

Senate Rural and Regional Affairs and Transport References Committee

Questions on Notice – Friday, 15 February 2013 CANBERRA, ACT

Inquiry into aviation accident investigations

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE**

Inquiry into aviation accident investigations

Public Hearing – Friday, 15 February 2013

Questions Taken on Notice – Civil Aviation Safety Authority

1. HANSARD, PG 5

Senator FAWCETT: Mr McCormick, two points: (1) the report I was just talking about was in fact the Special Audit of Pel-Air Fatigue Risk Management System of December 2009, a separate CASA report almost a year ahead of the Chambers report that you are referring to; and (2) this report, and Chambers, that are different to other internal CASA reports—which I accept any good learning organisation will do; some of them will be embarrassing, and there is no requirement, in the normal course of events, for CASA to release internal reports. But, where they are directly relevant to the causation of an accident that is being investigated by the ATSB, there is clearly an expectation of disclosure by the public, and indeed by your own organisation and the government, because it is articulated in the MOU that 'wherever CASA conducts a parallel investigation into a transport safety matter the ATSB is also investigating, CASA will provide the ATSB with a copy of the CASA investigation as soon as it is practicable to do so.' Given that this was tabled in December 2009, is there any reason why this was not provided to the ATSB in accordance with the MOU?

Mr McCormick: If I could make two points on that. If you look at the Chambers report—and I will go away and confirm this—to my knowledge the points raised in there are points that are also covered in our special audit report and our accident report. In other words, they are not raising new information; they are raising information about how internal processes in CASA were carried out. As I said, I will check that on notice, if I can; but I think you will find that there is nothing raised in the Chambers report that is not reflected in our accident report. So if you ask have we given the information, as I said: we gave the information that we were required to give, that the ATSB asked for, we assisted where we could within the confines of the MOU and confidentiality and our differing aims and opinions—and, when it comes to the Chambers report, to me it shows what is behind those points. But I think you will find all those points are raised.

To turn to that report you have in your hand, Senator: in actual fact the major elements in it are, to my knowledge, are incorporated in the accident report as

well. I had not seen that report before today, I might add; and you will notice from the front cover that I am not actually an addressee. That is not me trying to sidestep it, but you will find it has not actually been signed by anybody. There were two human-factor specialists involved in that investigation, and to my knowledge their comments were incorporated in the report. I might ask Mr Hood if he can expand a bit of the background of that.

2. HANSARD PG 6

Senator FAWCETT: I accept the fact that the detail, if you like, of some of the issues that were found with the operator ended up in the reports.

The issue here, as you correctly point out in most of your written and oral evidence, is that the pilot is the last line of defence and is a key part. The operator is another one. As you correctly point out, many of those things made their way into the report. But the oversight by the regulator is a third tier and that is what is missing from the ATSB report.

It is clear that CASA had in its possession, through these reports—and this is where the Chambers report differs from the special audit. The Chambers report is CASA's own assessment of how it performed its oversight role, which is why, to use your term, it appears 'passing strange' to the committee that there should be such strong rebuttal against witnesses who say we do not think the surveillance was adequate. There was very strong rebuttal, in a public space, saying 'CASA rejects that', when you know your own internal investigations by senior managers are saying that your oversight was inadequate.

We are happy that you are taking steps to correct it. Surely it is in the public interest, rather than us having to drag it out through a committee process like this. There were inadequate processes. The ATSB should be provided with that information so the public have confidence that you recognise there are problems internal that contributed to our culture, environment and practices by pilots that led to an error and an accident. The public should have confidence that, regarding the organisational characteristics and culture as such, (a) you are learning—and yes, that is good and (b) that you are also transparent and will say 'ATSB: yes, we were making mistakes in the past and we are addressing it, but here is a report of our own assessment.' For you to say in things like this rebuttal, in quite strong language and with absolutely no hint of compromise, that you reject any assertion that your oversight may have been inadequate when your own internal reports are damning in that area, is surely not in the public interest, nor does it inspire public confidence.

