



Australian Government
Civil Aviation Safety Authority

OFFICE OF THE DIRECTOR OF AVIATION SAFETY

Trim Ref: G113/302

26 April 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

**CASA request for clarification and review of *Hansard*, Aviation Accident and
Investigations (Pel-Air) hearing on 15 February 2013**

I refer to an email from _____, dated 18 March 2013, regarding the Aviation Accident and Investigations (Pel-Air) Inquiry *Hansard* for the hearing on Friday, 15 February 2013, and referring to the corrections to that *Hansard* submitted (in tabular form) by the Civil Aviation Safety Authority (CASA) on 14 March 2013 (letter dated 12 March 2013).

In her email message, _____ advised that not all of the corrections listed in the table provided by CASA would be accepted as such, because they were not considered to be purely typographical changes. While, of course, the content of *Hansard* is ultimately a matter for the Committee and for *Hansard*, CASA would like to re-submit those items identified by _____ as 'not accepted', as proposed clarifications rather than corrections. These items are set out below.

Beyond this, however, while reviewing a recording of the hearing for the purposes of confirming our understanding of what appeared to be errors in the *Hansard*, it became apparent that there were indeed a number of errors—words omitted or incorrectly transcribed—in the *Hansard* of 15 February 2013. Some of these are included below as part of CASA's proposed clarifications. I have also provided an example of two pages out of the relevant *Hansard* (see Attachment A) identifying differences between the transcription and the audited recording. Because our attention was focused on those portions of the text (and corresponding portions of the recording) in respect of which CASA initially suggested that certain errors had appeared in the *Hansard*, we do not suggest that the items identified in Attachment A necessarily reflect all errors or omissions.

Recognising that *Hansard* staff face sometimes daunting challenges, and mindful that it is now well past the date by which corrections to the relevant proof *Hansard* might be made, it is nonetheless of concern to CASA that such discrepancies should have arisen, and we would appreciate being advised of any actions the Committee might take in connection with this matter.

While the statements identified below, as they appeared in the *Hansard*, are not false or misleading, in the interest of ensuring greater accuracy and clarity, CASA asks that these comments all now be included as part of the relevant record of the proceeding in question.

- Mr McCormick, Page 3: *It did not even require to be done.*
 - CASA determines Mr McCormick meant: 'It was not even required to be done.'
- Mr McCormick, Page 5: *in actual fact the major elements in it are, to my knowledge, are incorporated in the accident report as well.*
 - CASA determines that both the *Hansard* and our original suggested correction are incorrect and the transcript should read: 'in actual fact the major elements out of it, to my knowledge, are incorporated into the accident report as well.'
- Mr McCormick, Page 6: *the question would have come to me: when do I release that report to the ATSB?*
 - CASA determines Mr McCormick meant: 'the question would have come to me: when do I release a report to the ATSB?'
- Dr Aleck, Page 7: *If I could just say something that might put some context for both Senator Fawcett's question and Mr McCormick's answer...*
 - CASA determines that both the *Hansard* and our original suggested correction are incorrect and the transcript should read: 'If I could just say something that might put some context both to Senator Fawcett's question and to Mr McCormick's answer...'
- Dr Aleck, Page 7: *In the spirit of that arrangement, and I agree it probably should be read largely, the question should that a default position should be: 'We'll give you as much as you possibly can and then you decide...'*
 - CASA determines that both the *Hansard* and our original suggested correction are incorrect and the transcript should read: 'In the spirit of that arrangement, and I agree it probably should be read largely, the question should be that the default position should be: 'We'll give you as much as we possibly can and then you decide...'
- Dr Aleck, Page 7: *It is quite conceivable that this information could have been developed within CASA in a form that did not take the form of a report, and that would have been playing smart: 'We'll put it in this form so it doesn't go there.'*
 - CASA determines the *Hansard* contains errors and the recording clearly indicates that Dr Aleck meant the term to be recorded as 'playing it smart', bespeaking a too-clever approach which CASA most certainly would not have taken. The transcript should read: 'It is quite conceivable that that information could have been developed within CASA in a form that didn't take the form of a report, and that would have been "playing [it] smart": "We'll put it in this form - so it doesn't go there".'
- Dr Aleck, Page 7: *In that respect, it is in learning.*
 - CASA determines the *Hansard* is incorrect, and while our original request for omission is withdrawn, the *Hansard* should read: 'In that respect, it's a learning.'
- Dr Aleck, Page 7: *But the fact of the matter...ought to have been passed to the ATSB at a particular time and was not perhaps involved...*
 - CASA determines that both the *Hansard* and our original suggested correction are incorrect and the transcript should read: 'But the fact of the matter is—and it is a matter for Mr Dolan—that it is quite conceivable that information which, on a liberal reading of that provision, ought to have been passed to the ATSB at a particular time and wasn't, perhaps did involve...'

