

ATSB/CASA Review 2007

Miller Report on Aviation Safety Agency Relations

Summary of Recommendations

Note: Recommendations 1-6 raise legislative or governance issues and Recommendations 7-10 deal with refinements to protections for the information collected during ATSB investigations. The remaining recommendations are mainly administrative in nature and relate in more detail to working relationships between the two agencies.

Mr Miller's report, beginning at page 73, contains a detailed summary of all recommendations, including background and references to relevant passages in the report.

Recommendation 1 – TSI Act objects

A subtle but important amendment to the objects in the TSI Act is warranted. The TSI Act should be amended to make it clear that the primary object of the Act is to contribute to improved transport safety. The tasks referred to as current objects in section 7(1) should be a statement of the outcomes the Act is directed to in order to achieve that object.

Recommendation 2 – TSI Act objects: - requirement for co-operation

TSI Act section 7(2) is inappropriately limited. It should provide that, in the performance of the Executive Director's powers and duties under the Act, the Executive Director is required to co-operate, in the interests of improved transport safety, with CASA, regardless of whether CASA has powers or responsibilities under another law of the Commonwealth to also investigate the matter under investigation by the ATSB. Furthermore, the objective of co-operating with CASA should not be limited to the period during which the ATSB is conducting an investigation.

Recommendation 3 – Policy statements

Consideration should be given to including in the TSI Act a provision to the effect that the Minister may issue policy statements from time-to-time setting out the Government's policy in relation to the administration of the TSI Act and its role in the Australian transport safety system. Any such policy statement should be general in nature and not relate to a specific investigation. If the ATSB remains a Division of the Department the policy statements should be directed to the Portfolio Secretary and the Executive Director should be required to act in accordance with them. If the Commission model is adopted the Minister's policy statements should be directed to the Commission.

Recommendation 4 – Policy development

Primary responsibility for policy in relation to proposed amendments to the TSI Act and for Australia's policy positions at ICAO should be assumed by a policy Division within the Department, with that Division seeking input from the Executive Director and all other relevant stakeholders.

Recommendation 5 – ATSB governance

If the current ATSB governance arrangements remain, there is merit in resolving ambiguities over the ATSB's roles and responsibilities within the Department. This should include:

- (a) the Executive Director, with the agreement of the Portfolio Secretary, appointing an expert peer review panel to review each draft and final investigation report and advise the Executive Director before the reports are issued. The TSI Act could subsequently be amended to provide for this if necessary;
- (b) administrative arrangements changing so that the position of Executive Director is filled for a fixed term, thereby reinforcing the autonomy and impartiality of that office in relation to accident and incident investigations; and
- (c) the memorandum setting out the Portfolio Secretary's expectations of the Executive Director being

replaced with a new memorandum taking account of the matters set out above.

Recommendation 6 – Alternative ATSB governance

Although there are good reasons for the ATSB to remain in the Minister's portfolio, consideration should be given to changing the Executive Director's statutory role and responsibilities and improving the status of the ATSB by establishing an Australian Transport Safety Commission, based on the International Air Services Commission model. The Commission should have the following attributes:

- (a) the Commission should consist of three part-time commissioners with broad safety related experience, not all in the aviation field;
- (b) the Executive Director should be appointed by the Portfolio Secretary, after consultation with the commissioners, for a term of 3 years;
- (c) the Commission should be responsible for approving all draft and final investigation reports, but with power to delegate approval of less significant reports to one commissioner;
- (d) the current powers of the Executive Director in the TSI Act should reside in the Commission, with the normal power to delegate to appropriate levels within the ATSB; and
- (e) staff of the Commission, including the Executive Director, should be provided by the Department.