Mr McCormick: All I can say about that is go back to what I said earlier on the standard we were applying in the Chambers report. I wanted the full information, in other words, to put us to a gold standard. The Chambers report adequately reflects what Mr Chambers found when he carried out that investigation. That was an internal report, to me. The issues raised, I think you will find, are raised already in our special audit report and/or the accident report, although I will check that on notice if I can. As far as this system of safety goes and the way things operate, an analogy would be: driving down the highway at 100 kilometres an hour. The only thing that keeps you safe is the thin white line on the ground, instead of regulations or laws that you can choose to disregard it or not, and trust that the person on the other side of the road will not cross the line.

Recently, when they were talking about how often they could review banks and financial institutions, the ACCC said that they cannot have a policeman on every corner. We are in the same boat. We require the industry to do what it has to do, to step up to its safety commitments. I cannot follow everybody. Looking at whether the ATSB would have benefited from the Chambers report, in hindsight it is hard to say. I would have to put myself back in that position and look at the circumstances that prevailed. That report was to influence me or direct me in where we needed to make corrections. And we have, since then. We have made many. We could talk about that if you wish, though I realise that may not be germane to this.

3. HANSARD PG 10

Senator FAWCETT: That is directly opposed to the content of the Chambers report, where it actually indicates that it is likely that many of the deficiencies they identified after the accident would have been detectable through better surveillance—

Mr McCormick: I acknowledge that.

Senator FAWCETT: Surely that is relevant to an accident investigation?

Mr McCormick: As I said, the points raised in the Chambers report—and I will check it on notice—are covered in our special audit report and in the accident report itself. Mr Chambers has elaborated on that, because I requested operations, through Mr Hood, to tell me—and this was the first major accident that had occurred since I started in this organisation—so I would know exactly where we were: were we up to scratch? That was the question that was asked. That is what the Chambers report indicates. The Chambers report was a continuous improvement: how do we move forward from here? If there had been

anything particularly raised in the Chambers report that had not been raised elsewhere, then I would think that you are starting to head in the right direction—that we should have communicated that to the ATSB or in some manner indicated to the ATSB an area where they should have looked.

4. HANSARD PG 12

Senator XENOPHON: No, you are circling round and round without actually getting to a conclusion on this. The MOU is explicit. It says: 'If a CASA officer is known to have information that could assist the ATSB.' Do you consider, Mr McCormick, that the information contained in the Chambers report could have assisted the ATSB?

Mr McCormick: In determining—and I am going to have to slightly speak for the ATSB here—

Senator XENOPHON: No, I am not asking you to speak for the ATSB. I am asking for your obligation, under the memorandum of understanding, if you are known to have information that could assist the ATSB, to provide that information. Are you saying that there is nothing in the Chambers report that could have assisted the ATSB?

Mr McCormick: As I said, Senator, I will check that on notice. But to my knowledge, everything raised in the Chambers report that is germane to this accident that was not internal, such as the structure of the organisation or whatever, was provided to be ATSB in the documents they requested.

5. HANSARD PG 18 - 19

Senator XENOPHON: Mr Farquharson, do you have the minutes of the accident investigation committee of 18 November 2011 handy?

Mr McCormick: Can you give us a couple of minutes in which to look? We have got substantial amounts of paperwork.

Senator XENOPHON: Sure.

Mr McCormick: Sorry, what was the date again?

Senator XENOPHON: 18 November 2011.

Mr McCormick: I sincerely doubt it. That is not something which we considered. But we could have a look.

Senator XENOPHON: I have only got my note of it.

Mr Farquharson: No.

Senator XENOPHON: You don't have it?

Mr Farquharson: Not the 18th.

Senator XENOPHON: My understanding is that the minutes show, Mr Farquharson, that you were to meet with ATSB to see if ATSB had changed its position. Would that ring a bell?

Mr McCormick: We will have to take that on notice, sorry. We have to refer to the minutes.

Senator XENOPHON: If I can put it to you in those terms that, if that is the case, it shows that there is an element of influence on the part of CASA with respect to the ATSB?

Mr McCormick: As I said, Senator, we will have to take that on notice. I think Mr Dolan on a question on notice answered how he came to downgrade the report on the safety issue and, in fact, that it was done on 16 August 2012. As I said, our interchanges and exchanges with the ATSB are all within the documentation you hold. At no time did we release or indicate to the ATSB what our conclusions were. In actual fact most of the interactions by video and meetings, with Mr Sangston has outlined in his letters, on 26 March in particular and we agree with all the dates and our reports indicate the same. We did not provide that report to anyone. We did not provide the report outside—I am talking about the CASA accident report—we did not provide that report as we naturally would not do until the ATSB demanded it of us under section 32.

