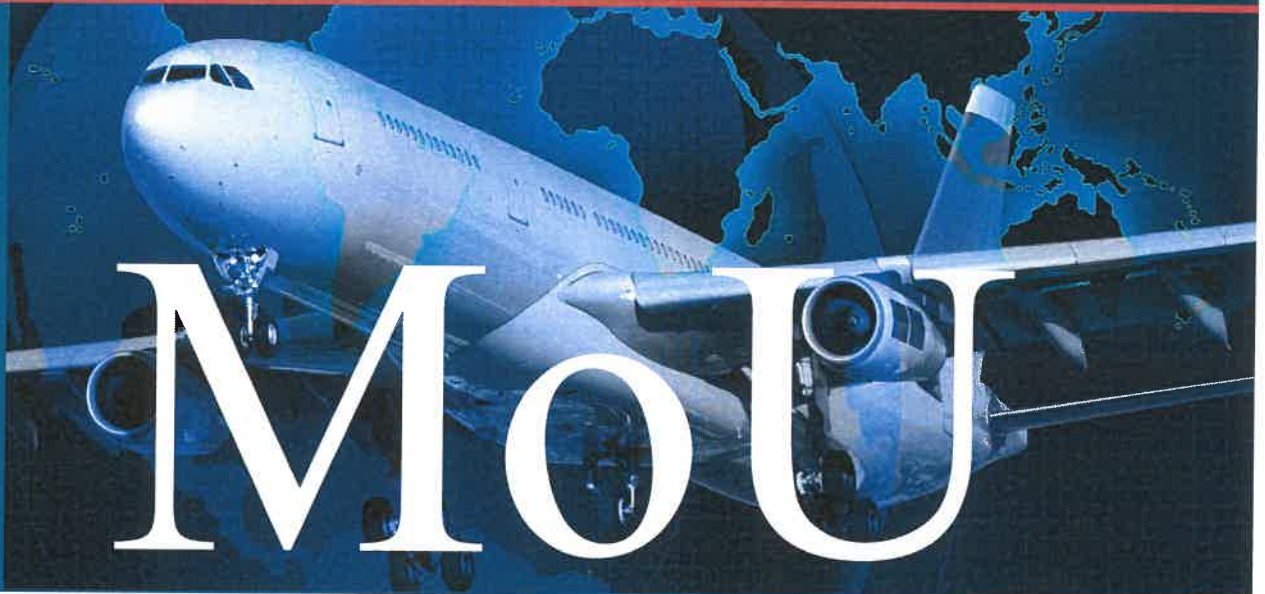




Australian Government
Australian Transport Safety Bureau



Australian Government
Civil Aviation Safety Authority



Memorandum of Understanding
between the
Australian Transport Safety Bureau
and the
Civil Aviation Safety Authority

May 2024

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN TRANSPORT SAFETY BUREAU

AND

THE CIVIL AVIATION SAFETY AUTHORITY

1 THE PARTIES

1.1 Civil Aviation Safety Authority

Under section 9 of the *Civil Aviation Act 1988* (CA Act), the Civil Aviation Safety Authority (CASA) is responsible for, amongst other things, the safety regulation of civil air operations in Australian territory and the operation of Australian aircraft outside Australian territory, and for the promotion of high standards of aviation safety.

1.2 Australian Transport Safety Bureau

Under section 12AA of 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 accidents and incidents and communicating the results for the purpose of improving transport safety.

2 OBJECTIVE AND STATUS

- 2.1 The purpose of this Memorandum of Understanding (MOU) is to detail cooperation between the agencies while maintaining the independent but complementary functions of each agency.
- 2.2 Both agencies agree to uphold the values of honesty, trust, mutual respect, openness, and professionalism.
- 2.3 While this MOU is not legally binding, both agencies will endeavour to perform their functions in a manner consistent with the values and principles it embraces.

3 SAFETY PROGRAMME

- 3.1 The ATSB and CASA are committed to ensure the effective implementation of Australia's *Aviation State Safety Programme* (SSP), as published by the Department of Infrastructure, Transport, Cities and Regional Development, Communications, and the Arts.
- 3.2 Cooperative priorities for improving implementation of the SSP include:
 - (a) Improving information collection and sharing processes, having regard to the standards and recommended practices in Annexes 13 (*Aircraft Accident Investigation*) and 19 (*Safety Management*) to the Convention on International Civil Aviation, adopted and signed in Chicago on 7 December 1944 (Chicago Convention).
 - (b) research and analysis to review safety trends and identify areas for safety improvement; and
 - (c) Public communication and education on aviation safety matters.

