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The Committee Secretary,

Senate Standing Committee
Rural and Regional Affairs and Transport,
PO Box 6100,
Parliament House,
Canberra, ACT,2600,
Australia.

12 October 2012

**Airline Passenger Safety Association and
Aviation Accident Investigations**

Dear Committee Secretary,

The following brief submission is made on behalf of the Airline Passenger Safety Association (APSA) This association was formed after to fatal aircraft accidents in the 1990's, known as the Monarch and Seaview accidents¹. Major inquiries, including a Royal Commission in to Seaview², and those finding, gave rise to the initial formation of the APSA, the founder all had relatives who perished in these accidents.

The writer of this submission has recently taken over responsibility for representing the APSA on the Civil Aviation Safety Authority Standards Consultative Committee, from a founder of APSA, Mr. John Laverick.

We thank the Committee for the opportunity to comment on a subject that is critical to all transportation safety, but particularly critical to attempts to continually improve aviation safety in Australia.

1

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/1011/Aviation

2

Commission of Inquiry into the relations between the CAA and Seaview Air	25 October 1994–9 October 1996	L. Street (1994–95), J. H. Staunton (1994–96)	List numbers 354- 355/1996
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EXECUTIVE SUMMARY

- 1) The APSA recommends, in the strongest possible terms, that ATSB become a fully independent body, answerable to, and funded directly by, the Parliament.
- 2) Much greater weight be given to Confidential Incident Reporting (howsoever called) to maximise the value of such reporting in ensuring a knowledge of what is happening in the “real world”.
- 3) That Memorandums of Understanding between ATSB and other Government instrumentalities do not, for the sake of bureaucratic convenience, impede the use of effective confidential reporting.
- 4) All ATSB data to be used by CASA or other regulatory bodies be de-identified by ATSB, to the degree that it cannot be used, indirectly, for enforcement purposes. ATSB recommendations should be mitigating areas of demonstrated unacceptable risk, and not be used for enforcement purposes.

Comments

Whilst the very short time for submissions to this enquiry have not permitted the presentation of an in-depth study, we make the assertion, based on publically available figures, that the Australian air safety record is far from as good as it should be, or could be.

It is acknowledged that airline high capacity public transport operators in Australia have a very good record, *in terms of fatal accidents*, but for accidents overall, the record is not as good as the world leader in aviation, the USA, in any standard statistical category.

As for smaller aircraft (and the Norfolk accident comes into this category), once again, we are of the view that the record is not impressive.

Having said that, what is the answer to Australia achieving air safety outcomes ?

A starting point must be an understanding of why we have the record we do, and this must be an in-depth understanding.

We are very strongly of the view that a reformed and revitalised ATSB is critical to making progress.

As part of this submission, we attach a copy of the submission made by the Sydney Metropolitan Airports Business Council, SMABC³ to the “Miller” report.

³ The SMABC has been superseded by the Save Our Sydney Airports Inc, SOS Airports, this writer is a member of the board of SOS, and prepared the SMABC Miller submission.

We are very strongly of the belief that the ATSB must be a stand-alone body, entirely independent of the Department of Transport (however called by various Governments) and the Government of the day, and being a creature of and reporting directly to the Parliament.

- ***The independence of the ATSB is absolutely critical to transportation safety, and air safety in particular.***
- ***This independence is so critical, that we strongly recommend that this opportunity be taken to remove the ATSB from a Department of State, and make it a body directly answerable to the Parliament.***⁴

The model for this fundamental change should be the USA's National Transportation Safety Board, NTSB.

The NTSB is not only internationally renowned for the thoroughness of its investigation, but more pertinently, *its frank and fearless recommendations to interested parties*, particularly the US Department of Transport and its aviation regulator and air traffic control service provider, the Federal Aviation Administration (FAA).

The ATSB simply must be transformed into an equivalent of the NTSB, if we are to make the same progress in improving transportation safety in general, and aviation safety outcomes in particular. This is not the only reform that is critical, but without this reform, we are destined to continually repeat the same mistake.