6. HANSARD PG 22

Senator XENOPHON: Mr McCormick, you are familiar with section 24 of the Transport Safety Investigation Act?

Mr McCormick: No, I am not, but someone here will be.

Senator XENOPHON: I will just read it to you:

24 Offence to hinder etc. an investigation

(1) A person is guilty of an offence if:

(a) the person engages in conduct; and

(b) the person is reckless as to whether the conduct will adversely affect an investigation:

(i) that is being conducted at that time; or

(ii) that could be conducted at a later time into an immediately reportable matter; and

(c) the conduct has the result of adversely affecting such an investigation (whether or not the investigation had commenced at the time of the conduct);

...

You do not see that you in any way adversely impacted on the ATSB's investigation by not releasing the Chambers report?

Mr McCormick: There are two positions to take here. As I said, in retrospect would I have released the report—or at the time when I turned my mind to it I did not think the report was germane, and that our report had been done and our investigation was finished. Now I was looking at it as internal as that of CASA. Whether that amounts to recklessness, I think that is a stretch too far. If we take your position and say it should have been released and that is the way it should have gone, again, I do not think that not releasing it will meet the definition of recklessness. I would have to get legal advice on the deconstruction of that sentence. There has never been any intent to withhold information from the ATSB. Whether the information contained in the Chambers report would have changed the ATSB's line of investigation, their outcomes, conclusions or recommendations is a matter for the ATSB, and I cannot speak for them.

At the time, and to the best of my knowledge and with the best of intentions, the Chambers report was commissioned, received and actioned by me through my executive team on the basis that it was an internal investigation into CASA. As I have said three times and I will say again—not because I do not think anyone has understood, but just to clarify the matter—we will, on notice, if we could, Chair, look at what the recommendations in the Chambers report were and whether they were all captured in our various reports: our accident reports, special audit report et cetera.

At this stage is it possible that we could perhaps put in a supplementary submission at some stage in light of the information that has come up to date?

Senator XENOPHON: Sure. So let's put it in context. This would still have been internal, but you do not consider you breached the MOU?

Mr McCormick: As I say, did I consider there was a breach of the MOU by intent or by fact? No, at the time I did not. Was I cognisant of 4.6 or whatever? No, I was not.

Senator XENOPHON: It was 4.4.6.

Mr McCormick: I will review the date of the MOU versus the date of that information on notice and come back to you. But at the time there was no deliberate attempt to withhold information. I honestly felt that the Chambers report was an internal report. Earlier Senator Fawcett, I think—excuse me if it was not you, Senator—mentioned lines of inquiry in our discussions with ATSB. Yes, part of the discussion with ATSB is: 'Are you looking at fuel planning? Are we looking at fatigue? Are we looking at these things?' That is all in accordance with the ICAO annexes. That is the exchange of information. As to conclusions, directions or telling someone, 'You should go and look here'—as Dr Aleck said, telling someone to look somewhere is covered and should be something, I think, which is done. As I said, I would apologise if that is not the case, but I do not think that that would have made any difference.



Australian Government
Civil Aviation Safety Authority

OFFICE OF THE DIRECTOR OF AVIATION SAFETY

Trim Ref: G113/366

26 March 2013

Senator the Hon Bill Heffernan
Chair
Senate References Committee on Rural and
Regional Affairs and Transport
Parliament House
CANBERRA ACT 2600

Dear Senator Heffernan

Questions Taken on Notice at 15 February 2013 hearing

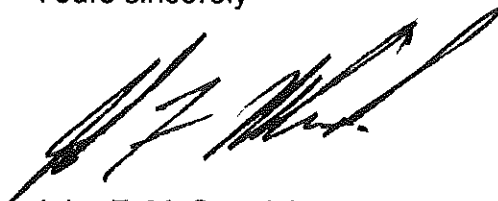
During the hearing of the Inquiry into Aviation Accident Investigations (Pel-Air) on 15 February 2013, the Civil Aviation Safety Authority (CASA) took seven questions on notice. CASA also provided the Committee with a second supplementary submission, which addressed a number of issues raised during that hearing.

