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Regulation 1.1

Part 1 Preliminary

1.1 Name of Regulations

These Regulations are the *Transport Safety Investigation Regulations 2003*.

1.2 Commencement

These Regulations commence on the commencement of section 3 of the *Transport Safety Investigation Act 2003*.

1.3 Definitions

In these Regulations:

Act means the *Transport Safety Investigation Act 2003*.

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 operating, or offering to operate, the vehicle for the purposes of travel.

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

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

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

Part 2 Aircraft operations

2.1 Application of Part 2

- (1) Subject to subregulation (2), this Part applies only in relation to matters involving aircraft operations.
- (2) This Part (other than regulation 2.9) does not apply in relation to aircraft operations involving:
 - (a) Australian defence aircraft; or
 - (b) exempt foreign aircraft.
- (3) To avoid doubt, if a matter involves:
 - (a) an aircraft (the ***first aircraft***) that is involved in an aircraft operation (other than an aircraft operation mentioned in subregulation (2)); and
 - (b) an aircraft that is not involved in such an operation; subregulation (2) does not prevent the matter from being a reportable matter in relation to the first aircraft.
- (4) Subject to subregulation (5), in relation to a particular aircraft, this Part applies only in relation to matters occurring during the period:
 - (a) beginning when the aircraft is being prepared for take-off; and
 - (b) ending when all passengers and crew members have disembarked after the flight.
- (5) 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 occurrence occurring during the period mentioned in subregulation (4).

Regulation 2.2

2.2 Definitions for Part 2

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, electrical system, flight guidance system and navigation system.

airprox means an occurrence in which 2 or more aircraft come into such close proximity that a threat to the safety of the aircraft exists or may exist, in airspace where the aircraft are not subject to an air traffic separation standard or where separation is a pilot responsibility.

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

approved flight envelope, in relation to an aircraft, means the operating limitations and limiting atmospheric conditions applying to the aircraft, as shown in the aircraft's flight manual, cockpit placards or other operating documents approved by CASA or the appropriate authority of another country.

Examples

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

Australian Flight Information Region means the Australian Flight Information Region specified in the *Designated Airspace Handbook* produced by Airservices Australia, as in force at the commencement of these Regulations.

charter operation means an operation for the purpose of:

- (a) the carriage of passengers or cargo for hire or reward to or from any place, other than carriage in accordance with fixed schedules to and from fixed terminals, or carriage of the kind permitted by subregulation 262AM (7) of the *Civil Aviation Regulations 1988*; or
- (b) the carriage, in accordance with fixed schedules to and from fixed terminals, of passengers or cargo or passengers and cargo in circumstances in which the accommodation in the aircraft is not available for use by persons generally.

Regulation 2.2

Note Subregulation 262AM (7) of the *Civil Aviation Regulations 1988* provides:

‘(7) A person may carry passengers in a limited category aircraft in circumstances where payment is made for carriage ... only if:

- (a) the pilot in command holds a commercial pilot licence, or an air transport pilot licence, with appropriate ratings and endorsements for a flight of that kind; and
- (b) the aircraft departs from and returns to the same aerodrome without landing anywhere else; and
- (c) the flight does not involve training or flight testing, and is not a scenic flight; and
- (d) the aircraft:
 - (i) is a replica aircraft, ex-military aircraft or historic aircraft; or
 - (ii) is being operated for the purpose of parachute jumping, mock combat or aerobatics; or
 - (iii) is being operated only to carry passengers as part of an intrinsically hazardous recreational activity; and
- (e) each passenger has acknowledged in writing that the passenger has been told about the matters mentioned in subregulation (5).’

control area means airspace that is determined to be a control area under paragraph 2.04 (1) (d) of the Air Services Regulations.

controlled airspace means a control area or a control zone.

control zone means airspace that is determined to be a control zone under paragraph 2.04 (1) (c) of the Air Services Regulations.

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

flight crew member means a licensed crew member who has duties essential to the flight management of an aircraft.