Many in the aviation fraternity have great concern about the degree of effort put into the Pel-Air accident at Norfolk Island, believing that resources should have been made available to retrieve more of the aircraft components for examination, including (as we understand):

- Voice recorder and flight recorder;
- Retrieval and reading of the memory chips in the GPS fitted to the aircraft, giving a detailed record of what the aircraft actually did.
- Determining whether the undercarriage extended as a result of the crash, or whether it had been extended by the crew, significantly reducing the fuel endurance of the aircraft, and seriously compromising the chance of a successful ditching

⁴ From page 1 of the SMABC response to Miller, the full response is attached to this submission

With the progressively increasing workload and responsibilities of the ATSB, resourcing must be adequate, and it seems clear to us that this is not the case.

The basis for this opinion is twofold:

- Informal discussions with friends and former colleagues who work at the ATSB, and;
- Forgoing the opportunity to carry out in-depth investigations of less than “high profile” accidents that, nevertheless, had major causal elements that were systemic in nature, ie; Accidents that have common elements that have been ongoing for many years, most prominently;

Thus, for example:

- A long history of fatal accidents in training in twin engine aircraft, where aircraft are operated outside their certified flight envelope, contrary to the “Airplane Flight Manual”(AFM), a document that is part of the Type Certification of the aircraft.
- Compliance with the AFM is mandated by Civil Aviation Regulation 138. This seem to make little difference to ongoing non-compliance.

In our view, this would be a prominent, but not the only area, where an in-depth ATSB investigation in to “normalised deviations” should reveal the reason for such consistent and on-going departure from acceptable risk standards.

An NTSB style investigation would delve into all aspects of what clearly appears to be a systemic problem, because we keep repeating the same accidents, usually with fatal consequences.

Such an NTSB style investigation would determine whether the problem was caused by industry practice, accepting non-compliance with AFM and related restrictions, such a departure being accepted as a “normalisation of a deviation”, and whether there are other contributors, such as misinterpretation of CASA regulations, incorrect weighting of regulations, or indeed, CASA acceptance of or actually condoning, or even encouraging (at a working level) such normalised deviation.

Indeed, as a former airline Check and Training Captain, this author believe that there an emerging culture of normalised deviation amongst the newer airlines.

Confidential Incident Reporting

Concern is widespread in the aviation community that confidential incident reporting is being compromised, despite the legislative safeguards in the Transportation Safety Investigation Act 2003, as amended.

Indeed, we are of the view that such is the importance of confidential reporting in determining what is going on in “the real world”, that safeguards should be further strengthened. This should be the degree that ATSB should de-identify data to the degree that it cannot be used by CASA to identify individual incidents or individuals who may have been the reporter.

Such is the all-pervading nature of (over) regulation in Australia, and aviation regulation in particular; that almost any incident reported will reveal a breach of a regulation.

Thus, extreme reticence about the potential outcomes of honest reporting is resulting in a reporting system, in which the aviation community have lost confidence.

Whether it be a pilot, engineer or anybody else in the aviation community, they are not going to report a safety issue, if they genuinely believe they are just putting their head in a noose. Whether the perception is right or wrong, the perception is the reality, and a serious contribution to improving air safety outcomes is being lost.

The ATSB/CASA Memorandum of Understanding;

Of concern to many in the industry is just how this system, a Miller Report recommendation, works in practice. Whether it is true or not, once again, perception becomes reality, and in the case the perception is fatal to ATSB’s proper role.

Quite simply, the perception is that ATSB is little more than an extension of CASA, as a result of the MOU, and since the establishment of the MOU, any criticism of CASA, as a contributor to an event is muted, to the degree that is silent.

While this might be an unfair characterisation of the workings of the MOU, it does seem to be supported by the very limited comments in the ATSB report on the Norfolk accident. In particular, the differences in CASA audit results prior and post-accident have come in for only limited attention by ATSB.