In CASA's view, the questions taken on notice are effectively addressed in this second supplementary submission and, in one case, in CASA's response to a written question on notice from Senator Xenophon, as follows:

- **Questions 1, 2, 3 and 4:** *Hansard*, pages 5-6, 10, 12, from Senators Fawcett and Xenophon (*information covered in the Chambers and Special Audit report/information in Chambers report which could have assisted the ATSB*) are covered in Sections 2 and 4 of CASA's Second Supplementary Submission.
- **Question 5:** *Hansard*, pages 18-19, from Senator Xenophon (*CASA influence over ATSB*) is covered in Sections 2 and 4 of CASA's Second Supplementary Submission.
- **Question 6:** *Hansard*, page 22, from Senator Xenophon (*handling of Chambers report recommendations*) is covered in Sections 2 to 4 of CASA's Second Supplementary Submission and in CASA's response to Question 16 of the written questions from Senator Xenophon.
- **Question 7:** *Hansard*, pages 22-23, from Senator Xenophon (*possible breach of the ATSB/CASA MOU*) is covered in Sections 3 and 4 of CASA's Second Supplementary Submission.

CASA is always willing to assist the Committee should further information be required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. F. McCormick', written in a cursive style.

John F. McCormick
Director of Aviation Safety

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE**

Inquiry into aviation accident investigations

Public Hearing – Friday, 15 February 2013

Questions Taken on Notice – Australian Transport Safety Bureau

1. HANSARD, PG 25

Senator FAWCETT: ...Have you had a chance to read the chamber's report?

Mr Dolan: I received it at most half an hour ago, so I have only had a chance to look at the broad headings in it.

Senator FAWCETT: I accept that. I also accept that so far you have not had a look at the fatigue special audit, because that is still being redacted prior to being distributed. Perhaps you could take this on notice: the committee would appreciate getting your feedback as to the content of those two reports and whether that would have changed some of your decision points in terms of the scope of the investigation.

I take you to emails of 9 and 10 February, between one of your officers and yourself, with a CC to Mr Sangston, where the officer talks about the fact that, from the systemic investigation perspective, there are three separate slices of the James Reason defences—that being the flight crew, the operator and the rule maker—and that it is important to look at all of those.

As I follow through the email traffic, it becomes clear to me that the scope of the operator and the rule maker appears to be reduced as a function of a lack of evidence. There is some discussion around evidence tables and what is hearsay versus what is clear evidence, and so those things are, essentially, scoped out of the report.

Mr Dolan: On the basis that we can only work on facts and evidence, Senator, and not on speculation, yes.

2. HANSARD PG 30 - 31

Senator XENOPHON: It is a pretty big deal to do a special audit request of CASA, isn't it?

Mr Sangston: I am aware of two. One being this investigation and the other one being the Canley Vale investigation.

Senator XENOPHON: When were those special audit requests made with respect to the issue date of the final report? Do you want to take that on notice?

Mr Dolan: I think we have already answered that question for this investigation.

Mr Sangston: It is in our most recent submission.

Mr Dolan: But we can get you the answer on the other investigation.

3. HANSARD PG 34

Senator FAWCETT: Also, in terms of that, was it the Canley Vale special audit that you mentioned, Mr Sangston?

Mr Sangston: Yes.

Senator FAWCETT: How did you become aware of that? Did CASA offer that up to you, did you have to seek it or did a third party tell you it existed? How did you come to be aware of it?

Mr Sangston: It was attained by what we call a section 32 request form, under our—

Senator FAWCETT: But how did you become aware of it? Did CASA tell you that they had done it?

Mr Sangston: I would have to take that on notice and get back to you, because I have not had that discussion with the investigator in charge.

4. HANSARD PG 34

Senator XENOPHON: Did you only ask for it [the Canley Vale special audit] after the *Four Corners* program was broadcast in September 2012?

Mr Sangston: My recollection is that it was after that.

Senator XENOPHON: So it was just a coincidence that it was only asked for after the *Four Corners* report?

Mr Dolan: Senator, we can get back to you with when we sought that report and any context we can supply after a conversation with the investigator in charge as to why that information was sought.