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

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

Regulation 2.2

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

minimum altitude means:

- (a) for aircraft operating in the Australian Flight Information Region — the altitude determined under regulation 178 of the *Civil Aviation Regulations 1988*; or
- (b) for aircraft operating outside the Australian Flight Information Region, and in a place where a local standard is in force at the commencement of these Regulations — the altitude specified in that standard, as in force at the commencement of these Regulations; or
- (c) for aircraft operating outside the areas mentioned in paragraphs (a) and (b) — the altitude specified in ICAO document 4444, as in force at the commencement of these Regulations.

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

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

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

regular public transport operation means an operation for the purpose of transporting persons generally, or transporting cargo for persons generally, for hire or reward in accordance with fixed schedules to and from fixed terminals over specific routes with or without intermediate stopping places between terminals.

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.

Regulation 2.3

separation standard means the separation standard specified in:

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

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

violation of controlled airspace means unauthorised entry of an aircraft into airspace for which clearance is required, or to which entry is prohibited.

2.3 Immediately reportable matters (Act s 3)

All aircraft operations

- (1) For the purposes of the definition of ***immediately reportable matter*** in section 3 of the Act, the following investigable matters, in relation to an aircraft operation (other than an aircraft operation mentioned in subregulation 2.1 (2)), are prescribed:
 - (a) subject to subregulation (2), the death of, or a serious injury to:
 - (i) a person on board the aircraft or in contact with the aircraft or anything attached to the aircraft or anything that has become detached from the aircraft; or
 - (ii) a person who has been directly exposed to jet blast;
 - (b) the aircraft being missing;

Regulation 2.3

- (c) the aircraft suffering serious damage, or the existence of reasonable grounds for believing that the aircraft has suffered serious damage;
- (d) the aircraft being inaccessible and the existence of reasonable grounds for believing that the aircraft has been seriously damaged;
- (e) breakdown of separation standards, being a failure to maintain a recognised separation standard (vertical, lateral or longitudinal) between aircraft that are being provided with an air traffic service separation service.

Note This may result from air traffic service, pilot or other actions, and may occur even if only 1 of the aircraft involved is under control of an air traffic service.

- (2) For paragraph (1) (a), ***the death of, or a serious injury to, a person*** does not include:
 - (a) death or serious injury resulting from natural causes (except to a flight crew member); or
 - (b) death or serious injury that is intentionally self-inflicted; or
 - (c) death or serious injury that is intentionally caused by another person; or
 - (d) death or serious injury suffered by a stowaway in a part of the aircraft that is not usually accessible to crew members or passengers after take-off; or
 - (e) death occurring more than 30 days after the occurrence that caused the death, unless the death was caused by an injury that required admission to hospital within 30 days after the occurrence.

Air transport operations

- (3) For the purposes of the definition of ***immediately reportable matter*** in section 3 of the Act, the following investigable matters, in relation to an air transport operation (other than an aircraft operation mentioned in subregulation 2.1 (2)), are prescribed:
 - (a) airprox;
 - (b) violation of controlled airspace;

Regulation 2.3

- (c) a near-collision involving aircraft manoeuvring on the ground;
- (d) an occurrence in which flight into terrain is narrowly avoided;
- (e) the rejection of a take-off from a closed or occupied runway;
- (f) a take-off from a closed or occupied runway with marginal separation from an obstacle or obstacles;
- (g) a landing on a closed or occupied runway;
- (h) a significant failure to achieve predicted performance during take-off or initial climb;
- (i) a fire (even if subsequently extinguished), smoke, fumes or an explosion on or in any part of the aircraft;
- (j) an uncontained engine failure;
- (k) a mechanical failure resulting in the shutdown of an engine;
- (l) the use of any procedure for overcoming an emergency;
- (m) an event requiring the use of oxygen by a flight crew member;
- (n) malfunction of an aircraft system that seriously affects the operation of the aircraft;
- (o) a flight crew member becoming incapacitated during flight;
- (p) fuel exhaustion;
- (q) the aircraft's supply of useable fuel becoming so low (whether or not as a result of fuel starvation) that the pilot declares an emergency in flight;
- (r) undershooting, over-running or running off the side of a runway during take-off or landing, or any other similar occurrence;
- (s) any of the following occurrences, if the occurrence causes difficulty controlling the aircraft:
 - (i) a weather phenomenon;
 - (ii) operation outside the aircraft's approved envelope;
- (t) the failure of 2 or more related redundant systems for flight guidance and navigation;

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- (u) serious damage to, or destruction of, any property outside the aircraft caused by contact with the aircraft or anything that has become detached from the aircraft.

