substantive definition of ‘airprox’ in section 6 of the Regulations since it is no longer a concept used in the reporting framework. If two aircraft come within close proximity that an avoidance manoeuvre to avoid a collision or an unsafe situation, or when an avoidance action would have been appropriate, then it is a reportable serious aircraft incident. Otherwise, if a threat to the safety of the aircraft exists or may exist, this kind of occurrence would be covered under the definition of an ‘aircraft incident’ (inserted by section 15).

#### Section 17 – section 6 definition of Airservices Australia

This amendment clarifies the definition of Airservices Australia by reference to its enabling legislation.

#### Section 18 – section 6 repeal of definitions

This amendment repeals the substantive definitions of ‘air transport operation’ and ‘below minimum altitude’ which are no longer concepts used in the occurrence reporting framework.

There is inconsistency between the definition of ‘air transport operation’ in section 6 of the Regulations which is defined as a regular transport operation or charter operation, and the definition of ‘air transport operation’ set out in the CASR Dictionary which means a passenger transport operation, cargo transport operation or medical transport operation conducted for hire or reward, excluding an aerial work operation or a balloon transport operation. To avoid industry confusion over different usage of the same terminology, the amendments adopt the concept of passenger transport operation in the definition of ‘Category A (passenger transport) aircraft operation’ (inserted by section 35) which places greater emphasis on the travelling public and fare-paying passengers as opposed to how the Civil Aviation Safety Authority uses the concept of ‘air transport operation’ for its entry control certification purposes.

Flight below minimum altitude is an occurrence that would be covered as an ‘aircraft incident’.

#### Section 19 – section 6 definition of categories of aircraft operations

This amendment also inserts signposted definitions in section 6 of the Regulations for each of the new categories of aircraft operations for reporting. These categories are:

- Category A (passenger transport) aircraft operation – defined in a new section 8;
- Category B (commercial non-passenger) aircraft operation – defined in a new section 9;
- Category C (non-commercial) aircraft operation – defined in a new section 10; and



- Category D (type 2 RPA and certain uncrewed balloons) aircraft operation – defined in a new section 11.

#### Section 20 – section 6 repeal of definitions

This amendment repeals the definition of ‘charter operation’, which is no longer a concept used in civil aviation legislation. To avoid industry confusion, it is also removed from the occurrence reporting framework.

This amendment also repeals the definition of ‘critical rejected take-off’, which will be covered as a serious aircraft incident in a new section 6A of the Regulations (inserted by section 29) or as a reportable serious aircraft incident as a significant failure to achieve predicted performance during take-off or initial climb.

#### Section 21 – section 6 definition of declaration of an emergency and fatal aircraft-related injury

This amendment inserts a new definition in section 6 of the Regulations for a ‘declaration of an emergency’. A declaration of an emergency is a type of reportable matter that is separate to other types of reportable matters. It has significance in the reporting framework because flight crew or air traffic control would have observed a significant risk of safety to the aircraft for a declaration to be made. The definition includes where a flight crew member has declared an alert phase (PAN PAN) or distress phase (MAYDAY), or where an air traffic service provider has declared a distress phase (DETRESFA) in relation to the aircraft. These phases and the circumstances in which they are declared are set out in the AIP and are part of operational training for flight crew and air traffic service providers.

This amendment also inserts a new definition in section 6 of the Regulations for a ‘fatal aircraft-related injury’. The definition is drawn from and consistent with ICAO Annex 13. It means where a person dies as a result of their injury within 30 days of the injury occurring, excluding circumstances such as natural causes, where the injury was self-inflicted, intentional injury caused by another person (such as a scuffle on board the aircraft), and injury to a stowaway on the aircraft.

