



Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012¹

Select Legislative Instrument 2012 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Transport Safety Investigation Act 2003*, the *Air Navigation Act 1920* and the *Navigation Act 1912*.

Dated 2012

Governor-General

By Her Excellency's Command

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

CONSULTATION DRAFT

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012*.

2 Commencement

This regulation commences on 18 December 2012.

3 Repeal

The following instruments are repealed:

- the *Air Navigation (Confidential Reporting) Regulations 2006* (Select Legislative Instrument 2006 No. 371);
- the *Navigation (Confidential Marine Reporting Scheme) Regulations 2008* (Select Legislative Instrument 2008 No. 278).

4 Transitional

(1) Despite section 3:

- (a) the *Air Navigation (Confidential Reporting) Regulations 2006* continue to have effect in relation to reports made under those regulations before 18 December 2012; and

2012,

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(b) the *Navigation (Confidential Marine Reporting Scheme) Regulations 2008* continue to have effect in relation to reports made under those regulations before 18 December 2012.

(2) For the reports mentioned in subsection (1), the ATSB or the Chief Commissioner may perform functions or exercise powers conferred on the Executive Director under the regulations mentioned in subsection (1).

5 Definitions

In this regulation:

Act means the *Transport Safety Investigation Act 2003*.

criminal conduct: see subsection 10 (3).

emergency services organisation includes the following:

- (a) a police force or service;
- (b) a fire service;
- (c) an ambulance service;
- (d) a service for dispatching a force or service mentioned in paragraph (a), (b) or (c).

personal information has the meaning given by subsection 6 (1) of the *Privacy Act 1988*.

REPCON scheme means the scheme established under section 7.

report means a report made under Part 3.

reportable safety concern: see subsection 10 (2).

terrorist act has the meaning given by section 100.1 of the *Criminal Code*.

transport safety authority means any of the following:

- (a) the Civil Aviation Safety Authority established by the *Civil Aviation Act 1988*;
- (b) the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*;
- (c) the Office of the National Rail Safety Regulator established by the Rail Safety National Law;

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- (d) an authority of a State or Territory, or any other body, that has functions relating to transport safety.

unlawful interference with aviation has the meaning given by section 10 of the *Aviation Transport Security Act 2004*.

Note Several other words and expressions used in this regulation have the meaning given by subsection 3 (1) of the Act. For example:

- ATSB
- Chief Commissioner
- restricted information
- staff member
- transport safety
- transport vehicle.

6 Information taken to be part of report

For this regulation, the following information is taken to be part of a report:

- (a) information obtained or generated by the ATSB in the course of considering a report;
- (b) records of the analysis of information contained in a report (including opinions expressed by a person in that analysis).

Part 2 REPCON Scheme

7 Establishment and application of scheme

- (1) For section 20A of the Act, a scheme (the ***REPCON scheme***) is established for the voluntary and confidential reporting to the ATSB of issues that affect, or might affect, transport safety.
- (2) The REPCON scheme applies in relation to the following:
 - (a) for aircraft operations—manned aircraft, large UAVs, small UAVs and micro UAVs;
 - (b) for marine activities—ships to which the *Navigation Act 1912* applies;
 - (c) for rail—rail vehicles and rail transport covered by subsection 11 (3) of the Act.

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- (3) For paragraph (2) (a), *large UAV*, *small UAV* and *micro UAV* have the same meaning as in the *Civil Aviation Safety Regulations 1998*.

8 Purposes of scheme

- (1) The primary purpose of the REPCON scheme is to enable the ATSB to do the following:
- (a) provide a voluntary and confidential reporting scheme for issues that affect, or might affect, transport safety;
 - (b) use the reports made under the scheme to identify unsafe procedures, practices or conditions;
 - (c) give information to the aviation, maritime or rail industry, to a transport safety authority, or to an emergency services organisation, about an identified unsafe procedure, practice or condition to facilitate:
 - (i) action and awareness about transport safety issues; and
 - (ii) improvements in transport safety by other persons and organisations.
- (2) An incidental purpose of the REPCON scheme is to enable the ATSB to give information about a transport security concern, mentioned in a report made under the scheme, to an appropriate person or organisation (including a transport safety authority or an emergency services organisation) to facilitate awareness of security issues.

Note Although the REPCON scheme is not established for the purpose of reporting security concerns, those concerns might be mentioned in reports made under the scheme.

9 Functions of ATSB

The ATSB's functions in relation to the REPCON scheme include the following:

- (a) assessing and accepting reports of issues that affect, or might affect, transport safety;
- (b) dealing with reports in accordance with this regulation, including forwarding, destroying or returning reports;

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- (c) reviewing information contained in reports, and publishing details of those reviews;
 - (d) setting up and maintaining one or more databases for recording information contained in reports;
 - (e) identifying issues and factors mentioned in, or arising from, reports that affect, or might affect, transport safety;
 - (f) communicating issues and factors mentioned in paragraph (e) to relevant sectors of the transport industry, to transport safety authorities, to emergency services organisations and to the public;
 - (g) issuing information briefs or alert bulletins that the ATSB believes are necessary or desirable in the interests of transport safety;
 - (h) establishing committees to review the effectiveness of the scheme.