2.4 Routine reportable matters (Act s 3)*Air transport operations*

- (1) For the purposes of the definition of ***routine reportable matter*** in section 3 of the Act, the following investigable matters, in relation to an air transport operation (other than an aircraft operation mentioned in subregulation 2.1 (2)), are prescribed:
 - (a) an injury, other than a serious injury, to:
 - (i) a person on board the aircraft or in contact with the aircraft or anything attached to the aircraft or anything that has become detached from the aircraft; or
 - (ii) a person who has been directly exposed to jet blast;
 - (b) the aircraft suffering damage that compromises or has the potential to compromise the safety of the flight but is not serious damage;
 - (c) flight below the minimum altitude, except in accordance with a normal arrival or departure procedure;
 - (d) a ground proximity warning system alert;
 - (e) a critical rejected take-off, except on a closed or occupied runway;
 - (f) a runway incursion;
 - (g) any of the following occurrences, if the occurrence compromises or has the potential to compromise the safety of the flight:
 - (i) a failure to achieve predicted performance during take-off or initial climb;
 - (ii) malfunction of an aircraft system, if the malfunction does not seriously affect the operation of the aircraft;
 - (iii) fuel starvation that does not require the declaration of an emergency;

Note Aircraft systems include flight guidance and navigation systems.

Regulation 2.4

- (h) any of the following occurrences, if the occurrence compromises or has the potential to compromise the safety of the flight but does not cause difficulty controlling the aircraft:
 - (i) a weather phenomenon;
 - (ii) operation outside the aircraft's approved flight envelope;
- (i) failure or inadequacy of a facility used in connection with the air transport 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;
- (j) misinterpretation by a flight crew member 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, telephone or electronic text message;
- (k) breakdown of coordination, being an occurrence in which traffic related information flow within the air traffic service system is late, incorrect, incomplete or absent;
- (l) failure of air traffic services to provide adequate traffic information to a pilot in relation to other aircraft;

Note The information may have been incomplete, incorrect, late or absent.
- (m) a traffic collision avoidance system resolution advisory being given to the pilot of the aircraft;
- (n) 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 loading of the incorrect quantity is likely to have a significant effect on aircraft endurance, performance, balance or structural integrity; or

Regulation 2.4

- (ii) the loading of an incorrect type of fuel or other essential fluid, or contaminated fuel or other essential fluid; or
- (iii) the incorrect loading of passengers, baggage or cargo, if the incorrect loading has a significant effect on the mass or balance of the aircraft; or
- (iv) the carriage of dangerous goods in contravention of Commonwealth, State or Territory legislation; or
- (v) the incorrect securing of cargo containers or significant items of cargo; or
- (vi) the incorrect stowage of baggage or cargo, if the incorrect stowage is likely to cause a hazard to the aircraft or its equipment or occupants, or to impede emergency evacuation; or
- (vii) a significant contamination of the aircraft structure, systems or equipment, arising from the carriage of baggage or cargo; or
- (viii) the presence of a violent or armed passenger;
- (o) a collision with an animal, including a bird.

Aircraft operations other than air transport operations

- (2) For the purposes of the definition of ***routine reportable matter*** in section 3 of the Act, the following investigable matters, in relation to an aircraft operation (other than an aircraft operation mentioned in subregulation 2.1 (2) or an air transport operation), are prescribed:
 - (a) an injury, other than a serious injury, to a person on board the aircraft;
 - (b) a flight crew member becoming incapacitated while operating the aircraft;
 - (c) airprox;
 - (d) an occurrence in which flight into terrain is narrowly avoided;
 - (e) the use of any procedure for overcoming an emergency;
 - (f) an occurrence that results in difficulty controlling the aircraft, including any of the following occurrences:
 - (i) an aircraft system failure;

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- (ii) a weather phenomenon;
- (iii) operation outside the aircraft's approved flight envelope;
- (g) fuel exhaustion;
- (h) the aircraft's supply of useable fuel becoming so low (whether or not as a result of fuel starvation) that the safety of the aircraft is compromised;
- (i) a collision with an animal, including a bird, on a licensed aerodrome.

