

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE AUSTRALIAN TRANSPORT SAFETY BUREAU
AND THE CHIEF MAGISTRATE OF TASMANIA AS TO
THE INVESTIGATION OF FATAL TRANSPORT SAFETY
MATTERS UNDER THE (CTH) *TRANSPORT SAFETY
INVESTIGATION ACT 2003***

1 DICTIONARY

1.1 In this Memorandum of Understanding (MoU):

ATSB: means the Australian Transport Safety Bureau, an operationally independent bureau within the Commonwealth Department of Transport and Regional Services. The Executive Director is responsible for its operations under the *Transport Safety Investigation Act 2003*.

Coroner: means the Chief Magistrate of Tasmania and where the context so requires means the Coroner appointed by the Chief Magistrate of Tasmania to conduct the particular investigation.

Executive Director: means the person occupying the position of Executive Director of Transport Safety Investigation referred to in section 12 of the *Transport Safety Investigation Act 2003*.

2 PURPOSE

2.1 The purpose of this MoU is to maximise the effectiveness of both parties in carrying out their respective roles in the event of a fatal transport safety accident by:

- (a) recognising the similarity of goals of the Bureau and Coroners in improving the safety of the public while at the same time acknowledging the different methods used by the parties to achieve those goals; and
- (b) minimising unnecessary duplication of effort and the potential for conflict without compromising the independence and function of either party and to encourage a spirit of consultation and cooperation directed to ensure both parties are able to carry out a proper investigation.

2.2 The Bureau and Coroners acknowledge that this MoU cannot legally restrict the statutory discretion and powers of either party under relevant legislation.

2.3 It is not the intention of the parties to this MoU to create any legal obligations between them as to the matters set out in it.

3 MUTUAL ACKNOWLEDGMENTS

- 3.1 The ATSB acknowledges the important public interest role of Coroners and the need for Coroners to be able to test any evidence that comes before them in a fair and impartial manner in accordance with their legislated roles under state and territory legislation.
- 3.2 Coroners acknowledge the important public interest role of the ATSB under Commonwealth legislation linked to Australia's international obligations and the need for the ATSB to utilise its limited budget to investigate transport safety matters to the extent likely to make the best contribution to future safety.
- 3.3 The ATSB will seek to conduct its investigations in accordance with best practice Chicago Convention Annex 13 'no blame' principles subject to any resource constraints and differences notified by Australia to ICAO.
- 3.4 Coroners note that the ATSB's Policy Manual, as updated from time to time, provides policy guidance for the conduct of transport safety investigations which helps to underpin the integrity of the ATSB's investigation findings.

4 NOTIFICATION OF AN INVESTIGATION AND CESSATION OF INVESTIGATION

- 4.1 The ATSB will notify the Coroner as soon as practicable after a decision to investigate or to cease an investigation has been taken.
- 4.2 The parties will liaise in respect of any fatal accident that both are investigating with a view to:
 - avoiding unnecessary duplication of effort, and
 - seeking to agree on the procedures of the investigation.
- 4.3 The parties are aware of the investigatory processes of each other and each will strive to avoid interfering with the efficacy of each other's investigation.
- 4.4 As soon as practicable after the commencement of an investigation and in jurisdictions where relevant and likely, the ATSB will advise the Coroner in writing, that the ATSB wishes to be advised of any coronial case management conference that may be proposed or held. The ATSB will also advise the Coroner in advance of any issues it thinks will be beneficial to discuss at the coronial case management conference.

