

REPCON SUBMISSION SUMMARY – Aviation, Marine and Rail

Theme	Submission	ATSB Response
General Support for the scheme and the ATSB being the administrator	The ATSB received a number of submissions indicating support for a REPCON scheme in rail as part of a consolidated REPCON scheme with aviation and marine and for the ATSB's role as administrator of the scheme	The ATSB thanks those who made submissions supporting the scheme and the ATSB's role in administering the scheme
1. Operational	<p>s.137.1 of the Criminal Code is not strong enough and would be hard to prove if a person reported without genuine concern and honest intent.</p> <p>The Regulations should outline the specific rail related security reporting arrangements and to which organisation any such rail related information may be reported.</p> <p>The section on reporting acts of terrorism and acts of unlawful interference with aviation needs further consideration. Current drafting (Regulation 17) applies only to transport vehicles and not to all railway assets covered by these Regulations, such as stations, tunnels and bridges.</p> <p>It was not clear why unlawful interference with aviation is specifically mentioned.</p>	<p>The ATSB considers that the penalties for providing false and misleading information are strong enough. The ATSB also considers that where a report is deliberately misleading, this will be established as part of the verification procedures that the ATSB has in place.</p> <p>The regulations are not designed to mandate to whom persons may report security concerns. In general, security related matters tend to be reported by members of the public who may not have sufficient familiarity with the regulatory framework to know that these are not reportable safety concerns. The regulatory framework is designed to allow the ATSB to pass on security concerns to the appropriate authorities. The ATSB expects that industry operators' systems provide separately for the reporting of security concerns by employees.</p> <p>The ATSB has reviewed the provisions relating to reporting of acts of terrorism and is satisfied that the provisions in the Exposure Draft are sufficiently broad. It must also be understood that security and terrorism matters are not reportable under the scheme, and as is stated in the comment above: <i>The regulatory framework is designed to allow the ATSB to pass on security concerns to the appropriate authorities if these should come to the ATSB's attention.</i></p> <p>This reflects specific offences under the <i>Aviation Transport Security Act 2004</i>.</p>

Theme	Submission	ATSB Response
	<p>REPCON will be of the greatest benefit if awareness and acceptance is high among front line rail workers. To that end the primacy given to written reports seems overly bureaucratic. While telephone contact is not ruled out, it is not the obvious preferred method and other reporting methods such as a text message or mobile communication are not discussed.</p> <p>Certain information will be needed before a report can be processed but a more interactive approach may reap benefits in more and better quality reports.</p> <p>The sections of the regulations detailing arrangements for regulators to be sent information needs to be reviewed to appropriately deal with the different regulatory regimes in place between the transport modes.</p> <p>In the co-regulatory model used in the rail Industry where the operator is responsible for setting safety standards and risk acceptance levels rather than the regulator, it would be more appropriate that Regulation 15 applied to those operators. Industry suggests some amendment is needed in this area.</p> <p>It is suggested that the REPCON effectiveness and efficiency is added to the ATSB annual report requirements at 63A of the Transport Safety Investigation Act. In doing so, this will provide a more meaningful and transparent process to be respected by all stakeholders.</p>	<p>Written reports are a significant aid in the verification of a matter. Where a telephone report is made, the ATSB reduces the details to writing and sends these to a reporter for verification. If a reporter will not provide sufficient detail to enable verification the report will not be accepted. This helps minimise frivolous or malicious reporting. The ATSB intends that a telephone reporter provide the same detail as would be required in a written report.</p> <p>The ATSB works closely with reporters and operators in establishing the scope of the report and verifying the matter. The ATSB is iterative so far as the confidentiality protections allow.</p> <p>The procedures in the regulations are intended to be consistent across the modes. The ATSB does not consider that these procedures require special arrangements based on mode.</p> <p>The ATSB considers that the procedures are consistent with co-regulation. Where reports are proposed to be sent to a regulator or other body they will first be sent to persons or operators named in the report to accord them natural justice. Any comments made must be taken into account when deciding whether to send the report to the a regulator or other body. Those requirements may only be overridden in limited circumstances.</p> <p>The ATSB Annual Report already includes information about confidential reporting.</p>