October 12, 2012

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Should the members of the Rural and Regional Affairs and Transport Standing Committee see fit, this writer would be honoured to give oral evidence, but, in summary, our view is simple.

Conclusion

There has been a serious loss of confidence in the ATSB.

Along with many who have been part of the aviation community for many years (many submissions to Miller expressed the same view) we believe that the ATSB must become a body that is truly independent of the Government of the day, and not subject to the pressures, subtle and not so subtle, that can be brought to bear to serve the immediate interests and priorities of Government, to the cost of both short and long term transportation safety, and especially air safety.

Yours sincerely,

(Captain) W.J.R.Hamilton. MAIAA
CEO, The Glenalmond Group,

For and on behalf of:
The Airline Passenger Safety Association.

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Regional Development and Local
Government,
GPO Box 594, Canberra, ACT, 2601

29 April 2008.

ATSB/CASA Review 2007 The Miller Report.

Sydney Metropolitan Airports Business Council Response.

Dear Sir,

In the short time available to respond to this report, and given the resources available, we have necessarily had to keep the response short, and as a result, we are unable to produce what we would normally wish, a full spectrum of references to support the position we take. Thus, our comments are in many respects assertions of fact, but based on experience and we believe the comments are well grounded.

At the conclusion of the report is a brief description of the background of the writer, it is this background that informs our comments.

However, we believe the core issues are clear, and there are significance differences we take, compared to the recommendations within the report.

We believe a shortcoming of the research that underpins the report is that there has been insufficient heed taken *of the history of the relevant legislation in Australia*, and why the Civil Aviation Act 1988 and the Transportation Safety Investigation Act 2003,

and their associated regulations as amended over the years, are as they are, in their present state of development.

- ***The independence of the ATSB is absolutely critical to transportation safety, and air safety in particular.***
- ***This independence is so critical, that we strongly recommend that this opportunity be taken to remove the ATSB from a Department of State, and make it a body directly answerable to the Parliament.***

If “world’s best practice” is represented by the position of other leading aviation nation’s¹ equivalents of the Australian ATSB, it should become a completely independent body, preferably with an expanded role in transportation safety research and education to improve transportation safety outcomes, as well as the traditional role of accident and incident investigation.

¹ Miller Appendix 3: International comparisons of the implementation of ICAO Annex 13.

In our opinion, the present governance arrangements are unsatisfactory, vis a vie the Department, this is recognised to a degree in the report², but we do not believe that what amount to, in our opinion, irreconcilable conflicts of interest, can be resolved by reducing the independence of the ATSB, or otherwise making changes to the administrative framework of the department.

For example,

- ***we cannot agree with the Recommendation 5, for the above reason;***
- ***nor agree with Recommendation 6, for the same reasons.***

If the ATSB were to be established as per our first recommendation, there is certainly room to consider the framework of an independent body. We and many of our colleagues with many years experience in the aviation field, regard the US NTSB as the leader, and its political and operational independence is a byword.

- ***We believe a “second best option” would be for the ATSB to answer to another Minister.***

However, the above alternative is very much a second best option, we believe that a majority of our peers in the aviation industry, who *have given the matter detailed consideration*, believe an “NTSB like” arrangement produces the best results.

Whilst we don’t believe it has ever been a problem to date, the fact that the ATSB and CASA report to the same Department of State and Minister leaves at the very least, a perception of a possibility of indirect political

pressure being brought to bear after a serious and politically damaging accident.

It is a fact of life that any major air accident, far more than any other mode of transport, will bring media demands for “heads to role”, including unrealistic but nevertheless real demands for political “accountability”.

