



Australian Government
Australian Transport Safety Bureau



MOU

**Memorandum of Understanding
between the
Australian Transport Safety Bureau
and
Airservices Australia**

June 2016

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN TRANSPORT SAFETY BUREAU

AND

AIRSERVICES AUSTRALIA

1 THE PARTIES

1.1 Airservices Australia

Airservices Australia (Airservices) is a corporate Commonwealth entity established under the *Air Services Act 1995* (AS Act). Airservices' primary function is to provide services and facilities for a number of reasons, including for purposes relating to the safety, regularity or efficiency of air navigation. It is acknowledged that Airservices also has internal investigatory roles in relation to its regulated safety functions.

1.2 Australian Transport Safety Bureau

Under the *Transport Safety Investigation Act 2003* (TSI Act), the Australian Transport Safety Bureau (ATSB) has functions including the independent investigation of aviation, marine and rail accident and incidents and communicating the results for the purpose of improving transport safety.

2 OBJECTIVE AND STATUS

- 2.1 The purpose of this MOU is to enhance aviation safety by facilitating cooperation between the agencies while maintaining their independence and capacity to perform their separate but complementary functions.
- 2.2 In pursuing this objective, both agencies agree to uphold the values of cooperation, honesty, trust, mutual respect, openness and professionalism.
- 2.3 While this MOU is not legally binding, both agencies will endeavour to perform their respective functions in a manner consistent with the values and principles it embraces.

3 STATE SAFETY PROGRAMME

- 3.1 ATSB and Airservices are committed to ensure the effective implementation of the State Aviation Safety Programme (**Programme**), as published by the Department of Infrastructure and Regional Development. Cooperative priorities for improving implementation of the Programme during the period of this MOU include, but are not limited to:
 - (a) Improving information collection and sharing processes, having regard to the standards and recommended practices in Annexes 13 and 19 to the Convention on International Civil Aviation;
 - (b) Cooperative research and analysis to review safety trends and identify areas for safety improvement; and
 - (c) Public communication and education on aviation safety matters.

4 COMMUNICATION

- 4.1 ATSB and Airservices management will take appropriate steps to ensure their staff understand and act in accordance with the complementary roles and responsibilities of each agency in the aviation safety system.
- 4.2 ATSB and Airservices management will encourage open dialogue between the two agencies on matters of mutual interest and concern.

- 4.3 In addition to regular meetings between the CEO Airservices and the Chief Commissioner ATSB, meetings will be held at least twice yearly between nominated representatives of the ATSB and Airservices to discuss matters including:
- business and operational plans;
 - recommendations and findings from ATSB investigations;
 - safety issues arising from Airservices investigations;
 - areas of shared risk;
 - research programs;
 - industry trends relevant to aviation safety;
 - operational policies and procedures; and
 - mutual staff training & development opportunities.
- 4.4 Where officers of the respective agencies communicate about the particulars of a given aviation investigation, they will ensure appropriate records are kept to provide a faithful and accurate account of those communications.
- 4.5 Key contact points are listed at Attachment 1. Contact points can be updated by notice by a party without interfering with the validity of the MoU.

5 NOTIFICATIONS

- 5.1 Information from notifications of aviation accidents, incidents and safety concerns will be shared and used in a manner consistent with relevant legislation and policies and procedures.

Airservices Notifications to the ATSB:

- 5.2 Airservices will use its best endeavours to enable Airservices officers to fulfil their statutory obligations under the TSI Act to report aviation “immediately reportable matters” and “routine reportable matters” to the ATSB.

ATSB Notifications to Airservices:

Mandatory Reporting

- 5.3 The ATSB will notify Airservices as soon as reasonably practicable of “immediately reportable matters” that relate, or appear to relate, to Airservices or the carrying out of Airservices’ functions.

Confidential Reporting

- 5.4 The ATSB will forward de-identified aviation information from the Aviation Self Reporting Scheme (ASRS) and the REPCON voluntary and confidential reporting scheme to Airservices, in accordance with the governing legislation for the confidential reporting schemes.
- 5.5 Unless otherwise agreed by the Parties, Airservices will advise the ATSB of its response to any safety concern arising out of a REPCON within 5 days, which the ATSB may publish in part or in full.

