

Senate Rural and Regional Affairs and Transport References Committee

Written Questions on Notice – Thursday, 28 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

**Written Questions Taken on Notice - Australian Transport Safety Bureau
from Public Hearing - Thursday, 28 February 2013**

Written Questions on Notice- Senator Fawcett

1. Could the ATSB confirm which edition of the Annex 13 document was current at the time Mr Dolan made his decision regarding not recovering the FDR.
2. Explain the discrepancy between the answer he provided today (explaining their decision to not recover the FDR which inferred that the "reasonable" clause in the current document was the basis) given the standard which was in force at the time of the accident, which, if it did not provide that modification would have mandated recovery of the FDR

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Written Questions on Notice- Senator Fawcett

1. Could the ATSB confirm which edition of the Annex 13 document was current at the time Mr Dolan made his decision regarding not recovering the FDR.

ATSB response: The version of Annex 13 current at the time was the 9th Edition as amended by Amendments 11, 12-A and 12-B.

2. Explain the discrepancy between the answer he provided today (explaining their decision to not recover the FDR which inferred that the "reasonable" clause in the current document was the basis) given the standard which was in force at the time of the accident, which, if it did not provide that modification would have mandated recovery of the FDR.

ATSB response: The ATSB considers that the general provisions of paragraph 5.4 of the Annex as it stood at the time provided the necessary discretion to the ATSB in its conduct of the investigation.

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Written Questions on Notice- Senator Xenophon

1. Can the ATSB provide an outline of what role budgetary constraints play in investigations?
 - In what circumstance would an investigation be limited or constrained, or a particular line of enquiry taken or not taken, because of cost pressures?
 - When would these restrictions, if any, be applied to the investigation?
 - What procedures does the ATSB have in place to assist in making these decisions and weighing up cost versus the requirements of an investigation?

2. Since the Lockhart River inquest in 2007, how has the ATSB's relationship with CASA changed?
 - Does the ATSB still acknowledge oversight of CASA's role as regulator?
 - If so, in what practical sense does the ATSB carry out its duties in this regard?
 - If not, who now has oversight of CASA?
 - As an oversight body, should the ATSB be aware, as a matter of principle, about internal audits of CASA and what these audits contain?

3. What access to incident reporting does the ATSB currently grant CASA?
 - What information in a report would usually be provided? Does this include personal or other identifying information?
 - Does the ATSB provide any conditions on access to this information?
 - Is the ATSB aware of any limitations CASA puts on using this information? For example, could it be used to investigate an involved individual?

4. If, as proposed in your changes to Mandatory Reporting, the ATSB merely acts as a conduit to provide CASA with unrestricted access, why not merely reverse the roles to have the industry report to CASA and CASA pass on what they think should be investigated?

5. Have mandatory reporting rates to the ATSB decreased since changes to the regime were proposed?

6. It seems clear that the Chief Commissioner, and potentially the other Commissioners, get involved in the management of investigations down to a very low level. What are the system safety qualifications and experience of each of the Commissioners?

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1. *Can the ATSB provide an outline of what role budgetary constraints play in investigations?*

- ***In what circumstance would an investigation be limited or constrained, or a particular line of enquiry taken or not taken, because of cost pressures?***

ATSB response: The ATSB is always conscious of its legal obligation under the *Financial Management and Accountability Act* for managing public resources efficiently, effectively and ethically. The public resources available to the ATSB will always be limited, so decisions both on whether to institute an investigation and on how it is conducted will always have regard to the resources available.

- ***When would these restrictions, if any, be applied to the investigation?***

ATSB response: The ATSB can only apply public resources to its legislated functions. The primary function of the ATSB is to improve transport safety. One of the questions about whether, and to what extent, to pursue a line of enquiry is whether doing so is likely to lead to improved safety.

- ***What procedures does the ATSB have in place to assist in making these decisions and weighing up cost versus the requirements of an investigation?***

ATSB response: The ATSB provides general guidance to investigators in charge about the procedure to be used when it is necessary or desirable to downgrade or upgrade the level of investigation activities. Key issues to be considered in making a recommendation for change to the relevant General Manager are the significance of the safety issues involved, resources required for the relevant activity and the time to complete the investigation.