Theme	Submission	ATSB Response
	<p>The REPCON review process (proposed regulation 20) should be further defined, for example, what committees, how many, who will be committee members, what will be the review period, and will stakeholders such as Industry be represented. Also, will the review results be made public.</p> <p>Feedback to the reporter is not covered in the proposed regulations. This is an important motivational element.</p> <p>There also needs to be a system to identify and manage reports that are rejected by the ATSB, for whatever reason.</p> <p>It is not clear what (if any) transitional arrangements will be in place (both for processes and information gathered) from the current state-based schemes to the proposed National scheme. Presumably there will be a requirement to have a phased introduction of the scheme.</p> <p>For example, what will happen if a person calls the current State confidential reporting number? What is intended to happen to information collected under the current State confidential reporting scheme?</p> <p>It is difficult to form a definitive view at this stage, as there is limited information regarding how the National Regulator's Office will function. It is also unclear how the scheme will operate in the proposed National Rail Safety Regulator environment. Finally it is unclear how this proposed legislation will interact with the National Regulator legislation.</p>	<p>The ATSB will take advice from modal stakeholders where committees are to be formed. Subject to any issues of confidentiality reviews will be made public.</p> <p>The ATSB provides feedback to reporters as a standard operating procedure. This does not need to be prescribed in the regulations.</p> <p>For reports that are not accepted there is a process in the regulations to identify and manage these.</p> <p>The new scheme will commence by 1 January 2013. There are no plans to phase the scheme in. If individual jurisdictions propose to keep their own reporting schemes or dispense with them then this is a matter for those jurisdictions.</p> <p>If a matter is reported to a state scheme and also reported to REPCON, the ATSB will make a determination on whether to accept the report and process it under the REPCON scheme. These are matters that will be considered as part of wider collaboration between the ATSB and the states with extant schemes and are more appropriate to be addressed operationally rather than through the regulations.</p> <p>By way of illustration, for the aviation mode, the reporter's de-identified text is forwarded to the 'named party' for a response. A copy of the named party response (any privacy markers removed) and the reporter's de-identified text are forwarded to CASA. CASA, under the current MOU with the ATSB, have 28 days to respond to the reporter's claim and named party response.</p>

Theme	Submission	ATSB Response
	<p>While we understand the need for natural justice, it is somewhat concerning that before the ATSB intends to forward information to a regulator, they first forward a copy of the report to the involved person or organisation referred to within the report (for comment). It is arguable that this may have potential consequences for any subsequent compliance investigation.</p> <p>What happens in the event that a person attempts to report a non-reportable safety concern, or a confidential report is made, which is later determined to be in relation to a non-reportable safety concern?</p> <p>The discussion paper asks the question: 'how can the ATSB best get the information to the people who need to use it to manage risks and hazards in conjunction with other information collections systems?' Further work is required to identify how this information could be</p>	<p>Under the proposed regulations, as is currently provided, the ATSB will have the discretion to inform the National Regulator, subject to the conditions imposed by the REPCON regulations, of the contents of a REPCON report. Any action taken by the National Regulator would be commensurate with the REPCON regulations and its own powers and functions under its legislation. The relationship between the ATSB and the NRSR in relation to REPCON will be set out in the MoU between the two organisations. Further detail of the NRSR's own processes in relation to the consideration of confidential reports via the ATSB should be sought from the NRSR Project Office directly.</p> <p>The focus of REPCON is ensuring confidential reporting and non-punitive actions. According natural justice is commensurate with those aims and ensures that material is directed to safety related purposes. Material from a REPCON is inadmissible in proceedings in any event. The ATSB is not aware of any incidence in the current schemes of the according of natural justice interfering in a compliance investigation by a regulator.</p> <p>There are arrangements in proposed regulations in the Exposure Draft for non-reportable matters. Also, while dealing with a report the ATSB undertakes a robust process of verification that the matter is reportable under the scheme or whether the reporter ought be referred to another agency or organisation. The proposed regulations have limitations on the retention or disclosure of material from non-reportable matters.</p> <p>The ATSB aims for continuous improvement in its RPECON scheme and further work may be required across the modes to improve the operational effectiveness of REPCON.</p>

