



Enhanced Aviation Mandatory and Confidential Reporting

The Australian Transport Safety Bureau (ATSB) is consulting on three changes to Australia's mandatory and confidential aviation reporting systems:

1. a proposal to improve the ATSB's and the Civil Aviation Safety Authority's (CASA) access to mandatorily supplied notifications of aviation accidents and incidents;
2. the draft Transport Safety Investigation Amendment Regulations 2012 (No. 1) which clarify what aviation accidents and incidents must be reported (**Attachment A**);
3. the draft Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012 which would replace the current REPCON confidential reporting regulations (**Attachment B**).

The ATSB is seeking comments back by **Friday, 27 July 2012**. Significant parts of the submission may be published on the ATSB's website. If a person wishes to keep their name and contact details confidential they should discuss the matter with the ATSB. However, the ATSB cannot make any guarantees about confidentiality in advance.

After the consultation period, the proposal in item 1 will be developed into a legislative amendment to the mandatory reporting scheme, which will be subject to further consultation. The proposals behind the draft regulations referenced in items 2 and 3 have already been subject to consultation. After the current round, a final set of regulations will be drafted and finalised for Ministerial and Governor-General approval and parliamentary tabling.

The proposal in item 1 highlights that within the safety system it is appropriate that CASA has access to information from mandatory notifications for the purposes of enhancing the regulation of aviation safety consistent with its responsibilities under the *Civil Aviation Act 1988* (CA Act).

The changes proposed to the mandatory reporting regulations in item 2 will enhance the industry's understanding of what accidents and incidents need to be reported to the ATSB. The intention is help facilitate the growth of the already good reporting culture in the aviation industry.

Changes to the confidential reporting scheme in item 3 are mainly structural: to make the regulations multi-modal (covering the aviation, maritime and rail modes of transport). The ATSB is using the consultation process on the draft regulations to promote the purpose of confidential reporting and encourage its use.

Purpose of Mandatory and Confidential Reporting

Mandatory and confidential reporting are important sources of information about accidents, incidents and safety concerns that usefully identify hazards and risks to aviation safety. Along with the ATSB's safety investigations, the reporting schemes should complement the tools of regulators and operators to inform safety management practices of organisations and persons within the safety system.

While the ATSB manages the mandatory and confidential reporting it must get information from the schemes in the most appropriate form to regulators, operators, air traffic service providers, baggage handlers, cabin crew, pilots, maintenance engineers, and others, who have various roles within the safety system for managing hazards and risks.

The ATSB is able to use its independent status to add value to the hazard and risk information available in the industry. Being independent positions the ATSB to not only look at issues arising within one operator who makes a report, but also at issues arising out of interactions between two or more operators, maintenance organisations and the regulator. There is a systemic focus to the ATSB's contribution to the safety system.

1. ATSB AND CASA ACCESS TO MANDATORY NOTIFICATIONS

The *Transport Safety Investigation Act 2003* (TSI Act) and the *Transport Safety Investigation Regulations 2003* (TSI Regulations) contain the requirements for certain responsible persons (i.e. operators and crew members) to report the occurrence of accidents and incidents to the ATSB. Presently, CASA receives a summary of each occurrence with only a little more detail than in the [Weekly Summaries](#) posted on the ATSB's website.

This level of information supply needs to be enhanced to ensure that CASA is in the best position to regulate aviation safety in a manner which fulfils the main objective of the *Civil Aviation Act 1988* (CA Act).

Section 3A of the CA Act states the main function of the Act is to provide for a regulatory framework that has a particular emphasis on preventing accidents and incidents. While the ATSB also has the objective of seeking to prevent accidents and incidents, the means through which the ATSB seeks to do this is different to CASA.

What can ATSB and CASA do for safety?

The ATSB uses notification reports to initiate independent 'no-blame' safety investigations where they are required.

The ATSB also uses the information to conduct research and trend analysis that might identify hazards and risks and makes the results available to highlight safety issues. Reflecting the ATSB's systemic approach to investigation and research, the safety issues usually require responses from the industry such as making changes to flight procedures, maintenance practices, training syllabus, reporting protocols etc.

To ensure that the full safety benefit is derived from mandatory reporting of accidents and incidents CASA, in its regulatory role, also needs open access to these reports. CASA has an enforcement function that the ATSB does not have. Depending on the circumstances of an accident or incident, the regulator may need to take legitimate action, in the interests of safety, to ensure compliance with applicable requirements.

In rare circumstances an accident or incident notification might indicate that there is a serious and imminent risk to air safety. To prevent or minimise this serious and imminent risk to safety, the regulator may need to suspend and later cancel an authorisation to operate. Only CASA can make the assessment and take such action. It would be inappropriate to deny CASA full and open access to notifications which could allow them to make an informed assessment of the presence of a serious and imminent risk to the travelling public.