5 ACCIDENT SITE MATTERS

- 5.1 The activities of those personnel assisting the Coroner in the identification and removal of deceased persons at an accident site, are covered by the exemption outlined in subsection 44(3)(b) of the *Transport Safety Investigation Act 2003* (TSI Act), that is to say, that authorisation by the Executive Director (or a delegate of the Executive Director) to access the site while it is secured by the ATSB is not required.
- 5.2 The Executive Director acknowledges that it is reasonable for the Coroner and the Coroner's staff and those otherwise assisting him (including pathologists and police officers) to enter, re-enter and remain at an accident site in order for the Coroner to discharge his role properly according to law.
- 5.3 Both parties agree to protect and preserve evidence at the site until each party is reasonably satisfied that their respective scene examinations are complete.
- 5.4 In the majority of cases the ATSB will place a protection order over the accident site requiring that the evidence must not be moved or interfered with except with the permission of the Executive Director. However, in circumstances where the ATSB is not on site, and it is considered necessary, authority will be given to the person or organisation deemed to be in the best position to protect and preserve the evidence. When the Coroner is given this authority the Coroner or the Coroner's representative will discuss with the ATSB by telephone the best way to preserve the scene of the accident and the evidence on-site.
- 5.5 Other than as authorised under a protection order or in accordance with clause 6 of the MoU, persons assisting the Coroner are expected not to move or handle any items (evidentiary or otherwise), including any recording devices, without the ATSB Investigator-In-Charge's permission.
- 5.6 Where it is necessary to disturb evidence for the purpose of removing bodies from the wreckage, persons assisting the Coroner are expected, where possible, to record the evidence prior to those actions being taken and to make those records available to the ATSB.
- 5.7 Both parties agree that before each party's evidence is removed from the accident site for further examination or testing, the Investigator-In-Charge and persons assisting the Coroner will liaise as to the general nature of examination and access to the results of such examination.
- 5.8 Persons assisting the Coroner agree to advise the ATSB Investigator-In-Charge as to the nature and contents of any personal effects, for example, medication, glasses, documentation, diaries, mobile phones etc., which were found on deceased persons and which were removed from the accident site with those persons.
- 5.9 The Investigator-In-Charge will advise the Coroner when the Bureau intends to relinquish control of the accident site.

6 CORONER ACCESS TO EVIDENCE UNDER A PROTECTION ORDER

6.1 Where a protection order applies at an accident site, for example, to prevent the removal of flight recorders from the wreckage, the activities of those persons assisting the Coroner in the identification and removal of deceased persons at the accident site, are covered by the exemption outlined in subsection 43(4)(b) of the TSI Act. That is to say that the Executive Director's (or a delegate's) permission is not required to disturb the evidence under the protection order providing that the actions of the persons assisting the Coroner were necessary for the identification or removal of deceased persons.

7 ACCESS TO PHYSICAL EVIDENCE BY BOTH PARTIES

7.1 Coroners may from time to time, for the purposes of a coronial inquiry, request in writing from the ATSB, physical evidence held by the ATSB. To the extent that it is legally entitled to do so, the ATSB agrees to provide Coroners with the physical evidence by:

- (a) providing the material upon request when no longer required by the ATSB; or
- (b) providing access to the material for observation/evaluation by Coroners under the supervision of the ATSB, including providing opportunities for Coroners to view testing and examinations conducted by or coordinated through the ATSB.

7.2 The ATSB will inform Coroners when the ATSB intends to undertake examinations of physical evidence that may change the status or functionality of that evidence.

8 CORONER ACCESS TO OBR INFORMATION UNDER SECTION 59 OF THE TSI ACT

8.1 When Coroners wish to access OBR information for the purpose of a coronial inquiry, a written request must be made to the Executive Director.

9 CORONER ACCESS TO RESTRICTED INFORMATION

- 9.1 When requesting access to restricted information, a written request is to be forwarded to the Executive Director which includes as far as is practicable, a detailed description of the types of restricted information that is being requested. A general request for 'all information in the possession of the ATSB' will not be considered.
- 9.2 The ATSB will endeavour, where practicable, to keep Coroners informed of the progress of the ATSB investigation and the types of information that have been obtained by the ATSB (including information that is planned to be collected) in the course of an ATSB investigation to which a coronial inquiry relates.