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 an aircraft maintenance engineer under the *Civil Aviation Regulations 1988* or the *Civil Aviation Safety Regulations 1998*; and
 - (ii) does any work in relation to the aircraft;
- (f) a member of the ground handling crew in relation to the aircraft;
- (g) a member of the staff of the Civil Aviation Safety Authority;
- (h) the operator of an aerodrome.

Regulation 2.6

2.6 Written reports (Act s 19)

- (1) For the purposes of section 19 of the Act and subject to subregulation (2), 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;
 - (d) the name of the owner of the aircraft;
 - (e) the name and contact details of the operator of the aircraft;
 - (f) if the aircraft was under hire when the reportable matter occurred, 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 flight crew member (if any), and the type and licence number of the licence held by each of them;
 - (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) 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

Regulation 2.6

- (iii) the weather conditions; and
- (iv) the airspace designation; and
- (v) the altitude at which the matter occurred; and
- (vi) if the matter occurred at, or in relation to, an airport, the name of the airport, and if it occurred on, or in relation to, a runway, the runway number; and
- (vii) if the matter involved a collision with an animal, including a bird, the nature of the collision; 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;
- (n) the physical characteristics of the area where the reportable matter occurred (eg the terrain, vegetation cover, and existence and location of any buildings, runways or aerodromes);
- (o) the flight rules under which the aircraft was operating at the time of the reportable matter;
- (p) the type of aircraft operation the aircraft was engaged in at the time of the reportable matter;
- (q) if the matter resulted in a fatality or serious injury, and the aircraft carried an emergency locator transmitter:
 - (i) the manufacturer and model of the emergency locator transmitter; and
 - (ii) whether it was fixed or portable; and
 - (iii) its location in the aircraft; and
 - (iv) whether it was activated;
- (r) if the aircraft's pilot has died:
 - (i) the pilot's date of birth; and
 - (ii) the pilot's total flying hours on all aircraft and flying hours on the same type of aircraft;
- (s) if any crew members have died or been seriously injured as a result of the reportable matter, how many, and their names and nationalities;

Regulation 2.7

- (t) if any passengers have died or been seriously injured as a result of the reportable matter, how many, and their names and nationalities;
 - (u) if any other persons have died or been seriously injured as a result of the reportable matter, how many, and their names and nationalities.
- (2) For the purposes of section 19 of the Act, a report that is only for a matter mentioned in paragraph 2.4 (1) (o) or (2) (i) (a collision with an animal, including a bird) must contain only 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 day and local time when the reportable matter occurred;
 - (c) the nature of the reportable matter, including:
 - (i) if the matter occurred at, or in relation to, an airport, the name of the airport, and if it occurred on, or in relation to, a runway, the runway number; and
 - (ii) the nature and extent of any damage to the aircraft;
 - (d) any other information that the person making the report considers appropriate.

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

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

Regulation 2.9

2.8 Reports to be given to staff member

- (1) Subject to subregulation (2), if a report under section 18 or 19 of the Act is given to a nominated official mentioned in paragraph 2.7 (b), the nominated official must, as soon as is practicable, pass on the report to a nominated official mentioned in paragraph 2.7 (a).
- (2) Subregulation (1) does not apply if the nominated official who receives the report under section 18 or 19 of the Act believes, on reasonable grounds, that a responsible person has already given, or will give, a report under that section to a nominated official mentioned in paragraph 2.7 (a).

2.9 OBR information (Act s 48)

For the purposes of section 48 of the Act, a recording is not an on-board recording for the purposes of the Act if the recording is:

- (a) an oral communication recorded by an air traffic service or a certified air-ground radio service for the purpose of directing or monitoring the progress of an aircraft; or
- (b) an oral communication recorded by the Australian Maritime Safety Authority.