For reporting purposes, it is important to note that a responsible person (for aircraft operations – prescribed in section 13 of the Regulations) is obliged to report a ‘reportable matter’ (section 3 of the Act) to the ATSB under sections 18 and 19 of the Act, only where the person has knowledge. In circumstances where a responsible person, such as a flight crew member or an operator, no longer has continuity of oversight of a passenger’s welfare after their transfer for medical treatment, the matter would still be initially reportable as an ‘aircraft accident’ (inserted by section 15) since the passenger would have likely suffered a serious aircraft-related injury known to the responsible person even if the gravity of that injury did not appear to be fatal at the time.

#### Section 22 – section 6 repeal of definitions

This amendment repeals the definitions of ‘near-collision’ and ‘regular public transport operation’ which are terms subsumed by other concepts in the occurrence reporting framework.

#### Section 23 – section 6 definition of reportable serious aircraft incident

This amendment inserts a new definition in section 6 of the Regulations for a ‘reportable serious aircraft incident’. The purpose of this definition is to capture an occurrence that is substantively a ‘serious aircraft incident’ (inserted by section 25) as well as any other incident – mentioned in the new subsection 6A(2) – that are to be reported as if it was a serious aircraft incident.

#### Section 24 – section 6 definition of runway incursion

This amendment omits a part of the definition of ‘runway incursion’ to remove reference to collision hazard for the aircraft or reduction of safety for the aircraft. Consistent with the ICAO Manual on the Prevention of Runway Incursions (Doc 9870), the incorrect presence of an aircraft, vehicle or person on the protected area of a surface designated for the landing and take-off of aircraft is an runway incursion – whether or not a collision hazard or reduction in safety exists. This amendment harmonises the definition with ICAO standards and recommended practices. Reportable serious aircraft incidents will have the subset of runway incursions listed, whereas other types of runway incursions will be aircraft incidents.

#### Section 25 – section 6 definitions of serious aircraft incident and serious aircraft-related injury

This amendment inserts a signposted definition of ‘serious aircraft incident’ pointing to the new subsection 6A(1) (inserted by section 29).

This amendment also inserts a new definition of ‘serious aircraft-related injury’ which is drawn from and consistent with the usage of ‘serious injury’ in ICAO Annex 13. The circumstances of the person’s injury – as a result of being in the aircraft, having direct contact with any part of the aircraft or direct exposure to jet blast – are the same circumstances for a ‘fatal aircraft-related injury’ (inserted by section 21). The exclusions of natural cause, self-infliction, intentional cause by another or injury to a stowaway are also applicable. The difference is that a ‘serious aircraft-related injury’ has a list of injuries which are not fatal (within 30 days) – rather, it would be common for the injury to require hospitalisation within 7 days after the injury was suffered, along with other kinds of injuries described in paragraph (b) of the definition.

#### Section 26 – section 6 repeal of definition

This amendment repeals the definition of ‘serious property damage’ from section 6 of the Regulations, since it will be replaced with another definition for ‘serious property damage incident (external)’.

### Section 27 – section 6 definition of serious property damage incident (external)

This amendment inserts a new definition of ‘serious property damage incident (external)’ in section 6 of the Regulations. The definition is intended to replace the concept of ‘serious property damage’ (repealed by section 26) and means damage to property external to the aircraft due to contact with any part of the aircraft or exposure to jet blast from the aircraft, and the damage caused would cost \$25,000 to repair or replace. This threshold amount balances those comparatively minor property collisions (aircraft incidents) which are not required to be immediately reported, with a greater reporting requirement for property damage which is comparatively more severe and which exceeds the threshold amount. In all cases of property damage caused by the aircraft, the precise quantification of the damage repair costs is not necessary before a reporting obligation is triggered – rather, the threshold amount clarifies how quickly an aviation industry participant should submit a report to the ATSB if property damage has occurred.

### Section 28 – section 6 repeal of definition

This amendment repeals the definition of ‘traffic collision avoidance system resolution advisory’ from section 6 of the Regulations. This kind of occurrence will usually be included as a reportable serious aircraft incident relating to a near collision since a resolution advisory requires an avoidance manoeuvre.

