

PROPOSED CHANGES TO THE TRANSPORT SAFETY INVESTIGATION REGULATIONS, INCLUDING AMENDED CONFIDENTIAL REPORTING PROVISIONS



Summary

The Australian Transport Safety Bureau (ATSB) recently sought the views of stakeholders (the consultation period expired on 27 July 2012) in relation to two proposed legislative changes:

- The draft Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012 (Draft TSI Regulation) to replace the current REPCON confidential reporting regulations.
- An amendment to the Transport Safety Investigation Regulations 2003 (TSI Regulations 2003) to incorporate a reference to the new International Maritime Casualty Investigation Code (Code).

Confidential Reporting

Current position

There are currently two separate schemes

for voluntary confidential reporting: firstly, the REPCON aviation scheme under the Air Navigation (Confidential Reporting) Regulations 2006 and, secondly, the REPCON marine scheme under the Navigation (Confidential Marine Reporting Scheme) Regulations 2008. There is no existing scheme for the rail industry.

Both schemes provide a means for any person, who has a legitimate reason to keep their identity confidential, to report safety concerns to the ATSB. Thus, in order to encourage reporting, the person, and any person referred to in the report, have their identity protected.

The ATSB will remove any information from the report that identifies individuals before contacting the operator in question for their comments. The report is then forwarded to the relevant Commonwealth, State and Territory transport regulators so that they can pursue appropriate action.



Proposed position

The Draft TSI Regulation will create a multi-modal scheme to be administered by the ATSB which will be applicable to the air, marine and rail industries jointly. The proposed scheme will be based on the existing aviation and maritime schemes and retain the REPCON name. The proposed amendments include:

- **The functions of the ATSB:** the ATSB will identify issues arising in reports that might affect the transport industry and will communicate these to the stakeholders affected without identifying any relevant individuals.
- **What may be reported:** any concerns or issues “that affect, or might affect, transport safety” will be a reportable safety concern. This avoids prescription which may reduce what is deemed a reportable safety concern, thereby limiting the number of reports submitted.
- **What may not be reported:** due to the confidentiality requirements of reports, some matters may not be reported; for example, reports of a serious and imminent risk to health that requires an immediate response; industrial relations issues; or reports containing matters involving any criminal conduct (as opposed to only those attracting custodial sentences over two years as in the current schemes). This is because an adequate response to these issues will most likely require someone’s identity to be disclosed (and confidentiality

thus not guaranteed). REPCON will avoid making adverse inferences against an individual. If there is a problem where action should be taken against an individual, REPCON may not be the best avenue to pursue.

Issues

Reaction within the transport industry to the proposals appears to be positive as the objectives behind the existing REPCON schemes have not been substantially altered. The different parts of the industries may also learn from the reports of safety concerns that contain transferable lessons. A full summary of the stakeholders consulted can be found on the ATSB website.



“The amendment will be subject to the same legislative approach as the amendments made to the REPCON schemes above, although as yet no expected date has been set for the amendment to come into effect.”

Status of proposals

After issues arising from the consultation are addressed, the ATSB will finalise the draft TSI Regulations. Then subject to the approval of the Minister of Infrastructure and Transport and the Governor General, the draft TSI Regulations will be made into law and tabled in Parliament so as to come into effect on 1 January 2013.

International maritime casualty investigation code

Current position

The approach to safety investigations taken by the Transport Safety Investigation Act 2003 (Act) and the Code are largely the same.

The Act states that the powers of the ATSB should be exercised in a manner consistent with Australia’s obligations under international agreements.



The Code currently states that its objective is to provide a common approach for States to adopt in the conduct of marine safety investigations and that this aim will be achieved by States applying consistent methodology in their practices and providing reports to the IMO.

Proposed position

It is proposed that Regulation 5.3 of the TSI Regulations 2003 be amended to incorporate a reference to Regulation 6 of Chapter XI-I of SOLAS. Parts II and III contain the mandatory standards and recommended practices for marine safety investigations. A reference to these Parts in the TSI Regulations 2003 will mean that the ATSB will be required to have regard to the mandatory standards and recommended practices of the IMO when exercising their powers, thereby helping to align the two regimes.

Issues

This proposal will not alter the basic functions of the ATSB and the amendment is not likely to have a substantial effect on stakeholders. However, formalising the link with the Code will send a clear message about the importance placed on safety investigations by the ATSB. The Code represents a best practice approach and reference to it in the TSI Regulations 2003 will highlight the ATSB's stance on identifying hazards and risks to safety that require action.

Status of proposals

The amendment will be subject to the same legislative approach as the amendments made to the REPCON

schemes above, although as yet no expected date has been set for the amendment to come into effect.

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