Regulation 3.1

Part 3 Marine operations

3.1 Application of Part 3

- (1) Subject to subregulation (2), this Part applies only in relation to matters involving marine operations.
- (2) This Part (other than regulation 3.8) does not apply in relation to marine operations involving:
 - (a) trading ships on intrastate voyages; or
 - (b) Australian fishing vessels on domestic voyages; or
 - (c) fishing fleet support vessels on domestic voyages; or
 - (d) inland waterways vessels; or
 - (e) pleasure craft; or
 - (f) off-shore industry mobile units that are fixed to the seabed; or
 - (g) Australian defence ships; or
 - (h) exempt foreign ships.
- (3) To avoid doubt, if a matter involves:
 - (a) a ship (the ***first ship***) that is involved in a marine operation (other than a marine operation mentioned in subregulation (2)); and
 - (b) a ship that is not involved in such an operation;
subregulation (2) does not prevent the matter from being a reportable matter in relation to the first ship.
- (4) Subject to subregulation (5), 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 crew member to disembark from the ship does so.

Regulation 3.2

- (5) 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 occurrence occurring during the period mentioned in subregulation (4).

3.2 Definitions for Part 3

In this Part:

Australian coastal sea means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia that is not within the limits of a State or Territory.

Commonwealth ship means a ship:

- (a) that is owned by the Commonwealth or a Commonwealth authority; or
- (b) the beneficial interest in which is vested in the Commonwealth or a Commonwealth authority; or
- (c) that is leased to, or in the exclusive possession of, the Commonwealth or a Commonwealth authority.

disabled, in relation to a ship, means that:

- (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.

domestic voyage, in relation to a ship, means:

- (a) an interstate voyage by the ship; or
- (b) an intrastate voyage by the ship; or
- (c) if the ship is an Australian fishing vessel that is regularly engaged in making voyages from a port or ports in Queensland — a voyage, beginning at a port in Queensland and ending at the same port or another port in Queensland, in the course of which the ship, as an incidental part of its fishing operations on the voyage, calls at a port or ports in Papua New Guinea, but does not call at:
 - (i) any other port outside Australia; or

Regulation 3.2

- (ii) a place in the waters of the sea above the continental shelf of a country other than Australia.

fishing fleet support vessel means a ship (other than a Commonwealth ship or an inland waterways vessel) that is used wholly or primarily to support the fishing operations of an Australian fishing vessel or vessels, including being used for any of the following purposes:

- (a) storing and transporting fish taken, caught or captured by the fishing vessel;
- (b) providing food, fuel or other supplies to the fishing vessel while it is engaged in fishing operations;
- (c) transporting crew members to and from the fishing vessel while it is engaged in fishing operations.

fishing operations means:

- (a) taking, catching or capturing fish for trading or manufacturing purposes; or
- (b) processing or carrying fish that are taken, caught or captured.

fishing vessel means a ship (other than a Commonwealth ship or an inland waterways vessel) that is used wholly or principally for fishing operations.

inland waterways vessel means a ship (other than a Commonwealth ship) that is used, or intended to be used, wholly in waters other than waters of the sea.

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

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

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

- (a) travels between ports within the same State; or

Regulation 3.2

- (b) leaves a port in a State and returns to the same port; or
- (c) travels between ports within the same Territory; or
- (d) leaves a port in a Territory and returns to the same port.

off-shore industry mobile unit means:

- (a) a vessel that is used, or intended to be used, wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of any or all of the following:
 - (i) the continental shelf of Australia;
 - (ii) the seabed of the Australian coastal sea;
 - (iii) the subsoil of that seabed;by drilling the seabed or its subsoil, or obtaining substantial quantities of material from the seabed or its subsoil, with equipment that is on, or forms part of, the vessel; or
- (b) a structure (other than a vessel) that:
 - (i) is able to float or be floated; and
 - (ii) is able to move or be moved as an entity from one place to another; and
 - (iii) is used, or intended to be used, wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of any or all of the following:
 - (A) the continental shelf of Australia;
 - (B) the seabed of the Australian coastal sea;
 - (C) the subsoil of that seabed;by drilling the seabed or its subsoil, or obtaining substantial quantities of material from the seabed or its subsoil, with equipment that is on, or forms part of, the structure; or
- (c) a barge or similar vessel that:
 - (i) is fitted with living quarters for more than 12 persons; and
 - (ii) is used, or intended to be used, wholly or primarily in connection with the construction, maintenance or repair of off-shore industry fixed structures.

