



## Enhanced Rail Mandatory and Confidential Reporting

The Australian Transport Safety Bureau (ATSB) is consulting on two reforms to mandatory and confidential rail reporting systems in Australia:

1. proposed amendments to the Transport Safety Investigation Regulations 2003 (TSI Regulations) to provide for reporting of notifiable occurrences to the ATSB; and
2. the draft Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulations (known as the REPCON scheme - 'Report Confidentially') which will provide a confidential reporting scheme for the rail, aviation and maritime industries (**Attachment**).

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 draft amendments to the TSI Regulations. As the mandatory reporting reforms are related to corresponding reforms in the Rail Safety National Law (RSNL – establishing the national rail safety regulator), the ATSB and the National Transport Commission (NTC) and the

National Rail Safety Regulator Project Office will jointly engage with the industry to consult on the draft when it is available.<sup>1</sup>

The proposals behind item 2 have already been subject to extensive consultation. After the current round a final set of voluntary and confidential reporting regulations will be drafted and finalised for Ministerial and the Governor- General's approval and parliamentary tabling.

### **Why is reporting important?**

Mandatory and confidential reporting are important sources of information about accidents and incidents and safety concerns that usefully identify hazards and risks to rail 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.

The ATSB is able to use its independent status in the management of mandatory and confidential reporting schemes 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 providers and the regulator. There is a systemic focus to the ATSB's contribution to the safety system.

The changes that are proposed to the mandatory reporting regulations in Item 1 are largely concerned with setting out what Category A and Category B occurrences must be reported to both the ATSB and to the NRSR in the future, how those reports are to be made and what the reports are to contain. The changes will also provide a process for a sharing of the information from the notifications between the ATSB and the NRSR.

With respect to the establishment of the REPCON scheme at item 2, the ATSB is using the consultation process to promote the purpose of the scheme and encourage its use by the rail sector for the reporting of safety concerns.

Overall, the changes will enhance the sourcing of safety information about hazards and risks and the distribution of it to the stakeholders within the rail safety system. That includes rail transport operators, rail safety workers and their representative bodies, the Regulator, the ATSB and rail industry standard setting bodies.

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<sup>1</sup> A copy of the National Rail Safety Law is available on the NTC's website: [www.ntc.gov.au](http://www.ntc.gov.au). Section 121 of the law and Regulation 40 contain the notification requirements of that legislation. The Bill has passed through both houses of the SA – copy is at [www.legislation.sa.gov.au/LZB/CURRENT/RAIL%20SAFETY%20NATIONAL%20LAW%20\(SOUTH%20AUSTRALIA\)%20BILL%202012.aspx](http://www.legislation.sa.gov.au/LZB/CURRENT/RAIL%20SAFETY%20NATIONAL%20LAW%20(SOUTH%20AUSTRALIA)%20BILL%202012.aspx) (Still S121 that relates to reporting requirements)

## 1. MANDATORY REPORTING

In September 2011 the Rail Safety Regulator's Project Board determined that mandatory reporting of rail occurrences across Australia would occur as follows:

1. Category A occurrences would be reported immediately to the ATSB by telephone<sup>2</sup>;
2. The written report of the Category A occurrence must go to the National Rail Safety Regulator (NRSR) within 72 hours of the occurrence; and);
3. All written reports of Category B occurrences must be provided to the NRSR within 72 hours of the occurrence.

The changes to mandatory reporting in the TSI Regs will operate to:

1. support the ATSB's role as the national rail investigator, investigating a wide range of accidents and incidents. The ATSB needs to be in a position where it has immediate access to notifications of Category A Occurrences; and
2. support the whole of industry effort to manage risk to an acceptable level. A national database of safety occurrences will provide the opportunity for all stakeholders to identify trends and emerging risks.

### **Why the proposed reporting structure?**

The ATSB's function is to improve transport safety. In rail it will perform that function through:

- receiving notifications;
- undertaking accident and research investigations; and
- reporting objectively; and
- providing appropriate access to notifications and investigation material to other entities in the rail safety system.

In performing that function and making the information available, this will also assist other entities in their roles with respect to rail safety.

It is important that the ATSB receives the immediate oral report as this will ensure the ATSB can quickly gain the first hand knowledge required to make an informed decision on whether or not to investigate. For receiving the notifications the ATSB has internal expertise as well as well-developed and proven systems and processes to assess whether a matter warrants an investigation. The ATSB can rapidly deploy and preserve perishable evidence at the accident site.

The proposed structure will have provisions for sharing occurrence data between the ATSB and the NRSR. This will ensure that the NRSR has access to the occurrence information in the event that a compliance investigation is required.

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<sup>2</sup> [www.nrsrproject.sa.gov.au/data/assets/pdf\\_file/0007/72790/int9F.PDF](http://www.nrsrproject.sa.gov.au/data/assets/pdf_file/0007/72790/int9F.PDF)

### **Amendments to the TSI Regulations**

It is proposed to address the regulatory changes by making amendments to Part 4 of the TSI Regs. These amendments will be aligned the proposed requirements in the draft National Rail Safety Law and Regulations, particularly Regulation 40<sup>3</sup>. The outcome will be a harmonisation of the reporting requirements for the rail industry under both the Commonwealth TSI Regs and under the National Rail Safety Law and Regulations. That harmonisation will give effect to the September 2011 Project Board agreement. The framework of mandatory reporting will be:

1. Immediate notification of the most serious matters will be made by telephone to the ATSB. This will be reflected in both the TSI Regs and supported by the Regulator exercising its power under section 121 of the RSNL to nominate the ATSB as recipient of Category A occurrences in the Regulations to be made under RSNL. Once a Category A matter occurs, a rail transport operator will have complied with their reporting obligations under both sets of legislation if they make an immediate report to the ATSB.