Note For rules relating to the disclosure of information contained in reports—see Parts 5 and 6.

Part 3 Reporting

10 What may be reported

- (1) A person may make a report to the ATSB about any reportable safety concern.
- (2) A **reportable safety concern** is any issue that affects, or might affect, transport safety, other than the following:
 - (a) matters showing a serious and imminent threat to transport safety or a person's life or health;
 - (b) industrial relations issues;
 - (c) criminal conduct.

Note If an issue mentioned in paragraph (a) or (c) is mentioned in a report, personal information about the person making the report may be disclosed—see subsection 16 (3) and Part 6.

- (3) For paragraph (2) (c), **criminal conduct** means an offence against a law of the Commonwealth, a State or a Territory, including the following:
 - (a) a terrorist act;

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- (b) an act of unlawful interference with aviation that constitutes an offence under the *Aviation Transport Security Act 2004*.

11 How report must be made

- (1) The person making the report should give the report to the ATSB in writing.

Note A report may be given in the form available on the ATSB's website at <http://www.atsb.gov.au>.

- (2) However, if a report is initially made to the ATSB in a non-written form (such as by telephone), the ATSB must reproduce the report in writing.

12 Information to be included in report

The person making the report must include the following information in the report:

- (a) the name of the person making the report;
- (b) a description of the reportable safety concern;
- (c) at least one of the following:
 - (i) the person's postal address;
 - (ii) the person's email address;
 - (iii) the person's telephone number;
 - (iv) the person's fax number.

Part 4 Accepting and dealing with reports

13 Accepting report

The ATSB must accept a report if:

- (a) the ATSB is satisfied that the REPCON scheme is the most appropriate way to make the report; and
- (b) the ATSB reasonably believes that the matter described in the report is a reportable safety concern; and
- (c) the ATSB reasonably believes the report to be true.

14 Dealing with report

- (1) Regardless of whether the ATSB accepts a report, the ATSB must:
 - (a) decide what information in the report is to be included in a database maintained for the REPCON scheme, and include that information in the database; and
 - (b) decide whether to disclose any information from the report in accordance with the Act and this regulation, and act accordingly; and
 - (c) if the ATSB does not believe that the report includes false or misleading information—as soon as practicable:
 - (i) for the part of the report given by the person taken to have made the report—destroy the part, or return it to the person; and
 - (ii) if a part of the report was given by another person—destroy the part, or return it to that other person.

Note 1 For rules relating to disclosure of information contained in reports—see Parts 5 and 6.

Note 2 For reports that may include false or misleading information—see section 15.

Including restricted information in database

- (2) For paragraph (1)(a), the ATSB may include restricted information that contains personal information in a database maintained for the REPCON scheme only if:
 - (a) it is not practicable to remove the personal information from the report; or
 - (b) the ATSB believes that it is necessary to keep in contact with the person who made the report, or a person or organisation mentioned in the report, and the restricted information is necessary for that purpose.
- (3) The ATSB must remove restricted information that contains personal information from the database if:
 - (a) the restricted information was included in a database for the purpose mentioned in paragraph (2) (b); and

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- (b) the ATSB is satisfied that it is no longer necessary or desirable to keep the restricted information for that purpose.

15 Dealing with report containing false or misleading information

- (1) If the ATSB reasonably believes that, in making the report, the person who made it has committed an offence under section 137.1 of the *Criminal Code* (False or misleading information), the ATSB must not:
- (a) destroy the report, or any part of it; or
 - (b) return the report, or any part of it, to a person; until 2 years after the day the report was made.
- (2) If a prosecution for an offence against section 137.1 of the *Criminal Code* in relation to the report is commenced during those 2 years, the ATSB must not destroy, or return to a person, any part of the report that is required to be kept for the purpose of the prosecution, until that part of the report is no longer required for that purpose.

Part 5 Use and disclosure of information

Division 5.1 Use and disclosure by ATSB

16 Disclosure of restricted information by ATSB

- (1) The ATSB must not disclose restricted information relating to a report unless:
- (a) the ATSB has removed all personal information from the information that is to be disclosed; or
 - (b) subsection (2) or (3) applies.
- Note* For rules about non-staff members accessing restricted information—see section 62 of the Act.
- (2) The ATSB may disclose restricted information that contains personal information if:

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- (a) it is not possible to remove the personal information from the information to be disclosed without defeating the purpose for which the ATSB proposes to disclose the information; and
 - (b) the ATSB believes it necessary or desirable to disclose the information for a purpose mentioned in paragraph 8 (1) (b) or (c) or subsection 8 (2); and
 - (c) before disclosing the information, the ATSB obtains the consent of the person to whom the personal information relates.
- (3) The ATSB may disclose restricted information that contains personal information if:
- (a) the ATSB reasonably believes the disclosure is necessary for the purpose of reporting, investigating or prosecuting a possible offence against section 137.1 of the *Criminal Code* (False or misleading information); or
 - (b) the ATSB reasonably believes that disclosure is necessary to reduce or prevent a serious and imminent threat to transport safety or a person's life or health; or
 - (c) the disclosure is in accordance with Part 6; or
 - (d) the ATSB reasonably believes the disclosure is necessary for the purpose of reporting, investigating or prosecuting criminal conduct not mentioned in Part 6.
- (4) Without limiting this section, the ATSB may disclose information under this section to a court.