4 ENGAGEMENT

- 4.1 In addition to regular meetings between the Director of Aviation Safety, Chief Commissioner, and other key personnel, both agencies are committed to a Bi-annual operational meeting (see TORs attached).
- 4.2 Key contacts are in Attachment 1.

5 INFORMATION SHARING

- 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 the Safety Information Policy Statement, published by the ATSB and CASA.

Note: In sharing and using mandatory reports of occurrences other than accidents and serious incidents, both parties will have regard to the objects, purposes and implementing processes reflected in Annex 19 to the Chicago Convention.

CASA Notifications to the ATSB

- 5.2 CASA will ensure CASA officers fulfil their statutory obligations under the TSI Act to report immediately reportable aviation matters and routine reportable matters to the ATSB.
- 5.3 CASA will ensure up to date data is provided to the External Data Catalogue maintained by the Department of Infrastructure, Transport, Regional Development, Communications, and the Arts in accordance with the Data Sharing Agreement.
- 5.4 CASA will provide the ATSB (monthly) with a copy of the current Aircraft registration database with email and phone contact information for owners and operators.

ATSB Notifications to CASA

Mandatory Reporting

- 5.5 The ATSB will provide CASA with details of notifications of immediately reportable aviation matters as soon as reasonably practicable. The ATSB will provide CASA, (daily) with details of notifications from aviation routine reportable matters and other occurrences received through its mandatory reporting scheme.
- 5.6 The ATSB will ensure that up to date data is provided to the External Data Catalogue maintained by the Department of Infrastructure, Transport, Regional Development, Communications, and the Arts in accordance with the Data Sharing Agreement.

Confidential Reporting

- 5.7 The ATSB will forward de-identified aviation information to CASA that is received through the Aviation Self Reporting Scheme (ASRS) and the REPCON voluntary and confidential reporting scheme, in accordance with the governing legislation and policies for the confidential reporting schemes.
- 5.8 Unless otherwise agreed by the Parties, CASA will advise the ATSB of its response to any safety concern raised in a REPCON within 21 days, which the ATSB may publish in part or in full.

6 COMMENCING AND CONDUCTING INVESTIGATIONS

- 6.1 The ATSB will notify CASA as soon as practicable if ATSB commences an investigation into an aviation transport safety matter under the TSI Act.
- 6.2 The ATSB will notify CASA of all active occurrence briefs in a weekly report.
- 6.3 If CASA commences an audit, surveillance activity or safety review 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 CASA, via an investigation report, CASA will inform the ATSB as soon as reasonably practicable.

- 6.4 Where CASA is aware of a matter that has the potential to require compliance or enforcement action, it will seek to initiate audit, surveillance, and safety review activities to obtain evidence without waiting for the findings from the ATSB's investigation into the same matter.
- 6.5 Participation in investigations by CASA personnel will be coordinated through the Manager ALO (CASA) and a Director of Transport Safety (ATSB) (see Attachment 2).

7 ONSITE EVIDENCE

- 7.1 The agencies agree:
 - (a) where practicable, and as authorised by the ATSB Investigator in Charge, the ATSB will make any physical evidence available for inspection to CASA,
 - (b) the ATSB has priority with respect to the removal and custody of evidence but will consult with CASA where CASA may have a need for access to the evidence,
 - (c) that the removal and retention of evidence will be conducted in line with appropriate chain-of-evidence protocols.
- 7.2 Attachment 3 details the working arrangements between CASA and the ATSB to facilitate timely access to certain documents after an aircraft accident or serious incident.
- 7.3 CASA will advise the ATSB if they intend to take control of aircraft accident sites or take custody of aircraft wreckage after the ATSB has completed their on-site activities.

8 DISCLOSURE OF INFORMATION RELATING TO INVESTIGATIONS

- 8.1 The provision of any information will be subject to the legal obligations and policies applicable to each organisation (the understandings below do not limit the legislative powers and functions). Information will only be disclosed and used in accordance with the Safety Information Policy Statement, published by ATSB and CASA.

Disclosure of Information to the ATSB

- 8.2 Unless otherwise agreed by the organisations, the ATSB will serve CASA through the CASA ALO with a notice under section 32 of the TSI Act where it requires information from CASA or a CASA officer for the purpose of an ATSB investigation.
- 8.3 Without restricting the ATSB's use of powers where an urgent response is required, a section 32 notice will normally provide a minimum of 10 business days for CASA to respond.
- 8.4 If CASA has information which CASA reasonably believes could assist the ATSB in the performance of its investigative functions in relation to a particular matter, CASA will undertake to advise the ATSB of the existence of that information as soon as reasonably practicable.

