

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN TRANSPORT SAFETY BUREAU

AND

THE AUSTRALIAN MARITIME SAFETY AUTHORITY



Australian Government
Australian Maritime Safety Authority



Australian Government
Australian Transport Safety Bureau

Memorandum of Understanding AMSA & ATSB

1. The Parties

- 1.1. The Australian Transport Safety Bureau (ATSB) is an operationally independent bureau within the Department of Transport and Regional Services (DOTARS). Under the *Transport Safety Investigation Act 2003* (TSI Act), the Executive Director of the ATSB is responsible for the investigation of marine, aviation and rail safety matters. Under the *Navigation (Confidential Marine Reporting Scheme) Regulations 2004* the Executive Director is also responsible for the Confidential Marine Reporting Scheme (CMRS).
- 1.2. The Australian Maritime Safety Authority (AMSA) is a statutory authority established under the *Australian Maritime Safety Authority Act 1990* (AMSA Act), with responsibilities under Commonwealth legislation for regulation of maritime safety, aviation and marine search and rescue, and ship-sourced pollution prevention. AMSA is also the Inspectorate for maritime occupational health and safety.

2. Purpose of the MOU

- 2.1. This MOU is intended to clarify the roles of and relationships between the parties in carrying out their respective statutory functions.
- 2.2. This MOU is not legally binding and nothing in this MOU affects or alters the statutory responsibilities and powers of either party under relevant legislation.
- 2.3. The attachments to this MOU do not form part of the obligations under this MOU.

3. Commitment to Achievement of Safety Outcomes

- 3.1. Both parties confirm their commitment to achieving the best possible maritime and - in respect to aviation search and rescue - aviation safety outcomes. In this respect the parties will seek to enhance public confidence in maritime and aviation transport safety.
- 3.2. The parties agree that the maritime and aviation safety outcomes are best achieved through mutual support, cooperation, openness and professional relationships.

4. Notification of safety matters

- 4.1. AMSA will make reports to the ATSB for the purposes of the TSI Act as soon as is reasonably practicable by calling the notification numbers in Attachment A.
- 4.2. Where the ATSB considers that AMSA may not be aware of an incident, the ATSB will notify AMSA as soon as is reasonably practicable by calling the notification numbers in Attachment A.

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5. Notification of investigation status

- 5.1. After receiving notification of a Reportable Matter the ATSB will inform AMSA, as soon as is reasonably practicable, whether the ATSB intends to conduct an investigation.
- 5.2. AMSA will inform the ATSB, as soon as is reasonably practicable when a decision is made, whether AMSA intends investigating an incident for regulatory compliance and/or prosecution purposes.
- 5.3. The preceding paragraphs do not prevent either party from reversing a decision to investigate or not to investigate. Should one party reverse its decision on investigating an incident it will notify the other party as soon as is reasonably practicable.

6. Cooperation in Investigations

- 6.1. AMSA and the ATSB agree that their respective investigations will be structured and promoted so that there is a clear, publicly perceived difference between them for the respective purposes of promoting (a) compliance with safety regulations and (b) identification of safety deficiencies and corrective actions.
- 6.2. The parties agree to cooperate in conducting their respective investigations, as far as is possible, to ensure that each other's functions do not impede either investigation or each other's statutory obligations.
- 6.3. The ATSB recognises that AMSA employees have functions that are conferred on them under the AMSA Act and other Acts. The ATSB acknowledges that the TSI Act is not intended to prevent another agency from carrying out its statutory functions. While exercising powers under the TSI Act the ATSB will endeavour to ensure, to the maximum extent practicable, that AMSA's operations can be facilitated. In this respect the ATSB will not unreasonably withhold permission to AMSA employees to engage in necessary conduct, which does not unreasonably impede an ATSB investigation, under sections 24, 43 and 44 of the TSI Act.
- 6.4. If either party considers that the other party's investigation is creating an unreasonable impediment on their own, it will promptly raise the matter with the other party. Both parties will endeavour to expeditiously resolve impediments to the maximum extent possible, consistent with their statutory obligations.

