

Rural Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Budget Estimates May 2011

Infrastructure and Transport

Question no.: 163

Program: n/a

Division/Agency: (ATSB) Australian Transport Safety Bureau

Topic: Retention of Aviation Safety Occurrence Reports

Proof Hansard Page/s: 83 (26/05/2011)

Senator Xenophon asked:

Senator XENOPHON: So, there is no view as to whether it is desirable to keep those things?

Mr Dolan: As Mr Walsh said, it is certainly desirable. I am not at a point where I have convinced myself that it necessarily needs to be mandatory, but I would agree with you that it would be desirable.

Senator XENOPHON: Perhaps on notice you could consider that. Maybe that is an issue that we can revisit at the next estimates.

Mr Dolan: Certainly.

Answer:

All holders of Air Operator's Certificates authorising regular passenger transport are required under the Civil Aviation Orders (CAOs) to implement safety management systems. A required part of such a safety management system is that it incorporates a safety assurance system, including arrangements for safety performance monitoring and measurement. The relevant Civil Aviation Advisory Publication (CAAP) issued by the Civil Aviation Safety Authority makes it clear that there should, among other things, be an organisation-wide:

- procedure for reporting occurrences (including those reportable to the ATSB), hazards, or safety concerns; and
- system for the capture of written reports on safety events and issues.

The ATSB is generally satisfied that, for regular public transport operators, the provisions of the CAAP are sufficient to capture, record and retain adequate information at the operator level to support the notifications that are made to the ATSB. When the ATSB has needed to confirm or gain more information about notifications from these operators, the relevant report has been retained and has been made available to the ATSB.

The ATSB also has powers under sub-section 19 (5) of the *Transport Safety Investigation Act 2003* to compel information direct from individuals where it does not consider the initial report adequate. To the ATSB's knowledge, it has never been necessary to use this power.

Since the evidence is currently that the existing arrangements are effective, the ATSB sees no strong argument for a mandatory system beyond that already set out in the relevant parts of the CAOs (Section 82.3 and 82.5) and the relevant CAAP (SMS 1(0) Safety Management Systems for Regular Public Transport Operations).

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Question no.: 164

Program: n/a

Division/Agency: (ATSB) Australian Transport Safety Bureau

Topic: ATSB Additional Capital for 2012-13

Proof Hansard Page/s: 84 (26/05/2011)

Senator Nash asked:

Senator NASH: Could you take on notice to provide us with a break-up of the \$3 million? That would be quite useful.

Mr Dolan: Yes.

Answer:

The total amount of new capital in the Budget for 2012-13 is \$3.080m. Of this, \$2.367m is earmarked for the fit-out and equipping of new and expanded office accommodation so that additional ATSB staff can be accommodated to undertake additional investigation work in rail and maritime.

The balance of the capital, \$0.713m, will be used for the necessary wide and local area network equipment and servers, video conferencing equipment and system changes to the ATSB's Safety Investigation Information System.

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Question no.: 165

Program: n/a

Division/Agency: (ATSB) Australian Transport Safety Bureau

Topic: Confidential Reporting

Proof Hansard Page/s: Written

Senator Heffernan asked:

I understand under the current legislation all people involved in an airport incident, not just the person making the report must be kept confidential. This seems to be odd. If an air traffic controller or a pilot is aware of an incident they are obliged to report it. By not doing so they have committed an additional infraction to the incident itself. If a REPCON has been made it is a bit of luck that the incident has come to light from a person who is aware of it but is most likely not obliged to report it. Keeping the names of all persons involved confidential simply hampers the investigation and restricts the action that should be taken.

- 1) Can vexatious complaints be dealt with without keeping all names confidential?
- 2) In relation to REPCONs, please list the circumstances where airport/airline incidents are kept confidential and those circumstances where information can be revealed?

Answer:

By way of background, the ATSB has responsibility for managing both a mandatory and a voluntary, confidential reporting scheme. These schemes are complementary. They work together with their different elements to ensure as much information as possible is captured.