17 Named person or organisation to comment on report

- (1) This section applies if the ATSB proposes, in the interests of transport safety, to give information from a report to a transport safety authority or an emergency services organisation.
- (2) Before giving the information to the transport safety authority or an emergency services organisation, the ATSB must:
 - (a) give a copy of the report that satisfies the requirements of section 16 to any person or organisation mentioned in the report; and
 - (b) invite the person or organisation to comment on the report within 5 business days after receiving the report.

Note **business day** is defined in the *Acts Interpretation Act 1901*.

- (3) However, the ATSB is not required to give a copy of the report to a person or organisation if the ATSB reasonably believes that:
- (a) giving a copy of the report to the person or organisation is likely to:
 - (i) reduce reporting under the REPCON scheme; or
 - (ii) reduce the ability of the ATSB to achieve a purpose of the REPCON scheme; or
 - (b) it is not practicable to comply with subsection (2).

Example for paragraph (b)

Waiting 5 business days for a response from the person or organisation would mean an urgent safety issue, or an emergency, could not be addressed.

- (4) The ATSB must take into account any comments made by the person or organisation when deciding whether to give information from a report to a transport safety authority or an emergency services organisation.

Division 5.2 Restrictions on use and disclosure of information

18 Disciplinary action and making administrative decisions

- (1) A person must not use information in a report to:
- (a) take disciplinary action against an employee of the person; or
 - (b) make an administrative decision under an Act, or an instrument made under an Act, against a person.

Note For rules about the use of information for these purposes—see section 19.

- (2) Subsection (1) does not prevent disciplinary action being taken, or an administrative decision being made, against a person if the information on which the action or decision is based is obtained from a source other than a report.

19 Information not admissible in evidence

- (1) A report, and evidence about the contents of a report, are not admissible in evidence in a court or tribunal.
- (2) However subsection (1) does not apply in proceedings in relation to whether a person committed an offence under section 137.1 of the *Criminal Code* (False or misleading information) in making the report.
- (3) Subsection (1) does not prevent information obtained from a source other than a report from being admissible in evidence in a court or tribunal.
- (4) If, despite subsection 18 (1), a person uses information in a report to:
 - (a) take disciplinary action against an employee of the person; or
 - (b) make an administrative decision under an Act, or an instrument made under an Act, against a person;the report, or evidence about the contents of the report, may be used, as evidence of the misuse of the information, in any appeal against the taking of the disciplinary action or the making of the administrative decision.
- (5) Subsection (4) applies only if the ATSB issues a certificate stating that:
 - (a) the use of a report, or evidence about the contents of the report, in specified proceedings is not likely to reduce reporting under the REPCON scheme; or
 - (b) any reduction in reporting under the REPCON scheme that might occur because of the use of a report, or evidence about the contents of the report, in specified proceedings is outweighed by the public interest in the use of the report, or evidence about the contents of the report, in those proceedings.

20 Use to be for same purpose as for disclosure

A person, body or agency to whom restricted information that contains personal information is disclosed in accordance with this regulation must not use or disclose that information for a purpose other than the purpose for which the information was disclosed to the person, body or agency.

Part 6 Reports relating to criminal conduct

21 Reports relating to terrorism or unlawful interference with aviation

Disclosure to Department

- (1) The ATSB must tell the Department about a report if the ATSB reasonably believes that the report relates to:
 - (a) an act of unlawful interference with aviation that is an offence under the *Aviation Transport Security Act 2004*; or
 - (b) a terrorist act involving or relating to transport, or a transport vehicle, to which the REPCON scheme applies.

Note These are not reportable safety concerns but may be incidentally mentioned in a report.

- (2) If the Department requests that the report, or information from the report, be given to the Department, the ATSB may comply with the request.
- (3) The ATSB may disclose restricted information that contains personal information from the report to the Department if necessary to comply with this section.

Disclosure for purpose of reporting, investigating or prosecuting

- (4) The ATSB may disclose restricted information that contains personal information if the ATSB reasonably believes that the disclosure is necessary for the purpose of reporting, investigating or prosecuting an offence:

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- (a) mentioned in paragraph (1) (a); or
 - (b) involving an act mentioned in paragraph (1) (b).
- (5) Without limiting subsection (4), the ATSB may disclose information under subsection (4) to a court.

Part 7 Miscellaneous

22 Delegation of powers of the ATSB

- (1) The ATSB may, in writing, delegate a power of the ATSB under this regulation (other than this power of delegation) to the following:
 - (a) the Chief Commissioner;
 - (b) a staff member who has duties relating to the administration of the REPCON scheme.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the ATSB.

Note

- 1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.