10 PATHOLOGY AND TOXICOLOGY

- 10.1 The ATSB acknowledges that Coroners will continue to have the primary role and control with respect to the bodies of the deceased and any autopsy, pathology and toxicology testing that may be undertaken to ascertain identity and cause of death.
- 10.2 While the undertakings in this part help fulfil Australia's international obligations under Annex 13 of the Chicago Convention (eg paragraph 5.9), they are not exclusive between the ATSB and the Coroners. It is understood the Coroners will deal in a way they consider appropriate with other parties.
- 10.3 Except in exceptional circumstances such as in the case of suspected serious criminality, Coroners (or their representatives) will provide the ATSB with copies of all reports arising from such testing which the ATSB will treat as restricted information.
- 10.4 Coroners (or their representative) will also seek to facilitate dialogue at the earliest practicable time in all the circumstances between pathologists and the ATSB concerning what testing and inquiry might be helpful in the particular circumstances, including in relation to ensuring that specific requests from the ATSB are accommodated. As soon as it is in a position to do so the ATSB will provide the pathologist with an outline of what information the ATSB is seeking. If there is likely to be a delay in providing the request the pathologist and Coroner is to be advised.
- 10.5 The requests are seen to be of mutual interest and benefit to Coroners. As a guide they are likely to include:
 - any pre-existing medical conditions that may influence performance, and the extent to which any such conditions may have influenced performance;
 - the presence of any medication and/or drugs which may influence performance, and the extent to which any such conditions may have influenced performance;

- the survivability of the accident and, if the accident was considered survivable, the nature of any issue which may have reduced survivability in the particular circumstances;
- the position and likely activity of the person at the time of the accident such as the placement of hands and feet and which seat the person was in;
- whether the person was wearing any spectacles, contact lenses, hearing aids, headphones or other similar aids/tools at the time of the accident; and
- in relevant circumstances, any evidence of smoke or fume inhalation or of drowning.

10.6 Where practicable, Coroners (or their representatives) will also endeavour to expedite testing and provision of reports to the ATSB to enable the ATSB to finalise its investigation. For toxicology reports the Coroners will seek to advise the ATSB of the time samples were taken, the condition of the samples at the time and how the samples were stored prior to and during examination.

10.7 Where it seems that, due to lack of resources or expertise, certain primary requests from the ATSB cannot be accommodated, Coroners will assist the ATSB to obtain copies of relevant records, materials and samples so that the ATSB can obtain a specialist opinion. The Coroners will only be expected to do this to the extent they can lawfully assist.

11 WITNESSES

11.1 If a Coroner wishes an officer of ATSB to be a witness (including as an expert witness) at a coronial inquest into a transport accident, a Coroner will issue a summons requiring the relevant ATSB officer to appear as such a witness. Prior to doing so, however, the Coroner will consult with the ATSB in order to ascertain the most appropriate ATSB officer to assist the Coroner. If no ATSB officer is able to assist, the ATSB will endeavour to identify for the Coroner another person (including a person from the aviation or other transport mode industry or another government agency) who may be of assistance to the Coroner.

12 CONTACT DETAILS

12.1 The parties will keep each other informed of all relevant (including after-hours) contact details.

12A THE ATTACHMENT

14 COOPERATION AND REVIEW OF THIS MOU

- 14.1 This MoU has effect from the 25th of June, 2004.
- 14.2 The parties to the MoU shall take all reasonable steps to ensure that all relevant persons in their respective organisation are aware of its terms.
- 14.3 Coroners and the ATSB will seek to meet at least every 18 months to review the operation of this MoU.
- 14.4 The parties may amend this MoU at any time by mutual agreement. Any such amendment must be by notice in writing, and takes effect from the date of amendment set out in the notice.
- 14.5 Either party may at any time give written notice of its intention to terminate this MoU. The MoU will terminate on the date for termination set out in the notice (which must not be less than 3 months from the date of the notice).

SIGNED By Arnold George Shott,
Chief Magistrate of Tasmania,
at Launceston in Tasmania
the 15th day of June, 2004. In
the presence of:


K. G. Shott
Launceston Magistrates
Court

SIGNED by Kym Bills,
Executive Director of the
ATSB of Canberra in the
A.C.T., the 18th day of June,
2004. In the presence of:


J. Oster

ATTACHMENT

This Attachment does not form part of the MoU but it is reproduced for convenience only as setting out the current intentions of the Executive Director as to the various matters to which it relates.