Theme	Submission	ATSB Response
	<p>best communicated to rail operators and regulators.</p> <p>It is suggested that the proposed expanded educative function of the ATSB, the building up of a research data base and expansion of the research and analysis capacity to cover all three modes is included under Powers and Functions (noted that the functions of the national rail safety regulator under rail safety law includes: to conduct research, collect and publish information relating to rail safety and to provide, or facilitate the provision of, advice, education and training in relation to rail safety).</p> <p>The new regulations will continue to require the ATSB to determine whether the REPCON scheme is the most suitable avenue for making a report. Can this assessment can be provided in writing to the reporter?</p> <p>The Paper refers to processes to verify information in a report and indicates “this may involve contacting the reporter and other involved parties to discuss its contents.” Do other involved parties include Unions? A Union could be providing a reporter with advice or have experience of similar transport safety matters. Clarification from the ATSB on this issue is required.</p> <p>The aviation and maritime regulation –Reports the making of which may have constituted an offence-refers in a Note to section 137.1 of the Criminal Code and that it is an offence for a person to knowingly supply false or misleading information to a Commonwealth Officer. It is suggested that the regulations should also include the penalty for the offence, which is imprisonment for a period of up to 12 months. This enables the entire provision to be comprehended rather than the information being contained in several pieces of legislation and this acting as a deterrent to a full understanding by industry participants.</p>	<p>The ATSB’s functions under the proposed regulations and the purposes of the scheme address this issue.</p> <p>The reporter is provided with oral and written feedback as to REPCON being the most appropriate reporting vehicle.</p> <p>The ATSB would provide an opportunity to comment to a Union if it were named in a report, otherwise the confidentiality provisions in the regulations do not allow the ATSB to contact the Union.</p> <p>The ATSB considers it sufficient that the regulations make specific provision for dealing with false and misleading reports and which adequately draws attention to the fact that this is a criminal offence.</p>

Theme	Submission	ATSB Response
	<p>The Paper indicates a broad power to deal with the report. The CIRAS practice in the UK is noted and supported where it publishes in its bi-monthly newsletter the nature of the report and how companies have dealt with it including information on how the reporters have rated the operator's response to the safety matter raised. These practices both publicise the confidentiality scheme, outcomes and promote transparency and accountability of rail companies.</p> <p>Noting the ATSB's obligations with regard to reporting of security related matters and the current provisions of the aviation and maritime regulations, does this regulation needs to be sub divided into mode specific legislation. Prima facie, a number of the circumstances in the existing regulations would not appear to have application to rail.</p> <p>It is requested that regulation 20 specifically provides for the industry union from each of the three sectors to be appointed to such a committee(s). Each of these sectors has a high union density. Combined with these Union's experiences in dealing with transport safety matters, and their ability to effectively represent the interests of employees in these sectors, this warrants the regulation being reshaped to include union representation.</p> <p>Some marine crews have limited English and a mistrust of authority. Interpreters should be made available.</p> <p>Environmental threats should be included in the purpose of the scheme – owners and operators who employ illegal systems to get rid of oily water and waste oils likely have the same casual attitude to safety.</p>	<p>The regulations give the ATSB a broad power to disclosure information from a report for the purpose of informing industry. For example, the ATSB may disclose information from a report as an information brief or alert bulletin to industry so that safety issues may be addressed, or through direct contact with a person or organisation that is in the best position to immediately correct the safety matter.</p> <p>The ATSB does not consider that modal specific regulations are required. The proposed regulations are necessarily subdivided to refer to an act of terrorism involving or related to a transport vehicle (which is aviation, marine and rail) and also acts of unlawful interference with Aviation which relates to specific offences under the <i>Aviation Transport Security Act 2004</i>. This regulation is merely to facilitate the ATSB being able to pass information to appropriate authorities.</p> <p>The ATSB does not consider it necessary to mandate that a particular body be on any committee it establishes. The ATSB considers that any committee which did not have broad representation in any event may not be effective in assessing the effectiveness of REPCON.</p> <p>The ATSB is aware of this. REPCON forms are available in Chinese, Filipino, Hindi, Indonesian and Ukrainian. Interpreter services can also be provided. In the rollout of the new scheme it will be emphasised that the ATSB is an investigatory body and is independent of police, regulators and other authorities.</p> <p>The primary purpose of the scheme is to provide for the voluntary reporting of matters that affect or might affect transport safety. It is not practicable to list every conceivable issue. However, where environmental threats would or might affect transport safety these are</p>