Provision of CASA Reviews

- 8.5 The ATSB will be invited by CASA to attend any specific Sector Safety Risk Profile (SSRP) workshops hosted by CASA. CASA will publish the outcomes and associated data from an SSRP on the CASA website.

- 8.6 If CASA decides to conduct a review in relation to a matter that is the subject of an ATSB investigation, CASA will advise the ATSB that such a review is being undertaken.
- 8.7 On written request from the ATSB, CASA will provide the ATSB with a copy of the completed review once CASA accepts the review as final and complete.
- 8.8 In the event a Review cannot be provided to the ATSB within 60 days of the date on which the Review was commenced, the ATSB may make a request to CASA to discuss CASA’s preliminary observations and recommendations with the ATSB.

Disclosure of Information to CASA

- 8.9 The ATSB agrees that, if an ATSB officer is known by the ATSB to have information which the ATSB reasonably believes to be information which CASA may require to act in the demonstrable interests of safety, the ATSB will advise CASA of the existence of that information as soon as reasonably practicable.
- 8.10 CASA may request information from the ATSB which CASA believes it requires in the demonstrable interests of safety.
- 8.11 In determining whether information will be provided, the ATSB will consider:
 - (a) the demonstrable interests of safety generally and in respect of a particular matter.
 - (b) whether the information can be readily obtained by CASA from an alternate source; and
 - (c) the safety information protection framework in the TSI Act for on-board recording (OBR) information and for restricted information.
- 8.12 When seeking information from the ATSB, CASA will provide the reasons why the information is required in the demonstrable interests of safety.
- 8.13 Where it is necessary to limit the disclosure of restricted information to certain individuals in CASA under statutory protection, section 62 of the TSI Act may be used to authorise the individuals to have access to the restricted information.

9 INVESTIGATION REPORTS

- 9.1 The ATSB will provide CASA with a copy of every aviation-related investigation report (including occurrence brief) that is published.
- 9.2 CASA will be deemed a Directly Involved Party (DIP) by the ATSB and invited to respond on the content of a draft final aviation investigation report (released for comment) for each major, systemic, defined, and short scope investigation.
- 9.3 CASA will submit its comments in writing with supporting evidence.
- 9.4 Unless otherwise notified by the ATSB in writing, in accordance with ATSB policies and procedures, CASA will receive the period of time to provide comments to the ATSB on draft final report as set out in the ATSB’s policies and procedures. The ATSB will keep CASA advised of the standard timeframes set out in its policies and procedures. Where necessary, CASA may ask for an extension of time to submit its comments on a draft final report. The ATSB will give reasonable consideration to the request.
- 9.5 If CASA has not sought an extension by the due date for a response it may be assumed by the ATSB that CASA will not provide a submission.

- 9.6 Comments from CASA will be considered by the ATSB and may be incorporated into the final report if the ATSB considers it appropriate.
- 9.7 The ATSB will provide written feedback to CASA on its comments for major, systemic, and defined scope investigations and CASA will be advised of any changes to the report as part of the advance release process.
- 9.8 Where the ATSB proposes to release an aviation draft report to give advance notice of the likely form of the final report, CASA will receive a copy no less than 5 business days before public release.

10 ROUTINE OR ADDITIONAL ENQUIRIES

- 10.1 When ATSB contacts CASA with queries relating to an ongoing safety investigation, safety recommendation, or other safety-related matter, CASA will endeavor to respond to the ATSB within 10 business days.
- 10.2 Where CASA contacts the ATSB with queries relating to an ongoing safety investigation, safety recommendation, or other safety-related matter, ATSB will endeavor to respond to CASA within 10 business days.
- 10.3 Each agency will consolidate questions regarding a particular matter, if possible, to minimise the need for multiple correspondence about a particular issue.
- 10.4 The ATSB will consider a request from CASA for a section 32 notice when seeking a response from CASA [noting the ATSB cannot use a section 32 after the final investigation report is published].
- 10.5 Any correspondence or interaction between the ATSB or CASA should be managed through the agreed contacts identified in Attachment 1.
- 10.6 Routine enquiries (e.g., research and analytics, occurrence level clarifications and engagement) should copy in the CASA ATSB Liaison Office (ALO) for transparency and awareness.
- 10.7 This MoU does not impact or affect fora in which the ATSB and CASA are active members of a larger working group or team.