### Section 29 – section 6 definition of serious aircraft incident and reportable serious aircraft incident

This amendment inserts a new section 6A which has the purpose of defining what is a ‘serious aircraft incident’ consistent with the definition of a ‘serious incident’ in ICAO Annex 13, but also particular kinds of incidents that are to be reported as if they were a serious aircraft incident due to their significance to safety – whether or not the incident meets the substantive definition. Each of the kinds of incidents set out in subsection 6A(2) have been drawn from examples mentioned ICAO Annex 13.

### Section 30 – at the end of subsection 7(3)

Subsection 7(3) of the Regulations has the purpose of excluding certain kinds of aircraft, called excluded aircraft, from the operation of Part 2 of the Regulations. The effect of this exclusion is that the excluded aircraft are not covered under the aviation reporting framework and are not required to report occurrences to the ATSB.

This amendment inserts five additional aircraft to be excluded from the reporting framework. Four of these aircraft – model aircraft, small balloon, light balloon and tethered balloon – adopt the definitions set out in the CASR. The other aircraft, being a kite, is not defined but is intended to have an ordinary meaning.

### Section 31 – subsection 7(5) substitution of definition

This amendment substitutes the definition of ‘manned aircraft’ with ‘crewed aircraft’, the latter being a gender-neutral reference and consistent with regulatory updates being planned by the Civil Aviation Safety Authority (CASA).

#### Section 32 – subsection 7(6) substitution of definition

This amendment substitutes the definition of ‘unmanned aircraft’ with ‘uncrewed aircraft’, the latter being a gender-neutral reference and consistent with regulatory updates being planned by CASA.

#### Section 33 – paragraph 7(6)(b) substitution

Subsection 7(6) has the purpose of clarifying when the reporting framework is required to be complied with during the flight period of an aircraft. For uncrewed aircraft, the period for reporting begins when the aircraft is ready to move for flight and ends when the aircraft comes to rest at the end of the flight and the primary propulsion system is shut down.

Some uncrewed aircraft do not have a primary propulsion system – for example, a gas filled balloon. This amendment repeals and replaces paragraph 7(6)(b) to clarify that the period for reporting ceases when the uncrewed aircraft comes to rest at the end of its flight and the primary propulsion system is shut down, or alternatively, when the uncrewed aircraft comes to rest at the end of its flight.

#### Section 34 – subsection 7(7) substitution

Subsection 7(7) of the Regulations has the purpose of extending the timeframe for reporting after the period of flight has concluded, if a death or serious injury occurs as a result of a matter that occurred during the period of flight.

This amendment clarifies that the extended reporting timeframe continues to apply but uses the new definitions of ‘fatal aircraft-related injury’ and ‘serious aircraft-related injury’ in connection with the reporting periods mentioned in subsections 7(5) and (6).

#### Section 35 – sections 8 to 12 substitution

This amendment inserts four new definitions in sections 8, 9, 10 and 11 to set out what kinds of aircraft operations are included in a Category A, Category B, Category C and Category D aircraft operation for the purposes of reporting requirements. The aircraft operations grouped into the four categories draw from civil aviation legislation administered by CASA but do not otherwise change the regulated nature of the aircraft operation that is conducted. The categorisations are then linked with immediately reportable matters and routine reportable matters in the new sections 11A, 11B, 11C and 11D – which has the effect of establishing a sliding scale of reporting burden commensurate with the public safety benefit.

A ‘Category A (passenger transport) aircraft operation’ is a grouping of a passenger transport operation or a medical transport operation, both within the meaning of the CASR, as well as a repositioning flight to undertake either of those aircraft operations. Under the CASR, a ‘passenger transport operation’ means an operation of an aircraft involving the carriage of passengers, whether or not cargo is also carried, but excluding certain kinds of operations

such as a cost-sharing flight, a medical transport operation or an operation of an aircraft with a special certificate of airworthiness. A ‘medical transport operation’ is separately defined in the CASR to mean, among other things, an operation where its primary purpose is to transport medical patients, medical personnel, or medical supplies such as blood, tissue or organs for medical uses. The purpose of a Category A grouping is to require the highest level of occurrence reporting to the ATSB with the types of reportable matters set out in section 11A (five immediately reportable matters and two routine reportable matters).