Theme	Submission	ATSB Response
	<p>In many other case of maritime environmental incidences, there lurks an underlying and systemic approach to cost avoidance, dangerous safety practices and other substandard operations</p> <p>Interpretation: 'regulatory authority' – 'or an agency of a State or Territory' is for those jurisdictions who do not have AMSA as regulator - if not, why is this inserted?</p> <p>Application re Marine –it is suggested that the references need to be broader than just to the <i>Navigation Act 2012</i>.</p>	<p>reportable and the ATSB would receive and act on any such report made. It should be noted, however, that any breach of the criminal law (section 10 of the Exposure Draft refers) is not reportable under REPCON, and should be reported to a regulatory authority, harbour master, port authority or the police as appropriate. It should also be noted that if the ATSB reasonably believes criminal conduct has occurred it can nonetheless make that information available to the appropriate authorities.</p> <p>The REPCON scheme is for the voluntary reporting of issues – it is not a mandatory reporting or regulatory surveillance scheme. If environmental incidences are associated with safety issues these may be reported through REPCON or could be required to be reported under mandatory reporting arrangements. Long term trend analysis would be required to assess the correlation between environmental incidences and lax safety practices.</p> <p>This definition has now been changed in the Exposure Draft and the phrase 'transport safety authority' is used. The intent is the same and it is to ensure that the ATSB can provide material to bodies other than AMSA where appropriate – particularly where the report is outside the scope of the scheme but needs to be forwarded.</p> <p>When the paper was originally released the jurisdiction in relation to REPCON Marine was limited to Navigation Act 1912 vessels.</p> <p>However the Explanatory Statement provided at page 12 states:</p> <p><i>In REPCON marine, the regulations only apply to the operation or safety of a ship to which the Navigation Act 1912 applies. Due to a number of exclusions, current coverage under REPCON marine is limited to a</i></p>

Theme	Submission	ATSB Response
	<p>How REPCON reports are to be made – suggested that with REPCON requirements and other reporting requirements in proposed Marine legislation this would, in effect, increase the regulatory burden and compliance costs</p> <p>Non-reportable criminal conduct – inconsistent terminology usage - terrorist act/act of terrorism</p> <p>Proposed regulation 15(4) is an issue – the application of this is predicated on whether allowing 5 working days for comment would inhibit the ATSB from achieving a purpose of the scheme. This is open to interpretation. It does not seem to allow providing the report to a regulator prior to giving a copy to a person or organisation.</p>	<p><i>small range of ships. These include ships on interstate and overseas voyages and other ships to which the Navigation Act 1912 applies. The scheme does not currently apply to pleasure craft, inland waterways vessels or fishing vessels (unless they are involved in an incident concerning a ship to which the Act does apply).</i></p> <p><i>In the future, it is possible that a wider class of vessels will be covered. However, this is dependent on regulatory reform in the maritime sector.</i></p> <p>Confidential reporting under REPCON is voluntary. These proposed regulations do not require a person to report any matter. No obligations to report are imposed by the proposed regulations. As such the proposed scheme is not a substitute for mandatory reporting and a person with mandatory reporting responsibilities cannot discharge those responsibilities by making a report under REPCON.</p> <p>The terminology issue has been rectified.</p> <p>The ATSB is exempt from compliance with the regulation if the requirement to consult before passing the information to a regulator would compromise the REPCON scheme. For example, it may be impossible to provide information from a report to a person or organisation named in the report without identifying an individual, such as the reporter. In such cases, complying with the regulation could compromise the REPCON scheme. It would be a breach of the regulations if information was passed on that reveals the identity of an individual without their consent. The proposed regulations ensure that the requirement to consult with the parties concerned does not apply in such circumstances, preserving the confidentiality of the scheme.</p>