Senator FAWCETT: Sure. The more important question from our perspective is: were you apprised of the existence of the report by CASA, or did you find out about it through a third party and then request it? I fully accept the fact you requested it when you did.

Mr Dolan: We will take that on notice. I would like to just verify exactly what went on there.

Senator FAWCETT: Sure.

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I take you to emails of 9 and 10 February, between one of your officers and yourself, with a CC to Mr Sangston, where the officer talks about the fact that, from the systemic investigation perspective, there are three separate slices of the James Reason defences—that being the flight crew, the operator and the rule maker—and that it is important to look at all of those.

As I follow through the email traffic, it becomes clear to me that the scope of the operator and the rule maker appears to be reduced as a function of a lack of evidence. There is some discussion around evidence tables and what is hearsay versus what is clear evidence, and so those things are, essentially, scoped out of the report.

Mr Dolan: On the basis that we can only work on facts and evidence, Senator, and not on speculation, yes.

1. ATSB Response:

The ATSB has reviewed the Chambers Report to see whether it contained evidence that might support substantive changes to the report of the investigation into the Norfolk Island ditching. In this context, it should be noted that the ATSB had already, as part of its investigation, assessed the content of

CASA's special audit of Pel-Air and had regard to that audit in finalising its report. It should also be noted that the primary (but not sole) purpose of an ATSB investigation is to establish the factors that contributed to an accident, and that the Chambers Report does not contain any new evidence that organisational factors were likely to have contributed to the accident.

In the view of the ATSB, there is insufficient additional material within the Chambers Report to support changes to the existing findings of the ATSB report or to require new findings. As regards the accident flight, the Chambers Report reflected what was separately reported (and available to the ATSB) in the reports of CASA's accident investigation and of its special audit of Pel-Air.

The Chambers Report could have been an indicator to the ATSB of potentially relevant organisational issues within Pel-Air and CASA. The report's availability to the ATSB investigation would likely have led to a review of the scope of the investigation to determine whether there needed to be further examination of possible organisational factors in the accident. That said, it is unlikely that the Chambers report would have led to substantive re-scoping of the investigation, since the CASA accident investigation report already indicated the existence of organisational deficiencies and the ATSB safety factor identification processes include the consideration of organisational factors as part of the scope of an investigation.

The ATSB does not consider that lack of access to the Chambers Report was a constraint or limitation to the ATSB investigation and its assessment of factors contributing to the accident.

The ATSB has also reviewed the CASA fatigue audit. The ATSB notes that it provides more detailed information and evidence to support the FRMS findings listed in CASA's Special Audit (which were briefly summarised in the CASA Accident Investigation Report). The CASA FRMS audit identified several important safety issues associated with Pel Air's FRMS. However, the audit report does not provide any new information that would assist with determining the level of fatigue associated with the accident flight, and the main themes of the report do not appear to be associated with the circumstances of the occurrence.

As the ATSB has previously advised the Committee, any judgement about whether to include, within the scope of a safety investigation, matters that are not contributory to the occurrence involves considering a range of factors. In this case, the ATSB was aware that CASA was conducting a review of the operator's FRMS. Accordingly, the ATSB judged that the safety enhancement value of considering this non-contributory issue in its investigation was limited.

2. HANSARD PG 30 - 31

Senator XENOPHON: It is a pretty big deal to do a special audit request of CASA, isn't it?

Mr Sangston: I am aware of two. One being this investigation and the other one being the Canley Vale investigation.

Senator XENOPHON: When were those special audit requests made with respect to the issue date of the final report? Do you want to take that on notice?

Mr Dolan: I think we have already answered that question for this investigation.

Mr Sangston: It is in our most recent submission.

Mr Dolan: But we can get you the answer on the other investigation.

2. ATSB Response:

The ATSB has requested copies of CASA special audits in respect of two other investigations. The first was the investigation into the collision with terrain that occurred on 15 June 2011 near Canley Vale, New South Wales on 15 June 2010 (investigation AO-2010-043). In this case, the ATSB requested the special audit on 5 September 2012 and the final investigation report was released on 20 December 2012.

The second was the investigation into the descent below minimum safe altitude south of Avalon Airport, Victoria on 30 June 2011 (investigation AO-2011-076). In this instance, the ATSB requested the CASA special audit on 4 October 2012. The final investigation report is expected to be released to the public in April 2013.