CASA's proportional approach

Ordinarily a notification is not going to indicate the presence of a significant risk to safety. However, CASA still needs access to the contents of the notifications to assess them for an appropriate response in order to ensure that any identified hazards and risks are effectively managed. In all such cases, CASA's approach is consistent with paragraph 2.4.3 of its Enforcement Manual (www.casa.gov.au):

Enforcement decisions must be proportional responses to the identified breaches and the safety risk they give rise to. In particular:

- *CASA's first priority is to protect the safety of passengers who are least able to control the aviation related risks to which they are exposed.*
- *CASA will take strong action against those who persistently and/or deliberately operate outside the civil aviation law.*
- *CASA will seek to educate and promote training or supervision of those who demonstrate a lack of proficiency but show a willingness to comply with the civil aviation law.*
- *Where consistent with the overarching interests of safety, CASA will consider the use of infringement notices rather than administrative action when dealing with private pilots who breach the law.*

CASA's enforcement policy is a proportional approach to the use of safety information to promote aviation safety. This undertaking applies whether the information is obtained through surveillance activities or through the receipt of reports of accidents and incidents.

Given CASA's responsibility for setting safety standards, issuing certificates and licenses and exercising its powers to help ensure the achievement of important safety outcomes, it is appropriate that CASA have access to accident and incident notifications to take action.

However, except in those cases where enforcement is necessary, CASA's regulatory response to notification of an accident or incident will normally involve CASA seeking to educate and promote training.

Consistent with international and domestic practices

Providing CASA with open access to mandatory notifications is consistent with practices in other countries for aviation reporting. For example, in the United Kingdom, all occurrences reported to the Air Accident Investigation Branch are made available to the Civil Aviation Authority. Similarly, in the United States, any occurrences reported to the National Transportation Safety Board are made available to the Federal Aviation Authority.

Domestically, providing open access to CASA will be consistent with the practice in the maritime and rail modes of transport where the regulator and the investigator get copies of accident and incident notifications. The notifications are recognised as primary sources of information that the regulator and investigator both need to act on for the effective functioning of the safety system.

Next steps

After the consultation period on this initial proposal finishes, work will progress on developing a draft of amendments to clarify the regulator's access to accident and incident notifications. At the same time, the ATSB and CASA will seek to develop an information management protocol to ensure that the content of reports is managed appropriately.

Both agencies are subject to the requirements of the *Privacy Act 1988* (Privacy Act). Consistent with the principles in the Privacy Act the protocols the ATSB and CASA develop will address matters such as informing persons from whom information is collected about the purposes for which it may be used; storage of the information; and disclosing the information. The amendments and the information management protocol will be distributed for consultation at a later date.

Accident and incident notifications can be better used to enhance aviation safety through the regulator getting open access to the notifications.

The situation is different to the conduct of the ATSB's accident investigations. In the context of an investigation, the ATSB has exercised discretion to obtain evidence for purposes that are not regulatory in nature.

In these circumstances limitations on the regulator's access to evidence retained by the ATSB will be appropriately preserved, noting, in most cases, the regulator can obtain information from the original source. However, with accident and incident notifications it is not a sound or effective approach to impose a requirement to report separately to both agencies.

2. PRESCRIBED ACCIDENTS AND INCIDENTS TO BE REPORTED

At the start of 2011 the ATSB distributed a package for consultation on proposed changes to the prescription of accidents and incidents in the TSI Regulations that need to be reported. Since that time the ATSB has worked with the Commonwealth Government Office of Legislative Drafting and Publishing to create a draft of the proposed regulations. Attachment A to this paper is a copy of the draft regulations with an accompanying Explanatory Statement that we are seeking comment on from industry.

Less prescriptive approach

The regulations have been revised so that they are less prescriptive about each particular incident that must be reported. Instead of the detailed prescription that exists in the current regulations, the new regulations describe broader categories of occurrences that must be reported. This change is to improve the workability of the regulations. The more workable the regulations are, the better they can be used to source information about hazards and risks.

The problem with trying to be too prescriptive is that any number of different occurrences could happen during a flight and have an effect on safety. Although the current regulations have been effective in maintaining good levels of reporting, there are times when it hasn't been clear whether an incident should be reported because it is not listed in the regulations.

Reporting of accidents and serious incidents

The attached draft requires immediate reports of deaths, serious injuries and serious damage to aircraft and property. They also require immediate reports of any occurrence where there is an exposure to a serious risk of a death, serious injury or serious damage.

The 'serious risk' category encapsulates situations where there has been a near miss; effectively an accident was only avoided through chance. The requirement to report these sorts of occurrences will apply in relation to all types of aircraft operations.