Theme	Submission	ATSB Response
	<p>Proposed new Regulation 8 will move away from a prescriptive to a general approach. This could broaden the scope of reportable safety concerns and worsen the situation for regulators in dealing with matters arising from REPCON.</p> <p>The definition of 'reportable safety concern' excludes non-reportable criminal conduct. While correct it is difficult to comprehend the meaning.</p> <p>Draft regulation 16 is effectively the same as existing regulation 16. If disciplinary action is taken what steps are available to the ATSB? What penalties are available to discourage this?</p> <p>There is an important and legitimate need for certain kinds of information, including that from REPCON, to be made available to a regulator for the purpose of enabling or facilitating the regulator's ability to take such action and mitigate threats to safety.</p>	<p>Further, the ATSB is exempt from compliance if that is impractical. This may be the case where a ship is in port for a short period of time, and will depart before the five working days to comment on the report has expired. If the ship departs before it is possible to address the safety concerns raised in the REPCON report, then the purpose of the scheme which is to facilitate safety awareness and safety action, would be defeated, thereby making compliance with the regulation impractical.</p> <p>Section 20A of the TSI Act authorises regulations for the voluntary reporting of any matter that affects or might affect transport safety. That is very broad. The examples in the current regulations while comprehensive are not exhaustive. The ATSB is currently developing a REPCON (mode specific) web page which will incorporate overviews of completed REPCONs (including safety outcomes), statistics and can even provide examples of 'reportable safety concerns' for each mode</p> <p>This definition has been abandoned. In the Exposure Draft no criminal conduct is reportable under REPCON.</p> <p>There are no penalties in place for any breach of this regulation. The ATSB considers that it is highly unlikely that administrative or disciplinary action could be made or taken due to the protections on confidentiality in the TSI Act and the proposed regulations.</p> <p>The ATSB considers that this is valid, however the provision of information to a regulator must be balanced against the need to protect the identity of individuals and ensure that the information from the scheme is not used to take punitive action, or action that might be considered to be punitive. That would detract from the purpose of REPCON which is to focus on addressing</p>

Theme	Submission	ATSB Response
	<p>Regarding proposed Regulation 4: excluding from REPCON those matters which constitute an offence carrying a penalty of 2 years imprisonment does not adequately reflect that many aviation offences are not punishable by imprisonment, but are nonetheless seen as being serious.</p> <p>Regarding proposed regulation 6(2)(c): it is necessary to add in words to the effect that the material may be provided to a regulator.</p> <p>Regarding proposed Regulation 14(3)(c): this regulation should also encompass threats to aviation safety.</p> <p>Proposed regulation 15. This regulation should expressly provide that information disclosed under the proposed regulation is provided under section 61 of the TSI Act. If necessary, consequential amendments should be made to the TSI Act.</p> <p>Proposed Regulations 16 and 16A: It is suggested that proposed Regulation 16 should allow a REPCON report to be used to make a decision of an administrative character if it were in the demonstrable interests of safety. It is also suggested that proposed regulation 16A be similarly redrafted to the effect that a REPCON report be admissible in evidence where a decision of an administrative character has been made in the demonstrable interests of transport safety.</p>	<p>safety issues rather than be a 'dobbing in' scheme.</p> <p>In the Exposure Draft, the ATSB is now proposing that no breach of the law will be reportable under REPCON as these matters should be reported to the appropriate authorities.</p> <p>In the Exposure Draft this part of the regulations has been clarified to make clear that information may be provided to aviation, marine and rail industries and "transport safety authorities" and "emergency services organisations"</p> <p>Given that the REPCON regulations are multi-modal, the appropriate insertion is 'transport safety', and this is reflected in the Exposure Draft.</p> <p>The ATSB does not consider it necessary to make any reference to section 61 of the TSI Act for the purposes of the proposed regulation. In the Exposure Draft this particular provision has been amended to provide only that the ATSB may provide information to a transport safety authority if it is in the interests of transport safety.</p> <p>The ATSB does not agree with these propositions. The ATSB considers that this would unreasonably compromise reporting under the REPCON scheme. In the Exposure Draft no change is proposed for the provision regarding use of REPCON reports for disciplinary or administrative action.</p> <p>In relation to admissibility, the ATSB has clarified that while a report or evidence about the contents of a report will remain inadmissible, where a report leads to a separate inquiry, the material obtained by that inquiry will be admissible.</p>
2. Potential for abuse of the system	Abuses of the reporting system would be expensive, time consuming and disguise genuine issues. The	The ATSB has robust existing processes and systems developed for marine and aviation to judge whether a