Recommendation 7 – Information sharing in the interests of safety

The sharing of information between the Executive Director and CASA, where it is appropriate to do so in the interests of aviation safety, should be facilitated by:

- (a) recasting the definition of the term 'restricted information' in the TSI Act to limit its scope to the types of information referred to in Annex 13. As presently drafted the term is expressed in significantly broader terms than is appropriate in the interests of aviation safety because it results in information that should be available to CASA to take protective action (but not criminal or civil proceedings against individuals who provided information compulsorily). As defined the term 'restricted information' is also significantly broader than the Annex 13 standard (5.12) provides;
- (b) requiring the Executive Director to disclose restricted information to CASA where the Executive Director has reason to believe that there is a serious and imminent risk to air safety and the information is evidence of that risk. TSI Act section 61 should be amended accordingly;
- (c) entitling CASA, where it receives evidence from the Executive Director, to use the information as evidence to take protective action where there is a serious and imminent risk to air safety, but not for any other purpose. The CA Act should be amended accordingly; and
- (d) providing that, in cases where restricted information is disclosed to CASA to take protective action that requires CASA to present evidence to a court, the court should limit publication of that information to the parties and their representatives.

Recommendation 8 – Inadmissibility of compelled evidence

Evidence not publicly available, obtained by the Executive Director compulsorily under section 32 of the TSI Act, should continue to not be admissible against the individual providing the information in any civil or criminal proceedings but should otherwise be available in accordance with other recommendations in this Report.

Recommendation 9 – Court access to information

The TSI Act should be amended to make it clear that:

- (a) section 7(3)(b) does not inhibit the Executive Director from sharing "restricted information" with the Department and CASA, in the interests of safety;
- (b) the court is entitled to consider whether restricted information should not be disclosed on the basis that it is likely to interfere with an active investigation, rather than the Executive Director being required to give the certificate provided for in section 60(4)(c)(i) before the court can consider the matter.

Recommendation 10 – Section 32 Notices

- (a) Except in exceptional circumstances or when requested by CASA, the Executive Director should request information required from CASA for an investigation and expect CASA's full co-operation in identifying what is required and providing the information in a timely manner without the need for a Section 32 Notice.
- (b) CASA should co-operate fully in identifying what is required and providing the information in a timely manner where the ATSB advises CASA that it requires information from CASA in the course of an investigation into an aircraft accident or incident.
- (c) Where a Section 32 Notice is to be issued it should, except in exceptional circumstances, only be issued after discussion between the Executive Director and the Director of Aviation Safety.

Recommendation 11 – Building inter-agency understanding

The ATSB and CASA should:

- (a) hold regular seminars involving ATSB and CASA staff at the operational level to consider agreed aviation safety issues, including the presentation of research outcomes;
- (b) exchange personnel with the main objective being that officers from both agencies obtain the benefit of the training and experience the other agency can offer; and
- (c) co-operation with joint research initiatives on matters relating to aviation safety.

Recommendation 12 – ATSB/CASA executive meetings

The ATSB and CASA should institute quarterly meetings at Executive level, with a positive agenda. Although the meetings should be strategic and forward-looking, they should also deal with emerging issues between the two agencies.

Recommendation 13 – ATSB Investigations and Reports

- (a) During an investigation, where CASA has expertise that might be brought to bear on the likely causes of an accident or incident, the ATSB should utilise that expertise as its investigation progresses, whether by including CASA experts on the investigation team or by regular inter-agency consultations.
- (b) Before including safety recommendations in a draft report directed to regulatory changes CASA should make, the ATSB should discuss the proposed recommendations with CASA and take account of CASA's views, in order to ensure that the ATSB has taken account of all relevant issues that may impact on the relevance and practicality of its proposed recommendation.
- (c) Where CASA or any other interested party provides a substantive response to a draft report, the final report should contain a balanced explanation of substantive information or comments provided and the facts supporting them and should set out the Executive Director's reasons for accepting or rejecting the views expressed.
- (d) ATSB reports should speak for themselves. The ATSB should not continue the practice of including press releases in its reports and should give careful consideration to not issue substantive press releases on its reports.
- (e) Where the ATSB proposes to issue a substantive press release on an investigation report that refers to another portfolio agency it should provide a copy of the draft press release to the Department and the relevant agency in advance for comment.

Recommendation 14 – CASA's co-operation with ATSB investigations

CASA should develop an internal system to ensure that it appropriately monitors and co-operates with ATSB investigations relevant to its regulatory functions and adequately resources those responsible for the system. If this is done there is no need for the Minister to issue a direction to CASA in that regard, but the opportunity exists to do so if required.