11 SAFETY ACTION

- 11.1 When CASA takes a safety action in relation to an aviation transport safety issue under investigation by the ATSB, CASA will notify the ATSB as soon as practicable of the action taken. The ATSB will acknowledge in its final report the safety action taken by CASA, if the ATSB is advised at least 20 days prior to publishing the final report.
- 11.2 Where CASA has information indicating action or inaction by a person or organisation in the Australian aviation industry the subject of an open safety issue identified in an ATSB report, CASA will advise the ATSB as soon as practicable.

ATSB Safety recommendations

- 11.3 The ATSB will consult with CASA about any identified safety issues that affect CASA or require action by CASA.

- 11.4 CASA 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, CASA will provide the ATSB with updates on progress at least every 3 months from the date when the recommendation was first issued.
- 11.5 CASA acknowledges that the ATSB may publish some, or all, of CASA's response to a safety issue or recommendation.

12 RESEARCH AND DATA ANALYSIS

- 12.1 Before the ATSB or CASA commences a general research or data analysis activity each agency will consult with each other to identify any opportunity for collaboration and cooperation.
- 12.2 Aviation research and data analysis reports will be provided to CASA by the ATSB in accordance with the ATSB's normal DIP process.
- 12.3 If CASA plans to publish, in a research report, any information prepared or otherwise arrived at using aviation safety occurrence data or information obtained from the ATSB that is not publicly available, CASA will give the ATSB the opportunity to review prior to release. Unless otherwise agreed by CASA, all comments from ATSB will be provided within 10 days.

13 SHARED TRAINING OPPORTUNITIES:

- 13.1 The ATSB and CASA will seek to identify opportunities for efficiency in the delivery of training from external providers by having staff attend together.

14 BRIEFING AND CONTACT WITH THE MEDIA

- 14.1 **Executive briefing** –The ATSB will provide relevant advance briefings to the Minister, the Departmental Executive and CASA 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.
- 14.2 **CASA agrees that where possible it will inform the ATSB and provide advance briefings** before it makes any public comments pertaining to any high-profile aviation transport safety matters that the ATSB is investigating.
- 14.3 **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 to the ATSB.
- 14.4 If CASA comments publicly on an occurrence that is under investigation by the ATSB, CASA will make it clear that the ATSB is undertaking an independent investigation, and that CASA's comment is not intended to prejudice the outcome of that investigation.


15 DURATION, VARIATIONS & DISPUTE RESOLUTION

- 15.1 This Memorandum will remain in force for 3 years from the date of signing and may be extended, varied, or terminated by exchange of letters between the ATSB and CASA. In the absence of extension or termination this Memorandum will continue to apply.
- 15.2 The Memorandum is subject to annual review.
- 15.3 If any disagreements or disputes arise in respect to any of the provisions of this Memorandum, then the dispute or disagreement will initially be referred to the Manager ATSB Liaison Office (CASA) and the Chief Operating Officer (ATSB). Should the disagreement be unresolved, the issue will be referred to the Director of Aviation Safety (CASA) and Chief Commissioner (ATSB) for resolution.

Dated at Canberra this 17 day of May 2024



Director of Aviation Safety
Civil Aviation Safety Authority



Chief Commissioner
Australian Transport Safety Bureau

ATTACHMENT 1 – CONTACTS

Investigations

ATSB: Directors Transport Safety

CASA: Manager – ATSB Liaison Office

Research and Data

ATSB: Head of Safety Reporting

ATSB: Manager Research and analysis

CASA: Manager – ATSB Liaison Office

CASA: Manager – Safety Intelligence & Analysis

Confidential Reporting

ATSB: Confidential and International Reporting Coordinator

CASA: Manager – ATSB Liaison Office

Safety Education

ATSB: Head of Engagement and Influence

CASA: Manager – ATSB Liaison Office

CASA: Branch Manager Communications

Training

ATSB: Head of Human Resources

CASA: Manager – ATSB Liaison Office

Interpretation of Provisions of the MoU

ATSB: Head of Legal, Governance and Strategic Policy

CASA: Executive Manager, Legal, International and Regulatory Affairs

ATTACHMENT 2 – PARTICIPATION IN INVESTIGATIONS

1. Participation in investigations will be coordinated through the Manager, ATSB Liaison Office (CASA) and the Directors of Transport Safety (ATSB).
2. The Agencies may agree that a CASA 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 CASA officer will be required to sign an agreement acknowledging their obligations and duties, appropriate to their level of involvement in a transport safety investigation.
3. The CASA 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 CASA regulatory processes. However, if the Parties agree that participation by an ATSB officer in a CASA regulatory process is appropriate, the ATSB officer must comply with any lawful direction given to them by the CASA officer in charge of the investigation.
5. Where participation does occur, each agency will seek to ensure it does not impose an unreasonable financial impediment on the other agency providing the assistance.