Theme	Submission	ATSB Response
	<p>ATSB needs to have discretion to dismiss non-safety related matters and there needs to be accountability for costs for vexatious/malicious allegations. Confidentiality protections can lead to abuse, particularly from malicious reporters or disgruntled persons.</p> <p>The correct balance between providing enough information to an organisation in order that it may do something about a matter and maintaining a high level of confidentiality is not struck by the regulations.</p> <p>Confidential reporting is open to abuse and the design of the system needs to include provisions that serve to provide disincentives to intentional false reporting for whatever purpose.</p>	<p>matter is appropriate for REPCON (as is required by the regulations). The new regulations, as with the current arrangements allow the ATSB to not accept a report if it does not consider that it is a matter for REPCON. The ATSB has the means to prosecute reporters who provide false and misleading information. However this has not been an issue for REPCON to date. The ATSB considers that the penalties for making a false or misleading statement along with the ATSB's verification procedures are adequate safeguards against abuse.</p> <p>The ATSB intends an intensive education campaign for industry stakeholders to make clear the intent and expectations of the scheme. It will work closely with stakeholders to ensure that abuse of the reporting system is minimised and reports are genuinely made to advance the interests of transport safety. Under the current arrangements for aviation and marine the ATSB has not experienced issues with abuse of the process. The ATSB's operating procedures, staff training and availability of expertise across the modes helps ensure that reports are properly processed, screened and verified.</p> <p>The ATSB considers that the penalty for making a false and misleading report to a Commonwealth official (a breach of s.137.1 of the Criminal Code Act 1995 – 12 months imprisonment) is adequate.</p>
3. Protections for Reporters	Part 5 contains provisions that deal with disclosure of personal information. Part 5 also deals with 'use limitations' on reports designed to protect the reporter or other people identified within the report, from having the report used in certain administrative or disciplinary actions. This part also ensures natural justice for a person or organisation referred to in a report. Where the ATSB proposes to forward a report to a Regulatory Authority the ATSB will provide them an opportunity to comment on the report before the report is sent:	After removing, in consultation with the reporter, enough information to de-identify the text, ATSB REPCON staff will ascertain if there is enough information in the reporter's de-identified text (RDT) to allow the 'named party' a reasonable right of reply to the safety concern. If the RDT is sanitised to the point where no reasonable action could be expected by the named party or Regulator then other reporting avenues/options, where available, will be put to the reporter as a means of addressing the safety concern.

Theme	Submission	ATSB Response
	<p>What is not clear is the output of this process i.e., how the report and comments are incorporated. For example, will there be two separate versions of events, or one 'amalgamated' document? We make this point because, whilst conjecture, if the 'report' is an amalgamated document and not undertaken with accuracy, any bias or prejudice may inadvertently / potentially be incorporated into that single document.</p> <p>The proposed regulations are based on ATSB's no blame investigation principles with information supplied to industry and Regulator bodies de- identified to facilitate safety awareness " rather than the purpose of impugning an individual through a dobbing type arrangement." This principle is strongly supported.</p> <p>De-identification – what confidence does a reporter have that de-identification is sufficiently robust? – This works well in theory but in practice there are significant practical limitations to de-identification.</p> <p>Proposed regulation 14 prohibits release of a report unless all personal information has been removed – but identification involves more than personal information</p> <p>Proposed regulation 16 does not seem to be consistent with its title; it could be significantly improved if redrafted in line with the principles of plain English and precedents set elsewhere. For example, the wording of the Fair Work Act regarding adverse action is instructive and could possibly be used. This could give rise to a new clause along these lines:</p>	<p>The output is document that provides the de-identified text of the reporter and the response, if any, from the operator. These are clearly delineated</p> <p>The principle is also drawn from paragraph 8.3 of Annex 13 of the Chicago Convention on Civil Aviation regarding voluntary incident reporting schemes which states that such schemes should be non-punitive and afford protection to the sources of the information.</p> <p>Protection for reporters and other parties named in a report is a fundamental precept of the REPCON scheme. If a report cannot be adequately de-identified and provide protections under REPCON, other reporting avenues will be explored. This may arise where a REPCON report duplicates reports that a person may have made under his employer's reporting system. The ATSB has no control over what a reporter may do either prior to or after contacting REPCON, however the ATSB will ensure that the information is appropriately de-identified.</p> <p>The definition of personal information is the same as for the <i>Privacy Act 1988</i> – this includes all information about an individual whose identity is apparent or can reasonably be ascertained from the information.</p> <p>The ATSB considers that the wording of the proposed regulation (now section18) is adequate.</p>