Complete independence for an ATSB can be a political (as well as a safety investigation) plus under these circumstances, “*Not only must justice be done, must be seen to be well and truly done*”³

We accept the in-depth analysis of points of law on the protection and disclosure of information, but believe that the central point that has been missed is;

- ***Industry confidence in reporting safety problems, or responding openly during an investigation, is an extremely fragile confidence, easily destroyed, and;***
- ***The authority of the Director of ATSB over disclosure should not be watered down, and;***
- ***That Australia has a more robust protection of information system than required by treaty, should be regarded as an advancement made by Australia, over and above a minimum level of compliance with ICAO Annex 13.***
- ***ICAO standards are generally minimum standards only, it should not be accepted that meeting the minimum standard is “good enough”.***

² S.9 and footnote 21 on page 14

³ The Rt. Hon. Lord Hewart of Bury, Lord Chief Justice of England, about 1927

CASA – The Balance.

Despite major changes in the management of CASA under Mr. Bruce Byron, and his new senior management team, the underlying CASA culture has changed little from the time a previous Director said; “*we are policemen*”, and declared that (effectively) CASA actions should not be subject to the normal rules of evidence, and “----- DPP, who may or may not take the matter to court, ----- . You may also then get an outcome that is not appropriate”.⁴

Here the then Director is saying that the person charged with an aviation offence might be found not guilty. That the normal protections of rules of evidence and judicial process should not apply to those “committing aviation”, rather CASA should be able to run a “Star Chamber”. This belief, that the “sanctity of air safety” should over-ride the normal processes of the criminal law (except for CASA employees) runs very strongly in the “CASA Culture”.

After many years of, in our opinion, misuse of CAR 269, a new approach to enforcement was enacted in 2003, including Enforceable Voluntary Undertakings, a system of administrative fines and penalty points.

Included in the package was the requirement mentioned in the Miller Report⁵, where CASA has to establish cause in the Federal Court. This stopped dead the misuse of CAR 269, where “a serious and imminent threat to air safety” could be found six months or more after an incident, and where 28 day suspensions were effectively used as “punishment” against an operator.

- ***We reject any proposal to water down the 2003 enforcement provisions, a hard won change after many years of industry requests for a fairer and more balanced system.***
- ***Further, we believe any move to wind back the 2003 changes will meet with widespread opposition from a range of industry associations, to the degree that a successful disallowance in the Senate is a high probability.***

Confidentiality.

An important contributor to air safety is a system of “*confidential incident reporting*”. Until recently, and unlike US and UK, Australia has not had an effective system of confidential reporting, because previous systems were not truly confidential, as understood in US, UK or by those conversant with modern Safety Management approaches to industrial safety. Indeed, previous Australian systems were little more than “dobbers charters”.

ATSB has now established a new confidential incident reporting system to provide the same air safety benefits as the US and the UK systems.

- ***Given the long history of distrust of CASA, even the slightest suggestion that such information may not, in fact, be confidential, but might find its way to CASA, will instantly destroy the system.***

It has taken many years for the confidence in ATSB to be built up, and in no way can ATSB and CASA be equated in this area.

The slightest suggestion that information gathered by open an honest exchange between

⁴ CASA Director, Mick Toller, National Press Club, 21 Feb. 2001, based on a transcript published on the CASA web site.

⁵ Miller Report, S17.7

industry personnel and ATSB, during an investigation, will not remain confidential, and may be used, even improperly or indirectly by CASA will”

- ***Put the effectiveness of accident investigation back decades.***

A reasonable question to ask would be:

- ***If the above is true, why has this not been picked up by Miller in the preparation of the report.***

A close examination of all industry persons interviewed by Miller show not one person with extensive experience of what goes on at the “regulatory and enforcement coalface”, and hence they would have little or no experience of the day to day workings of CASA in the field.

Hence, Miller would have got little of the feelings of industry persons, in the field, and despite the acknowledged changes under Bruce Byron, and more particularly a new Head of Legal Services branch of CASA, those feelings still run very strongly.