Reporting of incidents

At the next level down is a requirement to provide a written report within 72 hours of less serious occurrences. These less serious occurrences – 'incidents' – are irregular occurrences happening in relation to the operation of an aircraft in which all the risks of a death, injury, damage to an aircraft or to property, were not eliminated, minimised or effectively managed, so far as reasonably practicable.

To be reportable it is not necessary that the occurrence involve a serious risk. The incident will be reportable on the grounds that an acceptable level of safety has not been achieved.

Maintaining an acceptable level of safety in which risk is effectively managed is consistent with the obligations on regular public transport operators applied through their safety management systems (see: CASA [CAAP SMS-1\(0\)](#)). The occurrence of all incidents in circumstances where there was not an acceptable level of safety will be reportable in relation to aircraft operations that are normally commercial in nature (i.e. aircraft operations other than private operations).

The breadth of these reporting requirements for operations like regular public transport and charter operations is consistent with the [Statement of Expectations](#) provided to the ATSB by the Minister for Infrastructure and Transport that stresses that priority should be given to transport safety investigations that have the potential to deliver the best safety outcomes for the travelling public.

A smaller subset of incidents will be reportable in relation to aircraft engaged in private operations. This is consistent with the [National Aviation Policy White Paper](#), that the ATSB remain actively engaged in monitoring and improving safety in private operations including those in the sport and recreational aviation sector.

However, recognising the self-acceptance of risk in this sector, the reporting requirements to the ATSB are not as extensive as they are for regular public transport/charter operations. Persons engaged in private operations will only need to report where the risks involved in an occurrence relate to significant safety events such as runaway incursions, fuel exhaustion and fuel starvation. They are the sorts of events that should be monitored in case trends start to develop across the industry.

Unmanned Aerial Vehicles (UAVs) are also addressed in the new regulations. As technology advances, UAVs are becoming more prevalent in Australia's airspace for a range of purposes from humanitarian, law enforcement, security and commercial activities. In order to ensure the mandatory reporting requirements recognise the increasing use of these aircraft, provision will be made for the reporting of incidents involving UAVs, similar to the provisions covering private operations.

Guidance material

For passenger carrying operations, private operations and UAV operations, a set of guidance material has been produced to assist those persons with reporting obligations to determine whether a particular incident needs to be reported. This guidance material has been included in the Explanatory Statement accompanying the draft regulations.

When the regulations are finalised the material will be placed on the ATSB's website and also included in the Aeronautical Information Package (AIP) published by Airservices Australia. Comments on the usefulness of this document as an accompaniment to the regulations would be appreciated.

Disclosure of information for management of hazards and risks

The changes to the content of the TSI Regulations for mandatory reporting are aimed to enhance their capacity to source information that identifies hazards and risks.

Part 1 of this paper discussed the need to make this information available to CASA so it can be used by CASA to perform its safety function. Similarly, information from accident and incident reporting needs to be made available to other persons or organisations in the industry in order for them to implement risk management measures. The supply of information needs to be appropriate to the function the person or organisation performs.

The industry will continue to be able access [Weekly Summaries](#) of accident and incident reports on the ATSB's website. The industry will also have access to [ATSB safety investigation reports](#) and [safety research and education materials](#) that draw on information contained in accident and incident notifications.

In addition, the ATSB is in the process of developing a publicly accessible and searchable database of accidents and incidents that will be available through the ATSB's website. Persons and organisations in the safety system with risk mitigation responsibilities can draw on this information and combine it with other safety information they may access to improve safety.

A regular public transport operator or an air service provider would necessarily look to hazard and risk information it has collated through the implementation of its safety management system, including maintaining an internal database of accident and incidents occurring within the organisation. The objective is to learn from not just what is happening within your own organisation, but also in the wider industry.

Next steps

After the consultation period is finalised the ATSB will work with Office of Legislative Drafting and Publishing to finalise a set of regulations. They will be made into law, subject to the approval of the Minister for Infrastructure and Transport and the Governor-General. They will then be tabled in Parliament. Prior to coming into effect the ATSB will distribute educational material to those persons and organisations with reporting responsibilities.

3. VOLUNTARY AND CONFIDENTIAL REPORTING

The Explanatory Memorandum accompanying the new REPCON confidential reporting regulations at Attachment B goes into detail about how the scheme will operate in practice.

Its operation in the multi-modal environment will not be distinctly different from the way that REPCON aviation currently operates. The scheme will still provide a means for any person to report safety concerns and have their identity protected. The protection of the reporter's identity is there to encourage reporting. Identity protection is also afforded to any person referred to in the report, as REPCON's purpose is not to be a 'dobbing' scheme.

REPCON's purpose is to source information about unsafe practices within an organisation or between organisations that haven't been able to be addressed through other means.