6 COOPERATION IN RELATION TO COMMENCING AND CONDUCTING INVESTIGATIONS

- 6.1 If the ATSB commences an investigation into an aviation transport safety matter under the TSI Act which relates to a function of Airservices, the ATSB will notify Airservices as soon as practicable.
- 6.2 If Airservices commences an audit or investigation that relates directly to a matter the ATSB is known to be investigating or an unresolved safety issue identified by the ATSB in an investigation and notified to Airservices, Airservices will inform the ATSB as soon as reasonably practicable.
- 6.3 Where Airservices is aware of a matter that has the potential to require internal action by Airservices, it will seek to obtain evidence without waiting for the findings from the ATSB's investigation into the same matter, if any.
- 6.4 Both agencies will seek to accommodate requests for assistance from one another involving the exchange of expert personnel. An agency seeking to accommodate such a request will take into account the matters in Attachment 2, as well as matters involving the safety benefit, legislative requirements, available resourcing, internal policies and the manageability of potential conflicts of interest arising from the exchange of personnel.
- 6.5 Where assistance of the kind mentioned in 6.4 is provided, each agency will seek to ensure it does not impose an unreasonable financial impost on the other agency providing the assistance.
- 6.6 Each agency will consult with the other on the development of its policies for the participation of staff from the other agency in providing assistance in the performance of the agency's statutory functions.

7 EVIDENCE

- 7.1 In order to ensure cooperation and coordination in relation to the collection of evidence where both agencies have an interest, the agencies agree:
 - (a) consistent with section 45 of the TSI Act, the ATSB, on request, will make evidential material available for inspection to Airservices, where practicable and as authorised by the ATSB Investigator In Charge;
 - (b) where the ATSB issues a protection order under section 43 of the TSI Act, Airservices and the ATSB will consult with each other where Airservices has a need for the evidence, with a view to meeting each agency's interests;
 - (c) to ensure that the removal and retention of evidence is conducted so as to maintain the integrity of that evidence.
- 7.2 The ATSB will normally be given priority over Airservices' internally led investigations into significant operational safety occurrences for interviews of Airservices' personnel involved in a matter the ATSB is investigating. However, nothing in this MOU will prevent Airservices from conducting interviews or collecting evidence to comply with its safety or statutory functions or obligations.

- 7.3 Where Airservices is aware that the ATSB has commenced an investigation, Airservices will endeavour to, unless otherwise agreed with the ATSB, restrict access to radar, audio and video data from those Airservices officers to be interviewed.

8 DISCLOSURE OF INFORMATION RELATING TO INVESTIGATIONS

- 8.1 It is understood that the provision of all information will be subject to the legal obligations and policies applicable to both organisations.

Disclosure of Information to the ATSB

- 8.2 Unless otherwise agreed in a particular circumstance, and without any intention to apply to routine discussions during the course of normal business, the ATSB will use, for an investigation, section 32 of the TSI Act to require information, evidence or interviews from Airservices, its officers, agents or employees. The section 32 notice will be issued through a nominated Airservices representative.
- 8.3 Unless otherwise agreed by the parties, a section 32 notice will provide a minimum of 10 business days for Airservices to respond. Airservices acknowledges that there may be exceptional circumstances where shorter time frames are required and will seek to cooperate in meeting those time frames.
- 8.4 Airservices agrees that if an Airservices officer is known to have information which Airservices reasonably believes could assist the ATSB in the performance of its investigative functions in relation to a particular matter, Airservices will undertake to advise the ATSB of the existence of that information as soon as reasonably practicable.

Disclosure of Information to Airservices

- 8.5 Subject to the provisions of 8.6 and 8.7, Airservices may seek information from the ATSB which Airservices believes it requires in the interest of the safety of air navigation.
- 8.6 In determining whether information will be provided pursuant to 8.5, the ATSB will have regard to:
- (a) the demonstrable interests of safety in respect of the particular matter;
 - (b) whether the information can, in all the circumstances, practicably be obtained by Airservices from an alternate source; and
 - (c) the provisions in the TSI Act regarding the disclosure of on-board recording (OBR) information and restricted information.
- 8.7 When seeking information from the ATSB pursuant to 8.5 above, Airservices agrees to set out the reasons why the information is required in the demonstrable interests of safety.
- 8.8 Where it is necessary to limit the disclosure of restricted information to a limited number of individuals in Airservices under statutory protection, section 62 of the TSI Act may be used.