The ATSB seeks to balance the manner in which its reporting systems are used. Confidential reporting captures important information about safety concerns, but it is not a substitute for the open mandatory reporting system which has extensive reporting requirements for accidents and incidents.

The ATSB notes that CASA maintains a confidential HOTLINE for the reporting of breaches of the CASA regulations. The ATSB works with reporters to assist them to make the report through the most appropriate avenue which, as far as practicable, meets the reporter's needs while achieving outcomes in the interests of safety.

Mandatory Reporting

The *Transport Safety Investigation Act 2003* requires 'responsible persons' to report 'transport safety matters'. Responsible persons are prescribed in the Transport Safety Investigation Regulations 2003 (the Regulations) and for aviation include pilots, air traffic controllers and maintenance workers among others. The Regulations also prescribe a range of incidents and accidents that constitute safety matters and as a result the ATSB receives approximately 18,000 reports annually.

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As well as providing the basis for the ATSB to determine which matters to investigate, the majority of the data collected under the mandatory scheme (with the exception of privacy related information) can be released publicly (<http://www.atsb.gov.au/aviation/weekly-summaries.aspx> refers).

Confidential Reporting (REPCON)

The Air Navigation (Confidential Reporting) Regulations 2006 establish a voluntary and confidential scheme for the reporting of 'safety concerns' across the whole of the aviation industry. Safety concerns cover either incidents or circumstances that might reasonably create uncertainty about a safety issue. These may include concerns about poor maintenance procedures, inadequate training, insufficient qualifications, inadequate airport facilities and so on.

There are a number of matters that are not covered by the REPCON scheme. These include reports relating to serious and imminent threats to health or life, acts of unlawful interference with aviation (essentially security-related incidents), industrial relations issues or conduct that may constitute a serious offence against the law.

REPCON reports cannot be used to support disciplinary or administrative action or as evidence in court. The desired outcomes from the REPCON scheme are that action be taken to improve aviation safety in response to the identified concern. This can include variations to standards, orders, practices, procedures or an education campaign.

Integral to the REPCON process is the removal of any information that can potentially identify the reporter or any other person named in the report. The REPCON reporter must then approve the de-identified text before any can be taken with the report.

Confidentiality of ATSB investigations

The *Transport Safety Investigation Act* contains a number of provisions that require the ATSB to protect information acquired in the course of an investigation. One of those requirements is that a published investigation report must not include the name of any individual unless they have agreed to that inclusion. This is consistent with the 'no blame' approach required of the ATSB.

Specific answers to the questions raised

- 1) Under section 137.1 of the *Criminal Code*, it is a serious offence for a person to knowingly supply false or misleading information to a Commonwealth officer. The REPCON scheme permits the release of information about individuals for the purpose of investigating a possible offence against section 137.1 of the *Criminal Code*. This arrangement is the main defence against vexatious complaints and misleading reports.

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- 2) As a default, any personal information submitted as part of a reportable safety concern under REPCON (that is, information that has the potential to identify the reporter or named third parties) cannot be released unless the Chief Commissioner is satisfied that consent to release has been received from the person to whom the information relates.

There is an exception to this rule where a possible breach of section 137.1 of the Criminal Code is being investigated. Further exceptions apply where there is a serious and imminent threat to a person's health or life or a serious criminal offence has been committed.

To de-identify a report the ATSB removes any information that identifies the reporter or a third party. At the same time, the ATSB endeavours to include as much detail as possible in the de-identified report text so as to assist in resolution of the issue, without compromising the identity of the reporter or other individuals. If the individual consents, however, their personal information may be disclosed.

Normally, though, after the report has had personal information removed, it is included in a database so that it can be used to monitor trends in safety issues. It is also provided, as appropriate, to CASA or aviation operators for necessary action if they are in a position to take safety action in response to the report. The ATSB publishes information about REPCON reports and about action taken as a result when it considers that such publication will increase the awareness of safety and safety issues.