3. HANSARD PG 34

Senator FAWCETT: Also, in terms of that, was it the Canley Vale special audit that you mentioned, Mr Sangston?

Mr Sangston: Yes.

Senator FAWCETT: How did you become aware of that? Did CASA offer that up to you, did you have to seek it or did a third party tell you it existed? How did you come to be aware of it?

Mr Sangston: It was attained by what we call a section 32 request form, under our—

Senator FAWCETT: But how did you become aware of it? Did CASA tell you that they had done it?

Mr Sangston: I would have to take that on notice and get back to you, because I have not had that discussion with the investigator in charge.

3. ATSB Response:

The ATSB was aware of the CASA special audit in respect of the Canley Vale investigation on 24 July 2010, about five weeks after the accident. CASA issued a media release on 24 July 2010. This media release advised of an investigation into the operator.

4. HANSARD PG 34

Senator XENOPHON: Did you only ask for it [the Canley Vale special audit] after the *Four Corners* program was broadcast in September 2012?

Mr Sangston: My recollection is that it was after that.

Senator XENOPHON: So it was just a coincidence that it was only asked for after the *Four Corners* report?

Mr Dolan: Senator, we can get back to you with when we sought that report and any context we can supply after a conversation with the investigator in charge as to why that information was sought.

Senator FAWCETT: Sure. The more important question from our perspective is: were you apprised of the existence of the report by CASA, or did you find out about it through a third party and then request it? I fully accept the fact you requested it when you did.

Mr Dolan: We will take that on notice. I would like to just verify exactly what went on there.

Senator FAWCETT: Sure.

4. ATSB response:

The ATSB requested the CASA special audit to confirm the completeness of the evidence collected during the investigation. A review of the special audit confirmed the completeness of the ATSB's evidence. The ATSB was aware of the fact that CASA was conducting a special audit of Pel-Air from a comparatively early stage of the investigation.

ATSB risk matrix for application when considering the risk associated with an identified safety issue:

The following tables were initially described to the Committee as part of the ATSB's original submission of October 2012 (see pages 21 and 22 of that submission) and are used to assess the risk associated with a safety issue. This assessment is of the worst credible scenario, which is the worst occurrence – in terms of the severity of its consequences – that could occur as a result of a safety issue after consideration has been made of the risk controls and management processes in place to minimise risk. These risk controls and management processes will generally reduce the level of adverse consequences associated with the worst possible scenario. In other words, the worst credible scenario has to be a plausible, feasible or reasonably believable scenario.

Consequence table

	Minimal	Moderate	Major	Catastrophic
Aviation				
Air transport > 5,700 kg (fare-paying passengers)	Minor incident only (e.g. birdstrike)	Incident	Accident; Serious incident; Incident with many minor injuries	Accident with multiple fatalities, or aircraft destroyed plus fatalities / serious injuries
Air transport > 5,700 kg (freight); Air transport < 5,700 kg (fare-paying passengers)	Incident	Accident; Serious incident; Incident with many minor injuries	Accident with multiple fatalities, or aircraft destroyed plus fatalities / serious injuries	N/A
Other commercial operations	Accident; Serious incident; Incident with many minor injuries	Fatal accident; Accident with aircraft destroyed or multiple serious injuries	N/A	N/A
Private operations	Accident with aircraft destroyed or multiple serious injuries	Fatal accident	N/A	N/A

Likelihood table

Level	Descriptor	Description	Indicative frequency
A	Frequent	Is expected to occur	One (or more occasions) per year
B	Occasional	Probably will occur in the medium-term future	One in 10 years
C	Rare	Could occur in some circumstances	One in 100 years
D	Very rare	Not expected to occur except in exceptional circumstances	One in 1,000 years (or less)

The table below shows the risk matrix to calculate the level of risk once the consequence and likelihood levels have been identified.

Risk rating matrix

<i>Consequences</i>					
<i>Likelihood</i>		Minimal	Moderate	Major	Catastrophic
	Frequent	Significant	Significant	Critical	Critical
	Occasional	Minor	Significant	Significant	Critical
	Rare	Minor	Minor	Significant	Critical
	Very rare	Minor	Minor	Minor	Significant