Theme	Submission	ATSB Response
	<p><i>"A person is not entitled to take any action to injure an employee in his or her employment, or alter the position of the employee to the employee's prejudice, as a result of their participation in an RSC investigation and/or based on information contained in an RSC report"</i></p> <p>Prohibitions on reprisals ought be prohibitions with penalties. It is suggested the Regulations incorporate the provisions, including penalties, of WHS law.</p> <p>The level of confidentiality for the reporter may be compromised if a company is first to be given details of a report. This may discourage reporting.</p> <p>Submitter expressed concern regarding confidentiality, that it is essential that the reporting ought to be transparent.</p>	<p>The penalty provisions in the WHS could not be replicated in the proposed regulations. Regulatory offences, as a matter of Commonwealth policy, would not allow for penalties of the magnitude available under WHS law. In practice, however, it is highly unlikely that a reporter could be identified from the report in any event.</p> <p>This cannot occur under the regulations which require removal of personal information, or the consent of the reporter, prior to the report being passed on.</p> <p>Submitter advised that the point of the confidentiality is not that the report is confidential, just the identity of the reporter, in order to forestall potential for reprisal.</p>
4. Coverage and Scope	While the draft Regulations appear to apply to all railway activities (Regulation 5 (3)) the covering paper "Confidential Reporting: Moving Forward" limits its application to accredited rail operators (page 5, 3rd bullet).	The Commonwealth <i>Transport Safety Investigation Act 2003</i> and associated regulations have wide application to the rail industry. In general, the Act and regulations can be exercised to the full extent of the ATSB's Commonwealth Constitutional powers. This means that the TSI Act and regulations can apply to any rail operator which is a constitutional corporation. The ATSB's view is that the only operators to which the TSI Act and regulations do not apply are very small, unincorporated railways run by individuals in their own backyards.

Theme	Submission	ATSB Response
	<p>The terminology of the proposed regulations and that used in the National Law and Regulations is inconsistent and requires clarifying.</p> <p>Is the term “rail operations” the same as for the National Law – is this defined narrower than rail operations definition under rail safety law – such as rail infrastructure – which has a broad ambit – broader than just transport vehicles.</p> <p>The Paper refers to a number of examples where the REPCON scheme may not be the most suitable venue for a person to make a report. One example includes a situation where a person is working for an operator that has an appropriate reporting scheme to deal with the issue but if the reporter wanted the confidentiality of REPCON then the ATSB would likely consider this request. There is concern that confidential reporting may be qualified by an operator’s “appropriate reporting scheme”.</p> <p>This qualification potentially introduces a number of subjective elements which could limit the operation of the REPCON scheme and see some employers argue they have an appropriate scheme, with unions arguing on behalf of the reporter that there are deficiencies with the operators’ scheme. The qualification should not be included in the regulation - Assessment and acceptance of reports.</p> <p>It is not a part of the current maritime and aviation regulations.</p> <p>There should not be a departure from the current REPCON legislative framework where there is a detailed outline in regulation of what are reportable</p>	<p>The ATSB considers that even if there is consistency in meaning and effect.</p> <p>“Rail transport” is not defined in the TSI Act. However a reportable matter under the proposed regulations is anything that affects or can affect transport safety – which would include infrastructure.</p> <p>The ATSB does not accept that the qualification potentially introduces a number of subjective elements. The wording of the paper is:</p> <p>“If, however, the person desired the confidentiality and independence of REPCON, or the ATSB believed that the reporter would not report the matter elsewhere, then the ATSB would be likely to consider the REPCON scheme as the most suitable avenue for the person to make the report.”</p> <p>This is part of the current REPCON maritime and aviation regulations.</p> <p>The TSI Act authorises regulations for the voluntary reporting of any matter that affects or might affect transport safety. That is intentionally broad. The</p>

