

Disclosing restricted information in civil proceedings

Introduction This section provides guidance for disclosing restricted information in civil proceedings.

Background The *TSI Act* provides a mechanism for restricted information to be disclosed by commissioners, staff members and consultants to a court in civil proceedings. This disclosure request will be based on a written request being received.

[Paragraph 60\(4\)c](#) of the *TSI Act* provides a defence to the prohibition on commissioners, staff members and consultants disclosing restricted information to a court in civil proceedings where:

- a. the ATSB issues a certificate under [subsection 60\(5\)](#) of the *TSI Act* (the *Certificate for Disclosure of Restricted Information in Civil Proceedings* form ([F60-1](#)))
- b. the court makes an order under [subsection 60\(6\)](#) of the *TSI Act*.

Note: The definition of 'civil proceedings' includes a coronial inquiry as defined in section 3 of the *TSI Act*.

ATSB issues a certificate

The test that the ATSB has to apply, with respect to providing the certificate under subsection 60(5), is whether the ATSB can state the disclosure of the information is not likely to interfere with any investigation.

The ATSB/Delegate should consider whether the disclosure:

- a. is consistent with the objects of the *TSI Act*;
- b. would interfere with the free-flow of information to any investigation under the *TSI Act*; or
- c. would otherwise prejudice any investigation.

Relevant to each of these considerations will be:

- a. the nature of the restricted information;
- b. the manner in which the restricted information was obtained;
- c. the purpose for which it may be used in the civil proceedings; and
- d. whether persons connected with the aviation, marine and rail transport industries that the ATSB investigates may be less cooperative in investigations if the disclosure was made for the purpose it was sought in the civil proceeding.

For civil proceedings, other than coronial inquiries, the focus is predominantly on apportioning blame and liability. As the ATSB conducts no-blame investigations in the majority of circumstances, the ATSB will need to carefully consider whether there will be an adverse affect on ATSB investigations by becoming involved in civil proceedings through the disclosure of restricted information. In this context, the *TSI Act's Explanatory Memorandum* makes it clear, with respect to section 60, that the intention of the protections is to separate judicial proceedings from the ATSB's investigation to ensure the continued free-flow of information.

Disclosing restricted information in civil proceedings, continued

**Coronial
Inquiries** With coronial inquiries, there are some categories of restricted information that the ATSB may be able to consider disclosing through the use of a subsection 60(5) certificate.