2. *Since the Lockhart River inquest in 2007, how has the ATSB's relationship with CASA changed?*

- ***Does the ATSB still acknowledge oversight of CASA's role as regulator?***

ATSB response: The ATSB has never had oversight of CASA's role as a regulator. Its role is independently to investigate transport safety matters.

This was confirmed by Parliament in the passage of the *Transport Safety Investigation Act 2003* and in the establishment of the Australian Transport Safety Bureau as an independent commission in 2009.

In the second reading speeches for both of these changes, it was highlighted that the ATSB must be independent from parties or actions that may have been directly involved in the safety occurrence or that had some influence on the circumstances or consequences of that occurrence. For example, the ATSB must be free to investigate and comment on any significant role of the regulator in a particular occurrence and as such must not itself play a regulatory role in the industry. Investigations that are independent of transport regulators, government policymakers, and the parties involved in an accident, are better positioned to avoid conflicts of interest and external interference.

- ***If so, in what practical sense does the ATSB carry out its duties in this regard?***

ATSB response: The ATSB does not have oversight responsibilities for CASA.

- ***If not, who now has oversight of CASA?***

ATSB response: The *Civil Aviation Act 1988* clearly sets out accountability arrangements for CASA including reporting to Parliament and the Minister. It also sets out the role of the CASA Board which includes deciding on the objectives, strategies and policies to be followed by CASA; ensuring CASA performs its functions in a proper, efficient and effective manner; and ensuring that CASA complies with certain directions given by the Minister.

- ***As an oversight body, should the ATSB be aware, as a matter of principle, about internal audits of CASA and what these audits contain?***

ATSB response: The ATSB is not an oversight body.

3. *What access to incident reporting does the ATSB currently grant CASA?*

- ***What information in a report would usually be provided? Does this include personal or other identifying information?***

ATSB response: Details of the information disclosed to CASA are provided on the ATSB's website as follows:

Information disclosed to CASA

Oral and SMS report of Immediately Reportable Matters

Oral and SMS advice of the occurrence of immediately reportable matters (IRMs – accidents and serious incidents) are provided to CASA as soon as the ATSB is informed.

The advice may contain details such as operator names, registration numbers, times, dates and locations. The ATSB will try, where possible, to avoid directly identifying individuals.

Daily report

CASA is provided with a redacted daily report of all incidents entered into the ATSB database. The redacted summary is a generic description of the event notified. Depending on the workload for data entry, this may be provided 1 to 3 weeks after the occurrence of the event. The notification will include aircraft registration, so that CASA has enough detail to gather its own information about the occurrence.

Aggregate summaries

An automated weekly transfer of summaries of information entered in the ATSB's database during that week is provided to CASA. The aggregate summary does not include identifying information such as aircraft registration.

- ***Does the ATSB provide any conditions on access to this information?***

ATSB response: The information is provided with acknowledgement of CASA's enforcement policy concerning the use of safety information. The ATSB is not aware of any circumstance where notification information has been relied upon by CASA to take enforcement action other than where the ATSB requested assistance in an instance where a person provided false and misleading information.

- ***Is the ATSB aware of any limitations CASA puts on using this information? For example, could it be used to investigate an involved individual?***

ATSB response: CASA may use the information supplied in an ATSB forwarded notification to inform itself of matters that require investigation by CASA so that CASA may obtain its own evidence where there is a need to take safety action.

- 4. If, as proposed in your changes to Mandatory Reporting, the ATSB merely acts as a conduit to provide CASA with unrestricted access, why not merely reverse the roles to have the industry report to CASA and CASA pass on what they think should be investigated?***

ATSB response: Under the proposed reforms the ATSB will maintain its full independence with respect to determining what to investigate. It will also maintain the accident and incident database which is used to conduct research and trend analysis. Adopting the above proposal would compromise the ATSB's independence.

5. Have mandatory reporting rates to the ATSB decreased since changes to the regime were proposed?

ATSB response: No.

For the period January to June 2012 the ATSB received an average of 1,306 reports per month. In July 2012, the ATSB briefed industry on the draft mandatory reporting changes. For the period July to December 2012 the ATSB received an average of 1,308 reports per month.

6. It seems clear that the Chief Commissioner, and potentially the other Commissioners, get involved in the management of investigations down to a very low level. What are the system safety qualifications and experience of each of the Commissioners?

ATSB response: See ATSB website for Commissioners' backgrounds/qualifications at:

http://www.atsb.gov.au/about_atsb/commissioners.aspx