The process is different to the current arrangements whereby a telephone report can go to a State regulator or the Office of Transport Safety Investigations (in New South Wales) who then passes this report to the ATSB;

2. Within 72 hours of the oral notification to the ATSB, the rail transport operator must provide a written report of the Category A matter to the NRSR. This will also constitute concurrent compliance with the Commonwealth TSI Act and Regs and the National Rail Safety Law and Regulations;
3. Less serious matters or Category B occurrences will be reportable to the NRSR within 72 hours. Again, there will be compliance with both sets of laws;
4. The ATSB may, in some circumstances, request further information from crew members of rail vehicles, but this will only be in limited circumstances; and
5. The proposed regulations will make arrangements for the ATSB and the NRSR to exchange Cat A and Cat B material. The ATSB will hold the national rail safety data set.

The ATSB will be providing further information and guidance to rail employees and their representative bodies prior to and following the rollout of the amended regulations.

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<sup>3</sup> [www.ntc.gov.au/filemedia/Reports/NRSRRegulationsFinal.pdf](http://www.ntc.gov.au/filemedia/Reports/NRSRRegulationsFinal.pdf)

### **Access to data**

From 2013, the ATSB will share data for all Category A and B rail occurrences with the NRSR. Access to the rail dataset will enable the ATSB to:

- proactively monitor the levels of safety in rail across the various parts of the industry, as is currently the case in aviation;
- routinely publish rail safety statistical publications and research publications on a range of topics that will be informed by both the occurrence data and findings from ATSB investigations;
- conduct research and trend monitoring to guide the selection of occurrences to be investigated and drive rail safety education material produced by the ATSB; and
- make the rail occurrence database held by the ATSB available for data requests from industry, the media and the general public, both through specific requests to the ATSB and through a limited searchable public database hosted on the ATSB website.

Currently the ATSB maintains publicly available weekly summaries of rail occurrences as well as investigation and research reports. That information will continue to be available to the rail industry and its accessibility will be greatly enhanced by its availability through the ATSB as a 'one stop shop'. The NRSR, operators and others in the rail safety system can use the data in conjunction with information they have obtained through their own information gathering tools to monitor hazards and risks and manage them.

### **Next steps**

After the consultation period on this paper is over, and any significant issues are resolved, the ATSB will work with the Commonwealth Government Office of Legislative Drafting and Publishing to prepare an Exposure Draft of the Regulations for a round of public consultation. This consultation will be conducted in conjunction with the NTC and the project office for the national rail safety regulator. These two bodies have responsibility for the development of the National Rail Safety Law and Regulations.

## 2. VOLUNTARY AND CONFIDENTIAL REPORTING

In September 2011 the ATSB sought public comments on proposed reforms to its REPCON schemes. The thrust of the reforms was the establishment of a voluntary and confidential reporting scheme for rail and consolidation of the existing REPCON schemes that exist for both aviation and marine transport. A full summary of the issues raised and the ATSB response to those issues may be found at [www.atsb.gov.au](http://www.atsb.gov.au)

Apart from the scheme administered by the Office of Transport Safety Investigations in NSW, legislated confidential reporting for rail in has not been provided for to date. Under the new multi-modal REPCON scheme to be operated by the ATSB any person to report safety concerns and have their identity protected. The attached regulations will provide protections in relation to the disclosure and use of the content of the report. The legislative protections are an important factor encouraging people to report something they may not otherwise report.

Identity protection is also afforded to any person referred to in the report as REPCON's 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.

From its experience as the administrator of the current REPCON aviation and marine schemes, the ATSB has a strong record with confidential reporting. As with mandatory reporting, ATSB systems are well established, well developed and proven in the receipt and administration of confidential information in REPCON reports.

The essential features of the new multi-modal REPCON scheme are:

### **Anyone can report a safety concern**

Any person who has a concern about safety in the rail industry can report through REPCON. REPCON can be used where a person has a safety concern but wishes to keep their identity confidential when making a report. Reports may be made either by telephone or in writing.



### **What can be reported?**

REPCON can be used to report anything that causes someone to be concerned about safety. 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 or 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 should 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 will happen to a report?**

If a report indicates a safety concern involving a rail 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 rail operator has been contacted for their comment, the de-identified report will be forwarded to the NRSR for appropriate action. The NRSR may consider that no further action is required or it may consider that it needs to conduct an education campaign, revise guidance material, or take some other form or regulatory action. Importantly, the ATSB will seek to close the loop with the reporter on what happens.

### **Balancing confidentiality with safety action**

When the ATSB consulted on confidential reporting in September 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 about 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, the ATSB has 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. It may be preferable for the reporter to be referred to the National Rail Safety Regulator or be encouraged to report to their employer. 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 contained in the **Attachment**, 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](http://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.