Recommendation 15 – Monitoring ATSB safety recommendations

- (a) Responsibility for registering, monitoring and reporting on progress with ATSB aviation safety recommendations should be assigned to another Division in the Department.
- (b) The Portfolio Secretary, or the appropriate Deputy Secretary, should convene a bi-annual meeting of the Executive Director of ATSB, the CEO/Deputy CEO of CASA and the CEO of AMSA to:
 - (i) receive reports on progress with all active safety recommendations;
 - (ii) note the reasons for closure of recommendations, including those found by the appropriate regulatory agency to be impractical or unfeasible;
 - (iii) share, to the extent desirable, information on current investigations and, perhaps, the safety research programs of CASA, AMSA and ATSB; and
 - (iv) report to the Minister on the “state” of ATSB safety recommendations so that he can form a view on the degree to which the regulatory agencies are pursuing implementation of safety recommendations and the degree to which ATSB is contributing to the improvement of transport safety.

Recommendation 16 - Coronial inquests

- (a) Recognising that it is the Commonwealth, rather than the ATSB, that is entitled to seek leave to intervene in coronial inquests, decisions to retain counsel to appear for the Commonwealth in coronial enquiries should be the exception rather than the rule. The decision to do so should be made by a senior departmental officer, taking account of the views of the Executive Director and the Department's Legal Counsel.
- (b) Before CASA decides to instruct counsel to appear for it at a coronial inquest CASA should be required to inform the Portfolio Secretary. The Director of Aviation Safety should take account of the Portfolio Secretary's views in making the decision to seek leave to intervene or not.
- (c) CASA should regard itself as obliged to inform ATSB of any view it has, or evidence it proposes to present, suggesting that the ATSB may have overlooked relevant evidence or come to an incorrect expert opinion, prior to presenting the evidence or making the relevant submission to the coroner.

Recommendation 17 – MOU

The agencies should negotiate a new MOU and include matters such as:

- (a) a means of encouraging more day-to-day interaction between the agencies when serious accidents and incidents occur;
- (b) a review as to whether the current time periods for CASA responses to ATSB reports and safety recommendations should be more flexible, taking account of the need for timely investigation outcomes;
- (c) ways of enabling CASA personnel to obtain greater value from participation in ATSB investigations;
- (d) a mechanism for developing common safety messages in cases where the agencies have come to different expert views on the causes of the accident or incident;
- (e) provision for regular seminars involving the ATSB and CASA staff at the operational level to consider agreed aviation safety issues, including the presentation of research outcomes;
- (f) exchanges of personnel between the ATSB and CASA with the main objective being that officers from both agencies obtain the benefit of the training and experience the other agency can offer;
- (g) improved co-ordination of research initiatives and education programs on matters relating to aviation safety;
- (h) the information that CASA can expect to have disclosed to it the ATSB's confidential voluntary reporting scheme (REPCON);
- (i) guidance on the circumstances in which the Executive Director might be expected to provide information to CASA under the TSI Act and a mechanism for that to occur;
- (i) reviews of information holdings of both agencies to see whether greater sharing of data would be

beneficial and feasible;

- (k) a review of the principles applied by the ATSB in seeking information from CASA (including a reduction in the number of requests for information under section 32 of the TSI Act);
- (l) discussion of legislative proposals in areas of interest to both agencies; and
- (m) provision for annual reviews of the MOU.

Recommendation 18 – CASA protocols

CASA should develop clear internal protocols setting out the mechanisms for active co-operation with the ATSB, including clear lines of responsibility. CASA should allocate the necessary resources to ensuring that it co-operates fully with the ATSB, provides timely and appropriate feedback to ATSB draft investigation reports and safety recommendations.

Recommendation 19 – Inter-agency meetings

The ATSB and CASA should institute quarterly meetings at the Executive level, with a positive agenda including matters such as:

- (a) presentations on each agency's strategic direction and business/operational plans;
- (b) approval of operating protocols;
- (c) review of ATSB's research program;
- (d) review of CASA's progress in implementing or otherwise dealing with ATSB safety recommendations;
- (e) international visitor and staff exchange programmes; and
- (f) review of joint and individual research projects.

Although the meetings should be strategic and forward-looking, they should also deal with emerging issues between the two agencies.