- Dr Aleck, Page 7: *The only other point I will make is that the information that came to us in relation to the operations of Pel-Air were based on the routine auditing processes...*
 - CASA determines Dr Aleck meant: 'The only other point I will make is that the information that came to us in relation to the operations of Pel-Air was based on the routine auditing processes...'
- Dr Aleck, Page 8: *...there is a great deal done about fatigue risk management*
 - CASA determines Dr Aleck meant: '...there has been a great deal done about fatigue risk management.'
- Mr McCormick, Page 10: *Many people operate to places we are not aware of—in the chartered operational aeromedical evacuation repositioning, or...*
 - CASA determines Mr McCormick meant: 'Many people operate to places we are not aware of—in the charter, operational aeromedical evacuation repositioning, or...'
- Mr McCormick, Page 12: *But, in 2009, we were operating under the premises that we have had from my predecessor,...*
 - CASA determines that both the *Hansard* and our original suggested changes are incorrect and the *Hansard* should read: 'But, in 2009, we were operating under the premise that we'd had from my predecessor....'
- Mr McCormick, Page 12: *...and I think the issues in that report have been already covered in other reports which are available to the ATSB—then we do not move forward.*
 - CASA determines that both the *Hansard* and our original suggested changes are incorrect and the *Hansard* should read: '...and I think the issues that are in that report have been already covered in other reports which are available to the ATSB—then we don't move forward.'
- Mr Farquharson, Page 17: *If you look at the full email trail that goes from 19 March, the manager of standards asks another officer to talk with me.*
 - CASA determines the recording of the hearing is unclear and Mr Farquharson meant: '... If you look at the full email trail that goes from 19 March, the executive manager of standards asks another officer to talk with me.'
- Dr Aleck, Page 18: *It is by no means the only means*
 - CASA determines Dr Aleck meant: 'It is by no means the only basis.'
- Mr Farquharson, Page 19: *Not immediately, Senator. It is the minutes of the meeting.*
 - CASA determines that both the *Hansard* and our original suggested changes are incorrect and the *Hansard* should read: 'Not immediately Senator, but it's the minutes of the meeting.'

Yours sincerely

Terry Farquharson
A/g Director of Aviation Safety

(Note yellow shading is part of CASA's proposed clarifications)

(page 6) Mr McCormick: We did not collude with the ATSB not in any way, shape or form. The paper trail, which the committee has in its possession, indicates that. But I go again to this issue, and it is germane to most things that we are discussing around FRMS operators et cetera. There have been many reports over the years that have gone to this. CASA can only do so much. That's not to abrogate our responsibilities, but CASA also has to be cognisant that the industry must do what it's required to do as well.

Look to the 1995 inquiry by the 37th Parliament into CASA and then CAA, which was in the transition period following a number of incidents, that's the plane safe report *Plane Safe: Inquiry into Aviation Safety: the Commuter and General Aviation Sectors* from December 1995. The Hon. Peter Morris MHR, as he then was, in the preface says:

The report reveals a regulator at war with itself and under constant attack from vested interests within the general aviation and commuter industry. Ensuring safe air travel must be the first priority of all participants in the industry as well as the regulator. This will require a major change of attitude and culture by many in the industry.

Now whether that statement is still true today is up to individual opinions.

In my opinion, particularly the last, I would say that is still the case. We can only do so much Senator.

Whether that report of the Chambers should have gone to the ATSB, as I said putting it in retrospect and looking at it, I viewed it as an internal report. We provided the information to the ATSB three times on the directly-interested- parties process. We went through the video conferencing. We did not discuss our conclusions. We had a meeting in February 2010. We also had another meeting in March 2010. All of which are in the documents in front of the committee. Where we went through, in scrupulous detail, the way the MOU and our conduct with the ATSB and the investigations are to be carried out. As I said the Chambers report, to me, saying would the Chambers Report have changed the ATSB's opinion that's a question for the ATSB. Should I have released to the ATSB that report? The question would come to me: when do I release that report to the ATSB?