Theme	Submission	ATSB Response
	<p>safety concerns, to a framework based on guidance materials and the legislative framework being dependent on the definition of transport safety in s20A of the TSI Act –Voluntary Reporting Scheme.</p> <p>The Paper argues this general approach avoids prescription and therefore the unintentional exclusion of safety issues. It is argued that the inclusion of reportable safety concerns as set out in the Aviation and Maritime regulations provides greater legislative protection and certainty compared to guidance materials. The review of national rail safety law saw the reference to guidance materials excluded from the legislation.</p> <p>The issue of ensuring other matters are not excluded from the list of detailed examples can be catered for by having a clause which refers to any other issue that effects, or might affect transport safety.</p>	<p>examples in the current regulations while comprehensive are not exhaustive. The ATSB is currently developing a REPCON (mode specific) web page which will incorporate overviews of completed REPCON's (including safety outcomes), statistics and can even provide examples of 'reportable safety concerns' for each mode.</p>
5. Rollout and Communication.	<p>The REPCON material has significant cross-over with work health and safety issues.</p> <p>How does the ATSB anticipate the rollout of the project will be managed?</p> <p>Will ATSB be providing any training to industry and stakeholders which will cover the following points:</p>	<p>The material was provided to the ATSB's transport contacts in the Commonwealth, State and the Northern Territory. It was also advertised publically for 3 months, during which time other agencies could comment if interested. It is worth noting that if a matter is reported to REPCON that would appear to be more appropriate for a State body without transport safety functions then the regulations permit this to be passed on.</p> <p>The ATSB will manage the rollout of the project with focussed communication with stakeholders.</p> <p>The ATSB will be providing information to stakeholders to help ensure that the objectives of the scheme are met.</p>

Theme	Submission	ATSB Response
	<ul style="list-style-type: none"> - Opportunity to ensure the information is accurate? - Ensure safeguard of the system from disgruntled workers? - Be convincing to Rail Safety Workers? - Be limited to RSW's and Rail transport operators only? <p>Will it be up to the ATSB staff to promote the system? What role and responsibility the Rail Safety Regulator will have in terms of ensuring the success of this scheme and, if so, will this be on an ongoing basis?</p> <p>It would be encouraging and helpful if REPCON could be promoted by all stakeholders including regulators, employers and unions, and the ATSB's thoughts and proposals on this promotion issue would be helpful.</p> <p>The discussion paper would benefit from the inclusion of a flow chart of the business processes to provide a succinct and clear picture regarding the overall operation of the scheme.</p> <p>The ATSB should adopt a system of surveys to ensure maximum employee satisfaction.</p> <p>Other avenues for education are publications, websites, email distribution, industry and union conferences and trade fairs.</p> <p>A unit of competence may also be developed.</p>	<p>The ATSB also emphasises that the scheme is not restricted to rail safety workers. The regulations contemplate that any person, including a member of the public can report through REPCON.</p> <p>The ATSB will be primarily responsible for promoting the scheme. The ATSB intends to promote the scheme through all stakeholders across the transport modes. The Rail Safety Regulator will also have a role in its capacity under the new regulations to receive de-identified REPCON material from the ATSB.</p> <p>The ATSB will be seeking to promote REPCON through all stakeholder bodies.</p> <p>Further explanatory material will be made available as part of an educational/promotional plan prior to the REPCON scheme commences.</p> <p>The ATSB will consider the efficacy of providing flow-chart and other operational material to assist stakeholders with a clear picture of the scheme.</p> <p>The ATSB will be assessing all possible means to publicise the scheme. This will include engaging with established industry forums and union groups.</p>

Theme	Submission	ATSB Response
	<p>REPCON should be more broad based and involve established industry forums.</p> <p>More resources are needed to familiarise industry with the scheme and access to it.</p> <p>Knowledge of REPCON and the confidentiality protections is limited. Suggested that when the new Regulations are promulgated they be brought to the attention of seafarers and other stakeholders in the most effective manner possible.</p>	<p>The ATSB currently devotes considerable resources to making industry aware of REPCON and will continue to do so.</p> <p>The ATSB will be engaging more directly with Industry forums and stakeholder groups such as unions to promote the scheme.</p>