ATTACHMENT 3 – POST-OCCURRENCE WORKING ARRANGEMENTS

Working Arrangements

between the Civil Aviation Safety Authority (CASA) and the Australian Transport Safety Bureau (ATSB) to facilitate timely access to certain documents

1. Purpose

The purpose of these working arrangements is to facilitate timely access by the CASA and the ATSB to certain aviation documents following an accident or serious incident, recognising that both organisations have a need to access several primary evidential records in the interests of fulfilling their complementary safety-related functions.

2. Scope

2.1 These working arrangements are limited in scope to documents:

2.1.1 that are required to be kept by or under the *Civil Aviation Safety Regulations 1998* and the *Civil Aviation Regulations 1988*; 1.2 to which CASA would normally have access in the performance of its ordinary surveillance and audit activities; and

2.1.3 which a person holding or having custody of such documents could be required to surrender to CASA pursuant to a notice of demand under regulation 301 of the *Civil Aviation Regulations 1988* (CAR).

2.2 These working arrangements are consistent with, and operate directly and indirectly in furtherance of, the objectives and principles set out in the *Memorandum of Understanding between the ATSB and CASA* (April 2024), having regard to:

Clause 6.1 The ATSB will notify CASA as soon as practicable if ATSB commences an investigation into an aviation transport safety matter under the TSI Act

Clause 6.3 If CASA commences an audit, surveillance activity or safety review 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 CASA via an investigation report, CASA will inform the ATSB as soon as reasonably practicable.

Clause 6.4 Where CASA is aware of a matter that has the potential to require compliance or enforcement action, it will seek to initiate audit, surveillance, and investigation activities to obtain evidence without waiting for the findings from the ATSB's investigation into the same matter.

3. The ATSB's and CASA's obligations under the working arrangements

ATSB TO NOTIFY CASA OF CERTAIN ACCIDENTS AND SERIOUS INCIDENTS

- 3.1 The ATSB will notify CASA as soon as practicable of any aviation accident or serious incident the ATSB intends to investigate or may be considering investigating. The notification process should be consistent with the MOU and Safety Information Sharing Policy for Mandatory Notifications.

CASA TO RESPOND TO ATSB NOTIFICATION

- 3.2 CASA will respond to a notification as soon as practicable, advising the ATSB of:
- 3.2.1 CASA's intention to pursue its own investigation(s) in relation to any aspect of the accident or incident.
 - 3.2.2 the specific documents in respect of which a notice under CAR 301 will be issued.
 - 3.2.3 the person to whom the notice will be served.
 - 3.2.4 when CASA expects to serve the notices.
 - 3.2.5 the date by which the person served with the notice will be required to surrender the documents identified in the notice.
 - 3.2.6 the date on which the CAR 301 notice was served; and
 - 3.2.7 CASA's receipt of the documents sought under the CAR 301 notice or advice from the person served that they do not have, or otherwise do not intend to provide CASA with, the documents identified in the CAR 301 notice.

CASA TO NOTIFY ATSB OF CASA'S INTENTION TO INITIATE INVESTIGATIVE ACTION IN THE ABSENCE OF PRIOR NOTIFICATION FROM THE ATSB

- 3.3 In the absence of notification from the ATSB of the kind mentioned in 3.1, if CASA becomes aware of a matter involving an accident or serious incident in relation to which CASA intends to initiate, or is considering initiation of investigative activities, CASA will notify the ATSB.

ATSB TO REFRAIN FROM SEEKING TO OBTAIN CERTAIN DOCUMENTS UNDER S. 32 OF THE TSI ACT PENDING ACTION UNDER CAR 301

- 3.4 On receipt of notification from CASA, in accordance with 3.2 or 3.3, and unless doing so would unduly impede the ATSB's investigation, the ATSB will refrain from issuing a s.32 notice under the TSI Act for original documents which CASA has advised it will seek in accordance with a CAR 301 notice.
- 3.5 Unless the ATSB finds that refraining from issuing the s.32 notice for the original documents in question would unduly impede the ATSB's investigation, it will refrain from doing so while:
- 3.5.1 CASA initiates and executes the process for obtaining access to the documents under CAR 301; and
 - 3.5.2 the documents are surrendered to CASA pursuant to the terms of the CAR 301 notice.