REPCON has been designed to source information that usefully identifies organisational hazards and risks while also being able to communicate de-identified information it acquires to persons and organisations best placed to manage those hazards and risks. Its role is to contribute its confidentiality protections, which encourage disclosure, to a broader framework of hazard and risk identification tools within the safety system.

The ATSB can use confidential reporting to identify trends of hazards and risks that are pertinent to more than just one operator, or that involve interactions between operators and the regulator. As a multi-modal scheme, REPCON will also be able to use reported safety concerns to identify hazards and risks in one industry that should be brought to the attention of another industry in the interests of safety.

Key elements of the multi-modal REPCON scheme

Any person may report

As stated above, any person who has a concern about safety in the industry will be able to make a REPCON report. REPCON is available in the circumstances where a person has a concern about safety but is, for some legitimate reason, worried to keep their identity confidential when they make a report.

What can be reported?

Given the focus of the scheme on organisational hazards and risks, typical reports include concerns about unsafe scheduling or rostering, concerns with the unsafe application of operating procedures or by-passing safety instructions.

Because of the confidentiality requirements some matters cannot be reported. These are:

- reports of a serious and imminent risk to health, life or transport safety that requires an immediate response;
- reports of criminal conduct and transport security issues.

To adequately respond to a report of the above nature there is always the possibility that someone's identity will need to be disclosed. In these circumstances a guarantee of confidentiality would not be given.

Further, for REPCON to be effective it has to be protected from misuse. The *Commonwealth Criminal Code Act 1995* will be relied upon to deter people from making a false or misleading report. Industrial relations matters will also be unreportable to ensure REPCON is not distracted from delivering safety outcomes.

What happens with the report?

If a report indicates a safety concern involving an aircraft operator, as an example, the ATSB will remove information from the report that identifies individuals and then ask the operator to comment on the issue raised.

Depending on the nature of the safety concern, the operator may, in response, advise that they are seeking to do such things as make changes to company practices, increase training or raise awareness amongst employees of a hazard that needs to be avoided. The operator may also review its own reporting systems to determine whether persons can be encouraged to report similar issues directly to the operator rather than through the ATSB with an identified need for confidentiality.

After the aircraft operator has been contacted for their comment, the de-identified report is forwarded to CASA for appropriate action. CASA may consider that no further action is required or it may consider that it needs to conduct an education campaign, revise guidance material, increase surveillance or take some other form of regulatory action. Importantly, the ATSB will seek to close the loop with the reporter on what happens.

Information about REPCON reported safety concerns is also made available to the industry in the ATSB's section in [Flight Safety Magazine](#). The ATSB encourages industry personnel to review these reports to consider whether there are any lessons that can be learnt in their own organisation. Also, if information from REPCON reports indicate that there is credible evidence of a significant safety issue, the ATSB may consider initiating an investigation under the TSI Act.

Balancing confidentiality with safety action

When the ATSB consulted on confidential reporting at the end of 2011 it noted the challenge between being able to make information available for safety action while still maintaining confidentiality. One of the difficulties with confidential reporting is keeping a reporter's identity confidential where they make allegations against another individual. The person whom the allegations are made against may be unable to properly and fairly respond if the person who is making the allegations becomes anonymous.

As one of the ATSB's responsibilities under section 12AA of the TSI Act is to avoid involving itself in the casting of adverse inferences against any person, it was determined that the new REPCON scheme should continue to provide confidentiality for both the reporter and individuals referred to in the report. If there is a problem where action needs to be taken with respect to an individual, then REPCON may not be the best reporting avenue (CASA may be more appropriate but it also is limited with respect to the confidentiality it can provide). REPCON works most effectively when the reportable safety concern is used to address hazards and risks of an organisational nature.

The new regulations

As a result of feedback to the material released in September 2011 the ATSB has made some changes to the previously released unofficial draft. Most of those changes are minor or technical and seek to clarify some issues raised by submitters or provide further information for potential reporters. The proposed draft of the regulations is at

Attachment B, along with an Explanatory Statement which goes into greater detail as to how the Regulations will work. However, in short, the new multi-modal REPCON scheme will not differ significantly from the current schemes for aviation and marine. A summary of the submissions received and the ATSB's response may be found at: www.atsb.gov.au/about_atsb/legislation/repccon-amend.aspx

Next steps

After the consultation period is over, and any significant issues are resolved, the ATSB will work with the Office of Legislative Drafting and Publishing to finalise the Regulations. Subject to the approval of the Minister for Infrastructure and Transport, and the Governor General, the regulations will be made into law and tabled in Parliament.

As with the mandatory reporting regulations the ATSB will distribute educational material to persons in the industry who are most likely to be affected by REPCON.