

Chapter 7

Communication between CASA and the ATSB

Background

7.1 In Chapter 2 the committee noted the findings of the Miller Review into the relationship between the Australian Transport Safety Bureau (ATSB) and the Civil Aviation Safety Authority (CASA):

It is clear that the relationship between the ATSB and CASA has, in the past, been sub-optimal. The applicable ATSB governance arrangements have, in the Review's opinion, been a significant contributor to this unfortunate state of affairs. CASA's internal arrangements have also contributed significantly. The respective statutory roles and responsibilities of each agency under the TSI [Transport safety Investigation] Act and the CA [Civil Aviation] Act have contributed to an environment in which interaction between the ATSB and CASA is not as it should be.¹

7.2 This relationship remains problematic, and may, as far as the Norfolk Island accident is concerned, have affected the course of the ATSB investigation.

Withholding of key information

7.3 The Chambers Report² is a key document constituting demonstrable evidence that CASA was well aware of serious deficiencies in its oversight of Pel-Air operations prior to the Norfolk Island accident.³ Along with other information known only to CASA and revealed by emails, for example the even split among CASA Flying Operations Inspectors (FOIs) regarding the legal requirement to divert,⁴ the report showed that CASA had withheld potentially critical information from the ATSB.

Breaching the Memorandum of Understanding

7.4 The committee notes that the Memorandum of Understanding (MoU) between the ATSB and CASA is not a legally binding document. It was, however, negotiated in order to guide interaction and cooperation between the agencies with the objective of enhancing aviation safety.

7.5 The intentions of the memorandum, as far as sharing information that could assist ATSB accident investigations is concerned, are unambiguous. Paragraph 4.4.6 of the MoU clearly states:

1 The Miller Review, p. 30.

2 For more detail see chapters 3 and 6 of this report.

3 The Chambers Report, internal CASA report titled 'Oversight Deficiencies – Pel-Air and Beyond, additional information 11.

4 As discussed in Chapter 4 of this report.

CASA agrees that if a CASA Officer is known to have information that could assist the ATSB in the performance of its investigative functions, CASA will undertake to advise the ATSB of the existence of the information.⁵

7.6 It is a fact that a number of people within CASA were aware of the existence and contents of the Chambers Report. It was commissioned by the Director of Aviation Safety, Mr John McCormick, and conducted by a senior CASA manager.⁶

7.7 Although the head of CASA, Mr John McCormick challenged this assertion,⁷ the committee maintains that a reasonable person would interpret paragraph 4.4.6 to mean that CASA *must* advise the ATSB of the existence of anything it has in its possession that could assist an accident investigation. The committee notes the specific use in the MOU of the phrase "could assist" which in the committee's view establishes a wide range of possible information that CASA should bring to the ATSB's attention. Presumably it would then be up to the ATSB to determine whether the information could assist with its investigation and require the information be provided under a section 32 request.

7.8 Despite this, CASA withheld a document which should have had a significant impact on the ATSB's investigation on the basis that it was 'an internal document'.⁸

Breach of the Transport Safety Investigation Act?

7.9 The committee remains very concerned by CASA's actions in this regard, and has cause to ask whether the agency is in fact also in breach of the *Transport Safety Investigation Act 2003* (TSI Act). Section 24 of the Act clearly states that it is an offence to hinder 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); and

5 Paragraph 4.4.6, MoU between the ATSB and CASA.

6 See discussion with Mr John McCormick, Director of Aviation Safety, CASA, *Committee Hansard*, 15 February 2013, p. 2.

7 Mr John McCormick, Director of Aviation Safety, CASA, *Committee Hansard*, 15 February 2013, pp 2–3.

8 Mr John McCormick, Director of Aviation Safety, CASA, *Committee Hansard*, 15 February 2013, p. 2.

(d) the conduct is not authorised by the Chief Commissioner.⁹

7.10 At a public hearing the ATSB confirmed that the agency had no prior knowledge of the existence of the Chambers Report, that is, that it had not been supplied by CASA.¹⁰ The ATSB subsequently had this to say about the likely impact had the Chambers Report been made available to the agency:

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.¹¹

7.11 Given evidence on the lack of analysis of systemic issues in the ATSB investigation report, as outlined in previous chapters, the committee questions the plausibility of the statement above. On the weight of evidence reviewed, the committee questions CASA's motivation in withholding the Chambers Report from the ATSB.

7.12 This leads the committee to conclude that CASA may have breached section 24 of the TSI Act by withholding the document. To ensure that any appropriate action is taken, the committee will write to the Australian Federal Police, providing a copy of this report and supporting evidence for review.

Committee view

7.13 Irrespective of how highly either agency head is inclined to speak on the public record when describing the ATSB/CASA relationship, this inquiry exposed not only a predilection by CASA to withhold information when it suited them, but also a willingness to engage the ATSB both formally and informally in ways that have not always been transparent. In both regards, CASA's actions have influenced the conduct of the ATSB investigation to the detriment of aviation safety. Based on the documentation available to the committee, it appears that the two agencies have placed maintaining the veneer of a productive working relationship ahead of public safety.

9 *Transport Safety Investigation Act 2003*, Subsection 24(1).

10 See discussion with Mr Ian Sangston, General Manager, ATSB, and Mr Martin Dolan, Chief Commissioner, ATSB, *Committee Hansard*, 15 February 2013, p. 23 and pp 25–26.

11 ATSB, *answer to question on notice 5*, 15 February 2013, p. 6.

7.14 The committee is of the view that CASA has adopted a rather self-serving interpretation of the MoU, which allows the agency to laud the spirit of the document whilst simultaneously failing to adhere to its contents when convenient. Whilst aware that the MoU between the ATSB and CASA is not a legally binding document, it nonetheless has an intended aim, and therefore fails to serve its purpose if not adhered to. The committee concludes that CASA's decision to withhold important documents from the ATSB has, as outlined in Chapter 6, had a severe impact on the ATSB's investigative process.

Recommendation 14

7.15 The committee recommends that the ATSB-CASA Memorandum of Understanding be re-drafted to remove any ambiguity in relation to information that should be shared between the agencies in relation to aviation accident investigations, to require CASA to:

- **advise the ATSB of the initiation of any action, audit or review as a result of an accident which the ATSB is investigating.**
- **provide the ATSB with the relevant review report as soon as it is available.**

Recommendation 15

7.16 The committee recommends that all meetings between the ATSB and CASA, whether formal or informal, where particulars of a given investigation are being discussed be appropriately minuted.

7.17 The committee emphasises that the recommendation above is intended to complement and clarify paragraph 4.4.6 of the MoU, not replace it.