A ‘Category B (commercial non-passenger) aircraft operation’ is a grouping of aircraft operations including an operation conducted for a commercial purpose, a cargo transport operation (within the meaning of CASR), an operation of a type 1 RPA (defined in section 6 of the Regulations – primarily large, medium or type certificated RPA), and a repositioning flight to substantive conduct any of the preceding aircraft operations. Under the CASR, a ‘cargo transport operation’ means an operation of an aircraft involving the carriage of cargo and crew only, excluding medical transport operations or carriage of personal possessions of the pilot or operator. The purpose of a Category B grouping is to require a high level of occurrence reporting to the ATSB with the types of reportable matters set out in section 11B (three immediately reportable matters and three routine reportable matters).

A ‘Category C (non-commercial) aircraft operation’ is a categorisation that is intended to be a catch-all for aircraft operations that are not grouped into Category A, Category B or Category D and which are also not excluded aircraft under subsection 7(3). For example, flying activities at local aero clubs, solo flying, community service flights and gliding activities would be covered under Category C. The purpose of a Category C grouping is to require a comparatively lower level of occurrence reporting to the ATSB, with the types of reportable matters set out in section 11C (three immediately reportable matters and four routine reportable matters – with adjustments to the scope of reporting for an aircraft accident).

A ‘Category D (type 2 RPA and certain uncrewed balloons) aircraft operation’ is a categorisation intended to only cover type 2 RPA (defined in section 6 of the Regulations – primarily small and medium RPA), or a medium balloon or heavy balloon both within the meaning of CASR. The purpose of a Category D grouping is to require the lowest level of occurrence reporting to the ATSB, with types of reportable matters set out in section 11D (two immediately reportable matters and two routine reportable matters – with adjustments to the scope of reporting for an aircraft accident).

This amendment also clarifies in a new section 12 that investigable matters (that is, the types of occurrences prescribed as an immediately reportable matter or routine reportable matter) are not mutually exclusive, and if an occurrence is both an immediately reportable matter and a routine reportable matter, then it is to be treated as an immediately reportable matter. This means that in some circumstances, to avoid ambiguity, the occurrence is to be reported as if it were a more pressing safety concern to provide the ATSB with earlier visibility.

### Section 36 – at the end of section 13

Section 13 sets out, for the purposes of the definition of ‘responsible person’ in subsection 3(1) of the Act, a list of persons who are required to submit reporting on

immediately reportable matters and routine reportable matters under Part 2 of the Regulations. The list does not presently include sport aviation bodies – being industry membership-based organisations who have oversight responsibility for aviation activities such as gliding, parachuting, ballooning and other kinds of activities. These organisations are regulated by CASA.

This amendment inserts paragraph 13(i) which requires a ‘sport aviation body’ within the meaning of CASR to provide reporting under the aviation reporting framework. This means that sport aviation bodies such as Recreational Aviation Australia Limited, the Gliding Federation of Australia and others, will be required to submit occurrence reporting to the ATSB. It is expected in the usual course of operations, a responsible person who is a crew member or the owner/operator of the aircraft would have specific knowledge about an occurrence and a sport aviation body (with later knowledge of the occurrence) would be able to discharge their reporting burden, if it believes on reasonable grounds that another responsible person has already reported. This reasonable belief may be formed through active organisational reminders or checklist processes developed by a sport aviation body in consultation with its members.

It should be noted that the definition of ‘sport aviation body’ adopted from the CASR Dictionary also includes a body established in a Contracting State to administer sport aviation in that State. From first principles, reporting obligations would not apply to foreign sport aviation bodies unless the aircraft involved in the occurrence is an Australian aircraft.