- 3.6 If the ATSB requires more immediate access to the documents in question, and the delay involved in awaiting the disposition of the CAR 301 process would unduly impede the ATSB's investigation, the ATSB will notify CASA of that determination, and of its intention to use its powers under s. 32 of the TSI Act to obtain the documents.
- 3.7 Where CASA has issued, or intends to issue, a notice under CAR 301 for certain documents, the ATSB will not be prevented from issuing a s. 32 notice for copies of the documents or otherwise taking copies of the documents while they are still in another person or organisation's possession.

ATSB'S ACCESS TO DOCUMENTS CASA HAS OBTAINED PURSUANT TO A CAR 301 NOTICE

- 3.8 If the ATSB wishes to obtain a document CASA has obtained pursuant to a CAR 301 notice, the ATSB may:
- 3.8.1 serve CASA with a notice under s. 32 of the TSI Act in respect of that document; or
- 3.8.2 await CASA's return of the document to the person from whom CASA had obtained it and seek to obtain the document directly from that person.

ATSB TO NOTIFY CASA IF IT OBTAINS A DOCUMENT CASA WAS UNABLE TO OBTAIN PURSUANT TO A CAR 301 NOTICE

- 3.9 If, pursuant to a notice issued under s. 32 of the TSI Act, the ATSB obtains a document of a kind covered by these working arrangements from a person:
- 3.9.1 on whom CASA had previously served a CAR 301 notice in respect of that document: but
- 3.9.2 from whom, for any reason, CASA was unable to obtain that document in the first instance,

The ATSB will immediately notify CASA that it has obtained the document in question.

- 3.10 To the extent permitted by law, the ATSB will use its best endeavors to facilitate the transfer to CASA of a document:
- 3.10.1 in respect of which a CAR 301 notice has been served: but
- 3.10.2 which, for any reason, has been obtained first by the ATSB under a notice issued pursuant to s. 32 of the TSI Act.

To this end, without limiting the actions it might take, the ATSB may:

- 3.10.3 transfer the document to CASA on behalf of the person in receipt of the CAR 301 notice: or
- 3.10.4 return the document to the person who is in receipt of the CAR 301 notice.
- 3.11 The ATSB will not take any action in relation to 3.10.3 or 3.10.4 above without first conferring with CASA.

4. Documents covered by these working arrangements

4.1 While the specific documents involved in any individual case will be identified to the ATSB with sufficient particularity by CASA in the notification provided pursuant to the process described in 3.2 above, such documents will fall within one or more of the categories set out below.

- 4.1.1 ***Documents required to be kept and maintained by the owner(s) and registered operators*** of an Australian aircraft that has been involved in an accident or serious incident, or that may be associated with such an aircraft.
- 4.1.2 ***Documents required to be kept and maintained the pilot-in-command and other flight crew and crew members*** who were on board or otherwise associated with the operation of an Australian aircraft that has been involved in an accident or serious incident, or an aircraft associated with such an aircraft.
- 4.1.3 ***Documents required to be kept and maintained by the holder of the Air Operator's Certificate (AOC)*** under which an Australian aircraft that has been involved in an accident or serious incident was, or may have been, operated at the time of an accident or serious incident, or at some other relevant time, or an aircraft associated with such an aircraft.
- 4.1.4 ***Documents required to be kept and maintained by the operator of a maintenance organisation*** that was involved in carrying out maintenance on an Australian aircraft (or a component of an Australian aircraft) that has been involved an accident or serious incident, or other aircraft (and components) associated with an Australian aircraft that has been involved in an accident or serious incident.
- 4.1.5 ***Documents required to be kept and maintained by the holder of other civil aviation authorisations*** under which actions have, or may have, been taken in respect of an Australian aircraft (or an aircraft component) that has been involved in an accident or serious incident, or an aircraft associated with such an aircraft; and
- 4.1.6 ***Documents required to be kept and maintained by personnel employed by, or working under an arrangement with,*** the persons and organisations identified above.

5. Duration

5.1 These working arrangements will apply for the duration of the MOU.

Attachments (embedded) for reference

1. Terms of Reference for ATSB -CASA operational Biannual meeting (agreed)



ATSB-CASA
Biannual Operation.