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overseas voyage, in relation to a ship, means a voyage (other than a voyage mentioned in paragraph (c) of the definition of **domestic voyage**) in the course of which the ship travels between:

- (a) at least 1 port in Australia and a port outside Australia; or
- (b) at least 1 port in Australia and a place in the waters of the sea above the continental shelf of a country other than Australia; or
- (c) a port outside Australia and a place in the waters of the sea above the continental shelf of Australia; or
- (d) a place in the waters of the sea above the continental shelf of Australia and a place in the waters of the sea above the continental shelf of a country other than Australia.

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

pleasure craft means a ship (other than a Commonwealth ship or an inland waterways vessel) that is used, or intended to be used, wholly for recreational or sporting activities (whether or not the ship is let, or intended to be let, for hire).

trading ship means a ship (other than a Commonwealth ship, fishing vessel, fishing fleet support vessel or off-shore industry mobile unit) that is used, or intended to be used, for, or in connection with, any business or commercial activity, and includes a ship that is used, or intended to be used, wholly or principally for:

- (a) carrying passengers or cargo for hire or reward; or
- (b) providing services to ships, whether for reward or otherwise.

3.3 Immediately reportable matters (Act s 3)

- (1) For the purposes of the definition of **immediately reportable matter** in section 3 of the Act, the following investigable matters, in relation to a marine operation (other than a marine operation mentioned in subregulation 3.1 (2)), are prescribed:
 - (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;

Regulation 3.3

- (b) the ship being lost, presumed lost or abandoned;
 - (c) the ship suffering serious damage, or the existence of reasonable grounds for believing that the ship has suffered serious damage;
 - (d) a fire (even if subsequently extinguished), smoke, fumes or an explosion on or in any part of the ship;
 - (e) the loss of a person from the ship;
 - (f) the ship being stranded or disabled;
 - (g) the ship being involved in a collision;
 - (h) the ship nearly being stranded or involved in a collision;
 - (i) contact between the ship and another object, including a wharf or buoy, resulting in the other object being seriously damaged or destroyed;
 - (j) the ship suffering a significant loss of stability to the extent that the safety of the ship is, or could be, seriously endangered;
 - (k) any other matter in relation to the operation of the ship that a reasonable person would consider seriously endangers, or, if not corrected, would seriously endanger, the safety of the ship, its occupants or any other person.
- (2) For paragraph (1) (a), ***the death of, or a serious injury to, a person*** does not include:
- (a) death or serious injury resulting from natural causes (except to a person who has duties essential to the safety of the ship); 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) death occurring more than 30 days after the occurrence that caused the death, unless the death was caused by an injury that required admission to hospital within 30 days after the occurrence.

Regulation 3.4

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 pilot who has duties on board the ship.

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 the ship was under charter when the reportable matter occurred, the name of the charterer;
- (g) the name and nationality of the master;
- (h) if a pilot was on board the ship when the reportable 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, how many, and their names and nationalities;

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- (m) if any passengers have died or been seriously injured as a result of the reportable matter, how many, and their names and nationalities;
- (n) if any other persons have died or been seriously injured as a result of the reportable matter, how many, and their names and nationalities;
- (o) the nature of the reportable matter, including a brief description of the occurrence;
- (p) a general statement of the causes of the occurrence, 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;
- (b) a member of the staff of the Australian Maritime Safety Authority.

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

3.7 Reports to be given to staff member

- (1) Subject to subregulation (2), if a report under section 18 or 19 of the Act is given to a nominated official mentioned in paragraph 3.6 (b), the nominated official must, as soon as is practicable, pass on the report to a nominated official mentioned in paragraph 3.6 (a).
- (2) Subregulation (1) does not apply if the nominated official who receives the report under section 18 or 19 of the Act believes, on reasonable grounds, that a responsible person has already given, or will give, a report under that section to a nominated official mentioned in paragraph 3.6 (a).