Capturing additional reporting from sport aviation bodies, or from other responsible persons who are reminded to report by sport aviation bodies, will establish a more accurate dataset for safety analysis conducted by the ATSB.

#### Section 37 – subsection 14(1)

This amendment substitutes the reference to section 11 of the Regulations with a reference to the new subsections 11A(1), 11B(1), 11C(1) and 11D(1) of the Regulations.

#### Section 38 – subsection 15(1)

This amendment substitutes references to sections 11 and 12 of the Regulations with a reference to the new sections 11A, 11B, 11C and 11D of the Regulations.

#### Section 39 – subsection 15(1) after table item 8

This amendment inserts item 8A in the table which clarifies that an Aviation Reference Number within the meaning of the CASR is to be provided in written reporting and that it is different from a licence number mentioned in item 8 of the same table.

#### Section 40 – subsection 15(1) table item 13

This amendment clarifies the distinction between an animal or a bird. For reporting purposes, an aircraft incident (external) can include a birdstrike or an animal strike.

#### Section 41 – subsection 15(1) table items 19 to 21

This amendment substitutes the entries for items 19, 20 and 21 by clarifying the three particulars to be included in written reporting where a crew member, passenger or other person has died or been seriously injured as a result of a reportable matter.

#### Section 42 – subsection 15(2)

This amendment is a consequential change of earlier clarification that an aircraft incident (external) may involve collision with an animal or a bird.

#### Section 43 – at the end of section 21

Section 21 sets out, for the purposes of the definition of ‘responsible person’ in subsection 3(1) of the Act, a list of persons who are required to submit reporting on immediately reportable matters and routine reportable matters under Part 3 of the Regulations.

This amendment inserts paragraphs 21(e) and (f) which respectively prescribe a ‘pilotage provider’ within the meaning given in the Navigation Act 2012 (Navigation Act) and a ‘vessel traffic service authority’ within the meaning given in the Navigation Act, as a responsible person for the purposes of submitting reporting.

Capturing additional reporting from pilotage providers and vessel traffic service authorities will establish a more accurate dataset for safety analysis conducted by the ATSB. In consultations with industry and the Australian Maritime Safety Authority (AMSA), some pilotage providers and vessel traffic service authorities already voluntarily submit reporting to AMSA (a nominated official for the purposes of collecting reporting under Part 3 of the Regulations).

#### Section 44 – section 41 at the end of the heading

This amendment clarifies that the application of section 41 of the Regulations which concerns written reporting for the purposes of subsection 19(4) of the Act, is written reporting that is required from a responsible person through a written notice given by the Chief Commissioner.

#### Section 45 – at the end of the instrument

This amendment inserts a heading for Part 6 – Application, transitional and saving provisions and inserts a new section 48 of the Regulations which states that the amendments apply to investigable matters (immediately reportable matters or routine reportable matters) that occur on and after 1 January 2023.

**Statement of Compatibility with Human Rights**

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

*Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022*

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

**Overview of the Legislative Instrument**

The purpose of the *Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations) is to amend a number of provisions in the Transport Safety Investigation Regulations 2021 (the TSI Regulations) to establish a revised occurrence aviation reporting framework across four aircraft operation categories that incorporate concepts consistent with civil aviation legislation and international standards. The Amendment Regulations also prescribe additional responsible persons in the aviation and marine industries who are required to provide reporting.

**Human rights implications**

*Right to protection against unlawful or arbitrary and interferences with privacy – Article 17 of the International Covenant on Civil and Political Rights*

The Amendment Regulations engages the right to protection from arbitrary and unlawful interferences with privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR), to which Australia is a party.

Article 17 provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation, and that everyone has the right to the protection of the law against such interference or attacks. The right to protection against arbitrary and unlawful interferences with privacy will be engaged in situations where agencies collect, use, store and share personal information.

The right to privacy may be subject to permissible limitations. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity.