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Question no.: 166

Program: n/a

Division/Agency: (ATSB) Australian Transport Safety Bureau

Topic: Takeoff Clearance

Proof Hansard Page/s: Written

Senator Heffernan asked:

On 27 March 2011 Qantas 767 QFA452 landed at Sydney at 1817 having departed from Melbourne. After the Qantas flight landed, another Rex flight, REX674, landed and stopped on the runway side of the holding point (within the flight strip, thus the runway was occupied). Whilst both aircraft were stationary on the runway QFA459 took off at 1822.

The Aeronautical Information Publication states that “an aircraft will not be permitted to commence take off until... a preceding landing aircraft using the same runway has vacated and is taxiing away from the runway”. It also states that, where reasonable to do so, air traffic control may issue a take off clearance in anticipation that the runway will be unoccupied by the time take-off roll is commenced.

The actions of QFA459 were in clear contravention of these rules and, if there was clearance given in anticipation of runway vacancy when REX674 stopped, this clearance should have been cancelled.

This incident was reported anonymously by a pilot who wished to retain his identity. He was informed that unless he signed his name then his report would not be taken further.

- 1) Was there a report made or an inquiry held into this matter?
- 2) If so what was the outcome? If not, why not?
- 3) Why was QFA459 given clearance for take off from an occupied runway?
- 4) Why does the ATSB not allow confidential reporting and not take anonymous reports seriously?

Answer:

- 1) No.
- 2) The Aeronautical Information Publication reference in Senator Heffernan’s question is accurate, but the word ‘runway’ referenced in paragraph 2 refers to the runway itself and not the ‘runway strip’, which is the area extending to 75 metres either side of the runway centreline and is defined by a series of gable markers. Subsequent ATSB inquiries into the incident, made after the matter was raised at the hearing by Senator Heffernan, found it was not a reportable transport safety matter as:
 - a. REX674 had taxied clear of runway 16R prior to QFA459 receiving a take-off clearance. The Air Traffic Control (ATC) clearance was issued in accordance with the prescribed procedures.
 - b. REX674 was positioned and stationary outside of the confines of the runway strip when QFA459 passed this aircraft during its take-off run (verified by the REPCON reporter).

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- 3) Once the Rex aircraft had taxied clear, the runway was no longer occupied.
- 4) The ATSB's Confidential Reporting (REPCON) scheme has been established in legislation to allow persons to report on safety concerns within a structure that gives priority to assuring confidentiality for all parties. Every report received through the REPCON office is handled in accordance with the appropriate legislative requirements. On occasion, reporters submit reports through REPCON that ordinarily would be submitted through the mandatory reporting process. In these cases, reporters are contacted to ascertain if this was their intention, or if REPCON is the preferred avenue. If REPCON is preferred, the report will be processed as such, and the Commissioner's delegate will assess the information to ascertain whether:
 - a. REPCON is the most suitable avenue for reporting
 - b. It is a genuine reportable safety concern
 - c. The ATSB believes the report to be true.

Completely anonymous reports cannot ordinarily be accepted under the REPCON scheme as the legislation (Air Navigation (Confidential Reporting) Regulations 2006, Part 3. Sect 8 (2) (a-c)) states that such reports shall contain:

- a. The reporter's name
- b. A preferred means of contact (phone, fax, email or mailing address)
- c. A summary of the reportable safety concern.

The ATSB does, however, have the ability to consider the content of any anonymous reports received if it has grounds to believe the content to be legitimate. The ATSB has, on a number of occasions, notified CASA and/or the operator of issues arising from an anonymous report that raises potential safety concerns. Any references that may identify an individual or third party are removed prior to the information being forwarded. It is also worthy of note that CASA maintains a telephone 'hotline' that permits the notification of safety reports in a completely anonymous manner.