A. CORONER ACCESS TO OBR INFORMATION UNDER SECTION 59 OF THE TSI ACT

- The release of OBR information to a Coroner will generally be a matter of timing. Where an ATSB investigation has been completed and where the final investigation report has been publicly released, the Executive Director will normally release relevant OBR information to the Coroner.
- Where OBR information relates to an ATSB investigation that is still ongoing, the Executive Director will not normally release the OBR to a Coroner. However, in exceptional circumstances and where the Coroner can provide justification of a need to access it before the release of the Final ATSB Report the Executive Director may consider allowing access to OBR information under section 52 of the TSI Act.

B. CORONER ACCESS TO RESTRICTED INFORMATION

The following policy shall apply to the release of various types of restricted information

(a) Statements (whether oral or in writing) obtained from persons by a staff member in the course of an investigation (including any record of such a statement) under the TSI Act

- Statements will not be released to Coroners or to any other party seeking access because of the importance the ATSB places on encouraging the free flow of this information for safety purposes on the basis that it will be protected.
- The ATSB will provide the Coroner with a list of all witnesses that have been interviewed by the ATSB during the course of the ATSB investigation.

(b) Information recorded by a staff member in the course of an investigation under the TSI Act

- This category of restricted information will most often contain personal information, opinions and analysis and will not generally be released. However, where it represents simple factual information, for example, a wreckage plot, such information would be considered for release after it has been verified by the

ATSB. The Executive Director would need to be convinced on a case by case basis that the circumstances warranted the release of any other type of restricted information recorded by a staff member.

(c) Communications with persons involved in the operation of a transport vehicle that was or is the subject of an investigation under the TSI Act

- This category of restricted information does not include OBR information. It would normally cover recordings such as Air Traffic Control, Rail Control or Port Authority tapes. The ATSB will advise the Coroner to obtain this evidence from the original source.
- Where advised in writing that it is not possible to obtain this evidence from the original source, including relevant justification, the ATSB will reconsider the request and may release the evidence to the Coroner.

(d) Medical or private information regarding persons (including deceased persons) involved in a transport safety matter that is or has been investigated under the TSI Act

- Pathological and toxicological information is under the control of the Coroner. The ATSB will advise Coroners to obtain other medical and private information from the original source.

(e) In relation to a transport vehicle that is or was the subject of an investigation under the TSI Act – information recorded for the purpose of directing or monitoring the progress of a vehicle from one place to another or information recorded in relation to the operation of the vehicle

- This category of restricted information includes a variety of recorded information such as radar plots, flight, voyage and rail data recordings, and train signal information etc.
- The ATSB will advise the Coroner to obtain this information from the original source.
- Where advised in writing that it is not possible to obtain this evidence from the original source, including relevant justification, the ATSB will reconsider the request and may release the evidence to the Coroner.

(f) Records of any analysis of information or evidential material acquired in the course of an investigation (including opinions expressed in that analysis)

- This category of restricted information would include analysis carried out by ATSB personnel as well as external personnel assisting the ATSB either under contract or by other agreed arrangements, for example, technical analysis of components or human factors analysis.
- The Executive Director would need to be convinced on a case by case basis that the circumstances warranted the release of this type of restricted information. It is likely that if the information is released to the Coroner it will be in the form of a section 25 report to ensure that the information cannot be used in any other legal forums.

(g) Information contained in a document that is produced to a staff member under paragraph 32(1)(b) or 36(3) or (4)(a) of the TSI Act

- This category of restricted information has been obtained under compulsion powers where self-incrimination is not an excuse for providing the information. Consequently, it attracts self-incrimination immunity and, as such, will not be released to Coroners but may be obtained from the original source.

C. PATHOLOGY AND TOXICOLOGY

In the exceptional circumstances referred to in paragraph [12.3], it is noted that the ATSB may utilise its powers under s32 of the TSI Act to obtain relevant reports from those assisting Coroners.