Regulation 3.8

3.8 OBR information (Act s 48)

For the purposes of section 48 of the Act, a recording is not an on-board recording for the purposes of the Act if the recording is:

- (a) an oral communication recorded by a ship reporting system or a marine vessel traffic control system for the purpose of directing or monitoring the progress of a ship; or
- (b) an oral communication recorded by the Australian Maritime Safety Authority.

Part 4 Rail vehicle operations

4.1 Application of Part 4

- (1) Subject to subregulation (2), this Part applies only in relation to matters:
 - (a) involving rail vehicle operations; and
 - (b) occurring on the interstate rail network.
- (2) 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 occurrence, involving a rail vehicle operation, on the interstate rail network.

4.2 Definitions for Part 4

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

track access provider means an organisation that manages rail vehicle operations on a railway network by:

- (a) controlling access by rail operators to the network; and
- (b) providing rail control services on the network; and

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- (c) maintaining the railway infrastructure on the network.

4.3 Immediately reportable matters (Act s 3)

- (1) For the purposes of the definition of *immediately reportable matter* in section 3 of the Act, the following investigable matters, in relation to a rail vehicle operation, are prescribed:
 - (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 1 or more other rail vehicles, resulting in serious damage to any of the rail vehicles;
 - (c) a collision between the rail vehicle and a person or vehicle at a level crossing, including a pedestrian crossing;
 - (d) a collision between the rail vehicle and an obstruction that results in serious damage to, or destruction of, the rail vehicle or obstruction;
 - (e) a running line derailment of the rail vehicle.
- (2) For paragraph (1) (a), *the death of, or a serious injury to, a person* does not include:
 - (a) death or serious injury resulting from natural causes (except to a member of 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) death occurring more than 30 days after the occurrence that caused the death, unless the death was caused by an injury that required admission to hospital within 30 days after the occurrence.

Regulation 4.5

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;
- (b) the owner or operator of the rail vehicle;
- (c) the track access provider that manages the railway network on which the reportable matter occurred;
- (d) a person performing a railway control service 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:

- (a) if a responsible person is required to give a written report of the reportable matter to an authority of the State or Territory in which the reportable matter occurred — the information required to be given in that report; or
- (b) in any other case — as much of the following information as is within the knowledge of the person making the report:
 - (i) the name and contact details of the person making the report;
 - (ii) the role of the person making the report in relation to the rail vehicle;
 - (iii) details of the rail vehicles involved;
 - (iv) the name of the owner of the rail vehicle;
 - (v) the name and contact details of the operator of the rail vehicle;
 - (vi) if the rail vehicle was under hire when the reportable matter occurred, the name of the hirer;
 - (vii) the name of the driver, and the type and licence number of the licence held by the driver;
 - (viii) the place where the reportable matter occurred;
 - (ix) the day and local time when the reportable matter occurred;

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- (x) if any crew members have died or been seriously injured as a result of the reportable matter, how many, and their names and nationalities;
- (xi) if any passengers have died or been seriously injured as a result of the reportable matter, how many, and their names and nationalities;
- (xii) if any other persons have died or been seriously injured as a result of the reportable matter, how many, and their names and nationalities;
- (xiii) the nature of the reportable matter, including a brief description of the occurrence;
- (xiv) a general statement of the causes of the occurrence, 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;
- (b) an employee of a State or Territory rail safety regulator.

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

4.7 Reports to be given to staff member

- (1) Subject to subregulation (2), if a report under section 18 or 19 of the Act is given to a nominated official mentioned in paragraph 4.6 (b), the nominated official must, as soon as is practicable, pass on the report to a nominated official mentioned in paragraph 4.6 (a).
- (2) Subregulation (1) does not apply if the nominated official who receives the report under section 18 or 19 of the Act believes, on reasonable grounds, that a responsible person has already given, or will give, a report under that section to a nominated official mentioned in paragraph 4.6 (a).

Regulation 4.8

4.8 OBR information (Act s 48)

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

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Part 5 General

5.1 Delegation (Act s 13)

For the purposes of subsection 13 (6) of the Act:

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

5.2 Special investigators (Act s 14)

For the purposes of section 14 of the Act, a person must satisfy at least one of the criteria mentioned in paragraph 5.1 (a).