As I said, that was concluded the Chambers report after we completed all our activities. Now as we know we completed our activities a couple of years before the ATSB did, because we are looking at different areas. Why the ATSB took a couple more years is a matter for the ATSB. I pass no comment; neither criticism nor laud it. The issue here is that we conducted our investigation independently into Pel-Air. Now it's not every day that someone ditches an aeroplane. It is as simple as that. The mere fact that happened, in-fact I was thunderstruck to start with that someone had got to that situation, for whatever reason. Our investigation is our report, our special audit report, indicates areas where we could have done better. Yes, I agree with that. The Chambers report as I say was to me to try to pull all this together, in a new time with a new position, trying to move the organisation forward. We have learned from that Senator and we are certainly a different organisation than we were then, both in structure, policy, process and procedure. The ATSB interaction with CASA is still governed by the MOU and we give as best we can to make sure we uphold the MOU.

(page 7) CHAIR: Is there anyone at the table who would like to add to your remarks, if they have the authority?

Mr McCormick: Thank you, Chair. Perhaps Dr Aleck may wish to add something.

Dr Aleck: I was very closely involved in the development of the MOU and the situation that preceded it. And if I could just say something that might put some context both to Senator Fawcett's question and to Mr McCormick's answer, it might help a bit. Firstly, the rationale for the new MOU was to create an environment in which, if I may put it this way, as much information as appropriate could be exchanged between the agencies. The motivating factor at the time had far less to do with any concerns on the part of the ATSB with information CASA was not providing to them but rather information that the ATSB in the past had not provided to CASA.

The fact that the provisions read the way they do reflect a very appropriate form of reciprocity, in which the ATSB under its new leadership said, 'Yes, we will provide you with more information, and we expect you to provide us with the same.' In the spirit of that arrangement, and I agree it probably should be read largely, the question should be that the default position should be: 'We'll give you as

much as you possibly can and then you decide when we've given you too much.' By the same token, there comes a point where the question has to be asked: 'Is this relevant?' Now I do not have it in front of me at the moment, but I think the provision talks about reports. To be sure, there was a report there because it took the form of a report, and that is what Mr McCormick asked for. It is quite conceivable that that information could have been developed within CASA in a form that didn't take the form of a report, and that would be playing smart: 'Well we'll put it in this form so it doesn't go there.'

This MOU is now up for review and one of the things we both agreed, between the agencies, but unrelated to these particular issues, is that we have to refine these points and we have to say, 'How much information have we given you that you didn't really need? How much information has not been passed that really ought to have been?' I daresay these provisions will be refined with that in mind. Not to say that to suggest that people have been manipulating the provisions but taking a view about how much should go and how much shouldn't. In many situations, it is important that information—certainly that passes from the ATSB to CASA—come under a section 32 provision, to provide the kind of protections that are available to people when the ATSB releases information. So in that respect, it's a learning.

I should mention to, and I don't mean to diminish the importance of anything, but the FRMS issues to the extent that they bore on the accident, which is what the ATSB was investigating, is somewhat debatable.

I am not going to say whether it is irrelevant or relevant. But the fact of the matter is—and it is a matter for Mr Dolan—that it is quite conceivable that information which, on a liberal reading of that provision, ought to have been passed to the ATSB at a particular time and wasn't, perhaps did involve a less than fully faithful adherence to the provisions. But then the question is: was that a harmless error?

Now, in light of the evidence that was produced at the proceedings, one would say that FRMS was such a major issue, how could this information not have been passed in the spirit of that provision? But I do not think there is a conclusion on that, and I think that's the context in which that needs to be looked at. I think Mr McCormick made it clear that it is perhaps something that needs to be looked at as to whether or not information of that kind should be passed. I am not suggesting it's the case but, as we have heard, certainly from people in industry, if the concern is that introspective examinations of one's own organisation then become a matter of public consideration, might that not then discourage the conduct of those activities? Now I think a slightly different standard applies to government agencies looking at themselves, as opposed to private entities, but the principle's the same. And I think that is a consideration that will need to be taken into account. Historically the ATSB—and I think everyone at the table will agree—spared no opportunity to have a go at CASA for some failing, legitimate in many cases. Whether it bore directly on the situation or not is questionable. And it is conceivable that some of those concerns vestigially remain: geeze if we tell them this, the whole focus is going to be on what we failed to do at a particular time.

The only other point I will make and that is the information that came to us in relation to the operations of Pel-Air were based on the routine auditing processes that CASA had had in place for many years, not deficient. Could they be better? Absolutely, and I think that is the point Mr McCormick been made. The Chambers report, coupled with the special audit report, was an extraordinarily incisive review both of the operator—far more detailed and far more depth than a standard audit would ever be and both of the operator and us. So with those considerations in mind could things have been done better, I don't think Mr McCormick has ever said—