9 INVESTIGATION REPORTS

- 9.1 The ATSB will provide Airservices with a copy of every aviation-related investigation report involving, or relating to, Airservices' operations that the ATSB publishes.
- 9.2 Airservices will be deemed a Directly Involved Party (DIP) by the ATSB and invited to respond on the content of aviation-related draft reports involving Airservices' operations.
- 9.3 Airservices will submit all its comments in writing with supporting evidence.
- 9.4 Unless otherwise notified by the ATSB, all comments from Airservices as a DIP will be made within the following time periods from when the ATSB provided Airservices with the draft report:
 - (a) 28 days for major, level 1, level 2 and level 3 investigations;
 - (b) 14 days for level 4 investigations
 - (c) 5 days for level 5 investigations.
- 9.5 Comments from Airservices will be considered by the ATSB and, where deemed appropriate by the ATSB, the final report will be amended accordingly. Airservices will be given feedback on why comments of a substantive nature are not incorporated.
- 9.6 Where the ATSB proposes to release an aviation draft report to give advance notice of the likely form of the final report, Airservices will receive a copy at the same time as the other relevant parties.

10 SAFETY ACTION

- 10.1 Where, prior to the release of a final report, Airservices takes safety action in relation to an aviation-related investigation by the ATSB, Airservices will notify the ATSB as soon as practicable. The ATSB will use its best endeavours to acknowledge in its final report the safety action taken by Airservices, where the ATSB is advised at least 20 days prior to publication.

ATSB Safety recommendations

- 10.2 The ATSB will consult with Airservices should any safety issues be identified that affect Airservices, and before making any formal recommendations for safety action by Airservices.
- 10.3 Airservices will respond to any formal safety recommendations issued, in accordance with section 25A of the TSI Act. Where consideration and implementation of the recommendation may be protracted, Airservices will provide the ATSB with updates on its progress at least every 3 months from the date when the recommendation was first issued, or otherwise as frequently as the parties agree.
- 10.4 Airservices acknowledges that the ATSB may publish some, or all, of Airservices' response to a safety issue or recommendation.

11 RESEARCH AND DATA ANALYSIS

- 11.1 Before either the ATSB or Airservices commences general research or data analysis on matters of potential mutual interest, the organisations will endeavour to consult with each other to identify the opportunity for input from the other organisation and mutual co-operation. General aviation reports, research and data analysis reports will be provided to Airservices by the ATSB in accordance with the ATSB's normal DIP process identified in section 9 of this MOU.

12 SHARED TRAINING OPPORTUNITIES:

- 12.1 The ATSB and Airservices will share their in-house training calendars with each other. To the extent there is capacity and available resources, each agency will seek to accommodate the requests of the other agency to have staff attend relevant training courses.
- 12.2 The ATSB and Airservices will seek to identify opportunities for efficiency in the delivery of training from external providers by having their interested staff attend together.

13 BRIEFING AND CONTACT WITH THE MEDIA

- 13.1 **Executive briefing** – The ATSB will advise the Minister, through his or her office, and appropriate members of the Department of Infrastructure and Regional Development and Airservices of serious and high profile aviation accidents or incidents relating to Airservices' functions. The ATSB will also provide relevant advance briefings to the Minister, the Departmental Executive and Airservices whenever it makes safety recommendations, circulates final reports in relation to aviation investigations of serious and high profile occurrences or proposes to release a significant media statement relating to Airservices' functions.
- 13.2 Airservices will endeavour to inform the ATSB and provide advance briefings before it makes any comments pertaining to any serious or high profile aviation transport safety matters that it is aware the ATSB is investigating.
- 13.3 **Contact with the media - During the course of an investigation by the ATSB.** The ATSB will be responsible for initial contact with the media and any subsequent briefing on information concerning an ATSB investigation. Any media inquiries specific to the ATSB's investigation should immediately be referred by Airservices to the contact officer nominated by the ATSB. However, nothing in this section limits Airservices' right to comment on an incident, occurrence or internal investigation.