- ***The great majority of those people in the aviation community are not legally sophisticated; any change in the balance of protected information (used as a general term) will not be well received.***
- ***CASA should accept the limitations (tensions) that result, and we have no doubt that the long term safety outcomes are more important than some (probably quite nebulous) short term gain.***
- ***We do not believe that Miller has struck the right balance when considering “protected information”***

v. claims of a “serious and imminent threat to air safety”

Indeed, within the report, Miller concedes that the probability of a situation where protected information keeps essential safety knowledge from CASA is extremely low, our opinion is that it is so low that a threat to the industry confidence in ATSB does not justify the risk.

Further, one might say: “Why have CASA audits failed to detect the problem”, despite their very wide powers across the aviation community.

General Comments – Summary of Recommendations

44(a): We agree with the suggestion, but also refer you to the final report of the Program Advisory Panel of the CASA Review in 1998, recommending a major overhaul of the CA Act 1988, an act conceived somewhat in haste, and not a good fit in an era of “performance based legislation”.

Recommendation 1 and 2.

We support the thrust of the recommendation, subject to consideration of the draft changes.

Recommendation 3.

We do not support the thrust of the recommendation, as we believe it would impinge on the independence of the Director.

Recommendation 4.

See 3 above, and indeed this points up what we believe is the irreconcilable difference if the ATSB remains within the same portfolio as CASA and other transport modes.

Recommendation 5.

As per 3 and 4.

Recommendation 6.

For reasons we have already made clear, we do not support 6, we do not believe the model of the Air Services Commission within the Portfolio is an appropriate model, as we see this as diffusing authority of, as well as reducing the independence of the ATSB.

Recommendation 7.

As we have already made clear, we have very serious reservation here, but recognise clearly the issue.

7A.

We reject the proposition that the standard in Annex 13 is adequate or sufficient for the purpose, as we have detailed elsewhere, and support the current standard for protected information.

As to **7B** and **7C** , we fully understand the issue, but would reserve judgement until we saw the actual draft legislation, OLDP has a well established ability to produce other than the expected regulatory outcomes, and parliamentary draftsmen also seem to have their moments.

Recommendation 8.

We support the intent of Recommendation 8.

Recommendation 9.

We have serious reservation about Recommendation 9, and would want to very carefully consider any draft legislation.

Recommendation 10.

Based on the history as we know it, the full power of Section 32 notices must be preserved, and the Director of ATSB must be prepared to use them, we believe it is unrealistic to expect the level of cooperation envisaged, short of legal compulsion.

Recommendation 11.

A laudable aim, we believe the realities are not auspicious.

Recommendation 12.

We agree.

Recommendation 13.

We support the intent of Recommendation 13, subject to the draft proposed legislative change, if any, to give effect to the recommendation.

Recommendations 14, 15, 16.

We have no comment to offer about these proposals to clarify inter-agency administration.

Recommendation 17.

Re. **(h)** and **(i)**; Once again we wish to emphasise the fragility of industry confidence in matters of confidentiality, the importance of maintain and enhancing the confidence in confidentiality of information provided to the ATSB.

Recommendations 18 & 19

We have no comment on these recommendations.

CONCLUSION

As we have made clear, we have serious reservations about some of the recommendations of the report, and we believe the recommendations were, in part, driven by the limited number and the category of those industry persons interviewed.

- **We firmly believe that the ATSB should be re-established as an independent authority, outside the present portfolio, and believe the US National Transportation Safety Board to be a preferred model.**
- **Given the close parallels between the Federal Government models of Australia and the United States, we believe an “NTSB style” ATSB to be quite feasible.**
- **We firmly believe such a development would greatly enhance public confidence in Australian Government of risk minimisation, safety outcomes, across all transport modes.**
- **We believe that it is beyond argument that such a move would greatly benefit the travelling public, but particularly passengers travelling with airlines and other forms of public transport by air.**

We thank you for the opportunity to comment on the proposal, and we would be happy to amplify any of our remarks, if so requested.

Yours sincerely,

W.J.R.Hamilton, FANAM, MAIAA
President.
SMABC.

Incl.
Appendix: Hamilton CV.