**Reportable matters**

Part 3 of the *Transport Safety Investigation Act 2003* (TSI Act) sets out requirements for the compulsory reporting of certain matters to a nominated official as an immediately or routine reportable matter. The TSI Regulations prescribe various matters to facilitate these reporting requirements.



Provisions in Parts 2, 3 and 4 of the TSI Regulations detail the types of aviation, marine and rail incidents that must be reported either immediately (as soon as is reasonably practicable) or as a routine matter within 72 hours by a responsible person. A responsible person is prescribed in the TSI Regulations.

The compulsory nature of these reporting requirements limits the right to protection against interference with privacy in that a person who is prescribed as a responsible person is required to report those matters prescribed by the TSI Regulations, including personal information to the ATSB.

The Amendment Regulations include the following persons as responsible persons prescribed in the TSI Regulations:

- a sport aviation body (within the meaning of the *Civil Aviation Safety Regulations 1998*);
- a pilotage provider (within the meaning of the *Navigation Act 2012*);
- a vessel traffic service authority (within the meaning of the *Navigation Act 2012*).

The personal information that is collected as part of this process includes:

- name and contact details of the person making a report;
- name and contact details of crew, including nationality;
- in the event of death or serious injury, passengers names, nationalities and a description of the injury.

The TSI Act makes it an offence not to report a reportable matter, if it is within the knowledge of a responsible person, to the ATSB including the particulars prescribed by the TSI Regulations.

Any interference or limitation on the privacy of an individual through the reporting of information to the ATSB is reasonably required in the interests of transport safety by ensuring that the ATSB has timely access to such information that is necessary to establish whether it is required to conduct an investigation into a matter. Information collected by the ATSB is handled in accordance with the requirements of the *Privacy Act 1988*, including the collection, storage, security, use, disclosure and quality of personal information.

Information that is collected by the ATSB may also be ‘restricted information’ for the purposes of Part 6 of the TSI Act which provides a number of protections in relation to the use or disclosure of this information. This includes that a person cannot be required by a court to disclose restricted information, and any information disclosed in contravention of the Act is not admissible on civil or criminal proceedings.

#### Provision of information to the ATSB.

The TSI Regulations provides for a person to report a reportable matter to a nominated official prescribed by these regulations. For aviation and marine matters, this means that a report may be made directly to the Australian Maritime Safety Authority (AMSA). Where the report is submitted directly to AMSA, the instrument requires AMSA to pass the report to the ATSB as soon as is reasonably practicable.

In this instance, the passing of reports from AMSA to the ATSB may interfere with the privacy of an individual in that personal information provided as part of the reporting requirements may be shared across agencies.

Any interference or limitation on the privacy of an individual through the sharing of information between agencies is reasonably required in the interests of transport safety by ensuring that the ATSB has timely access to such information that is necessary to establish whether it is required to conduct an investigation into a matter. This information will also be handled in accordance with the *Privacy Act 1988*, and subject to the type of information, may have the protections regarding the use or disclosure specified in Part 6 of the TSI Act.

Any limitation on this human right is reasonable and permissible when considered against the ATSB's functions set out in section 12AA of the TSI Act. This section provides that it is not a function of the ATSB:

- to apportion blame for transport safety matters;
- to provide the means to determine the liability of any person in respect of a transport safety matter;
- to assist in court proceedings between parties (except as provided by this Act, whether expressly or impliedly);
- to allow any adverse inference to be drawn from the fact that a person was involved in a transport safety matter.

Accordingly, the use of any information received by the ATSB is limited to independently investigating transport safety matters. These function and limitations ensure that any collection, storage or use of personal information is not arbitrary or unlawful and is only for the purposes of ensuring the safety of transport operations.

### **Conclusion**

The Amendment Regulations are compatible with human rights and to the extent that it limits the right to privacy these limitations are reasonable, necessary, and proportionate to achieving the legitimate objective of ensuring transport safety.