5.3 International obligations (Act s 17)

- (1) For the purposes of subsection 17 (1) of the Act, the following international agreements are identified:
 - (a) Articles 26, 37 and 38 of the Convention on International Civil Aviation, done at Chicago on 7 December 1944, in so far as those Articles relate to aviation safety investigation, and Annex 13 to that Convention;

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- (b) Chapter 1, Regulation 21 of the Annex to the International Convention for the Safety of Life at Sea, done at London on 1 November 1974;
 - (c) Article 23 of the International Convention on Load Lines, done at London on 5 April 1966;
 - (d) Article 21 of the Timor Sea Treaty between Australia and East Timor, done at Dili on 20 May 2002;
 - (e) Article 94 (7) of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.
- (2) For the purposes of subsection 17 (2) of the Act, the Code for the Investigation of Marine Casualties and Incidents, adopted by resolution of the Assembly of the International Maritime Organization, is identified.

5.4 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.

5.5 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 expiry date of the identity card;
- (g) instructions for the return of the identity card if found.

Regulation 5.6

**5.6 Fees for attending before Executive Director
(Act s 32)**

- (1) For the purposes of 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 be paid 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 be paid 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 her attendance, up to a maximum amount of \$1 000 for each day on which wages, salary or fees are lost because of the attendance;
 - (b) in any other case:
 - (i) \$500 for each full day of attendance; and
 - (ii) \$66.67 for each hour, or part of an hour, of attendance on each day on which the person is not required to attend for the full day, up to a maximum of \$500.
- (3) If the person is required to attend for a reason other than because of his or her professional, scientific or other special skill or knowledge, the person is entitled to be paid the following amount of fees:
 - (a) if the person is remunerated in 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 her attendance, up to a maximum amount of \$1 000 for each day on which wages, salary or fees are lost because of the attendance;
 - (b) in any other case:
 - (i) \$100 for each full day of attendance; and
 - (ii) \$13.33 for each hour, or part of an hour, of attendance on each day on which the person is not required to attend for the full day, up to a maximum of \$100.

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- (4) Subject to subregulations (5) and (6), the person is also entitled to be paid reasonable allowances for:
 - (a) transport between the person's usual place of residence and the place where 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 Executive Director must have regard to the rates (if any) determined from time to time for public service employees by the Department of Employment and Workplace Relations.
- (6) A person is entitled to be paid 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.

5.7 Release of OBR information (Act s 51)

For the purposes of subsection 51 (2) of the Act, the Executive Director may disclose to any person 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 5.3.

5.8 Release of restricted information (Act s 61)

- (1) For the purposes of subsection 61 (2) of the Act and subject to subregulation (2), the Executive Director may disclose to any person restricted information that is, or contains, personal information only if the Executive Director is required to do so by an international agreement mentioned in regulation 5.3.

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- (2) For the purposes of subsection 61 (2) of the Act, the Executive Director may disclose to a relevant body restricted information that is, or contains, personal information if:
- (a) the restricted 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 restricted information is provided solely for the purpose of:
 - (i) transport safety data sharing; or
 - (ii) reporting or investigation of a transport safety matter; or
 - (iii) conducting a coronial inquiry; and
 - (c) the restricted information will help the relevant body to carry out a statutory obligation.
- (3) In this regulation:
relevant body has the meaning given by section 45 of the Act.

5.9 Fees for attending coronial inquiry (Act s 67)

- (1) For the purposes of subsection 67 (2) of the Act and subject to subregulation (2), if a staff member attends a coronial inquiry, the State or Territory concerned is liable to pay to the Commonwealth a fee equal to the sum of:
- (a) the staff member's salary for the period of his or her attendance at, and any necessary travel to and from, the inquiry; and
 - (b) any reasonable costs incurred by the staff member and payable by the Commonwealth for transport between the staff member's usual place of residence and the place where he or she attends the inquiry; and

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

Note

1. Notified in the *Commonwealth of Australia Gazette* on *L* 2003.

26 June