14 DURATION, VARIATIONS & DISPUTE RESOLUTION

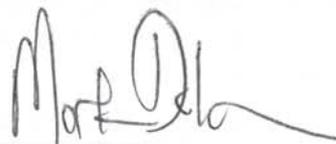
- 14.1 This Memorandum will apply for 3 years from the date of signing and may be extended, varied or terminated by exchange of letters between the ATSB and Airservices.
- 14.2 In the absence of extension or termination in accordance with 14.1, this Memorandum will continue to apply.

- 14.3 The memorandum is subject to review by the parties as required, but not more than once per year.
- 14.4 In the event that any disagreements or disputes arise in respect to any of the provisions of this MoU, then the dispute/disagreement will initially be referred to senior management of the two agencies. Should resolution not be forthcoming, the issue will be referred to the Chief Executive Officer (Airservices) and Chief Commissioner (ATSB) for resolution. If unresolved at that level, the matter should be jointly raised with the Secretary of the Department of Infrastructure and Regional Development.

Signed at Canberra on this *NINTH* day of *JUNE* 2016



JASON HARFIELD
Chief Executive Officer
Airservices Australia



MARTIN DOLAN
Chief Commissioner
Australian Transport Safety Bureau

ATTACHMENT 1 – CONTACTS

Immediately Reportable Matters (IRMs) and decision to investigate

ATSB: 1800 011 034

Airservices: Executive General Manager Safety, Environment & Assurance Group,
atsbadmin@airservicesaustralia.com

Investigations

ATSB: Manager for investigation advised by ATSB

Airservices: Executive General Manager Safety, Environment & Assurance Group,
atsbadmin@airservicesaustralia.com

Research and Data Analysis

ATSB: Manager – Reporting, Short Investigations and Research

Airservices: Systemic Analysis Monitoring and Review Manager

Data Requests (no investigation)

ATSB: Manager – Notifications and Data Quality (for urgent requests), otherwise
atsbinfo@atsb.gov.au for routine requests

Airservices: external.data@airservicesaustralia.com

Confidential Reporting

ATSB: Manager–Manager Short Investigations and Confidential Reporting

Airservices: Executive General Manager Safety, Environment & Assurance Group,
atsbadmin@airservicesaustralia.com

Safety Education

ATSB: Manager – Reporting, Short Investigations and Research

Airservices: Manager Safety Improvement

Training

ATSB: Manager Organisational Development

Airservices: Manager Safety Improvement

ATTACHMENT 2 – PARTICIPATION IN INVESTIGATIONS

1. Participation in investigations will be co-ordinated through the Executive General Manager Safety, Environment & Assurance Group Airservices and the General Manager Aviation Safety Investigations, ATSB.
2. The Agencies may agree that an Airservices officer will act as an observer or an external investigator for the purposes of an ATSB safety investigation under the direction of the Investigator-in-Charge (IIC). The Airservices officer will be required to sign an agreement acknowledging his or her obligations and duties, appropriate to their level of involvement in a transport safety investigation.
3. The Airservices officer will be given access to evidence to the extent necessary to enable the IIC to effectively complete the investigation.
4. Given the nature of its mandate, the ATSB will not normally seek to have its officers participate in Airservices internal processes. However, if the agencies agree that participation by an ATSB officer in an internal Airservices process is appropriate, the ATSB officer must comply with any lawful direction given to them by the Airservices officer in charge of the investigation.

Safety equipment for on-site

5. If Airservices officers attend an ATSB controlled accident site, they must ensure they meet the ATSB minimum training, occupational health and safety, and personal protective equipment requirements.
6. Where the ATSB has requested that an Airservices officer attend an accident site to assist in an ATSB investigation, the ATSB will provide the Airservices officer with any required disposable protective equipment (i.e. overalls, face masks, gloves and safety glasses).