7. Exchange of information and Specialist Assistance

- 7.1. The ATSB and AMSA agree to share information, documents or material, as appropriate, in the course of an investigation, including for any preliminary or initial assessments and may request technical or specialist assistance from each other, in order to establish the facts of an incident.

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- 7.1.1. Requests for technical or specialist services by either party will be considered subject to the availability of suitable resources and work priorities of the party requested to provide the service.
 - 7.1.2. Costs for specialist assistance will be paid in accordance with clause 11 of this MOU.
 - 7.1.3. Information exchanged will comply with the confidentiality requirements of relevant legislation and the organisation. See clause 12.
- 7.2. Where the ATSB issues a notice under s32 of the TSI Act for an AMSA employee to produce information or attend before the Executive Director, the ATSB will endeavour to give not less than 3 business days' notice for AMSA to respond. AMSA will endeavour to cooperate in exceptional circumstances where shorter notice is unavoidable.

8. Findings and Reports of Investigations

- 8.1. When the ATSB intends to include recommendations that affect AMSA in a report, the ATSB agrees to consult with AMSA prior to the draft report being released to Directly Involved Parties (DIPs). AMSA may make comment on the recommendations and the ATSB will seek to discuss those comments with AMSA prior to the draft report being released.
- 8.2. If the ATSB in the course of an investigation considers that an investigation is likely to extend to issues of AMSA management, operational practices, procedures or decisions, beyond consideration of AMSA's regulatory framework, the ATSB will immediately consult with AMSA on the nature and extent of any such issues.
- 8.3. The ATSB will provide AMSA with copies of all draft final reports of its investigations that relate to AMSA's maritime safety and aviation and marine search and rescue responsibilities, and will take into account comments made by AMSA in preparing the final report and recommendations.
 - 8.3.1. AMSA will endeavour to provide written comments within 28 days of receiving the draft final report.
- 8.4. Where AMSA and the ATSB disagree on findings, recommendations or matters of fact in the draft report, the ATSB will consult with AMSA. Where it may do so legally and it is necessary or appropriate, the ATSB will share information, including on the techniques used to gather and interpret data, with a view to resolving any differences.
 - 8.4.1. Subject to any confidentiality requirements, the ATSB's report will seek to reflect properly, any remaining substantive differences in a footnote or annex to the report. Should the ATSB have concerns regarding the publication in its final Investigation Report of any of AMSA's substantive differences, the ATSB will consult with AMSA to

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seek a resolution of the matter prior to publishing the ATSB's final Investigation Report.

8.5. The ATSB will provide AMSA with 4 copies of the final report of an investigation.

9. Confidential Marine Reporting Scheme

9.1. The ATSB will provide to AMSA as much information as possible on incidents reported under the CMRS, without revealing the identity of the person making a report, to enable AMSA to take follow up safety actions where appropriate.

9.2. AMSA will advise the ATSB of any actions taken in response to each report provided to AMSA or, if no actions are taken, the reasons for not taking action. The parties recognise that, where information provided to AMSA has been de-identified, such that the vessel, operator, location and/or crew members involved in an incident cannot be determined, AMSA may not be able to take any action.

10. Research and safety promotions

10.1. The ATSB and AMSA will consult on research or data analysis, to identify the topic and scope of research or analysis and to explore opportunities for mutual cooperation, and will exchange reports of any such activities.

10.2. The ATSB and AMSA agree to develop complementary maritime safety promotion and education programs.

11. Cost Recovery

11.1. Where the ATSB requests specialist services (which may be engineering advice, testing of navigational aids and other matters as agreed between the parties) from AMSA and the service is provided solely for an ATSB investigation, the ATSB undertakes to pay AMSA on a cost recovery basis for the services as agreed.

11.2. Where AMSA requests specialist services from the ATSB and the service is provided solely for an AMSA investigation, AMSA undertakes to pay the ATSB on a cost recovery basis for the services as agreed.

12. Disclosure of information

12.1. The parties acknowledge that information exchanged under this MOU is provided and received on the basis that:

- a) it will be kept confidential;
- b) it will not be disclosed except as required by law or as agreed between the parties;
- c) the agency which has possession or control of disclosed information shall ensure that the information is protected by such safeguards that

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are reasonable and in accordance with any request by the agency providing the information.

12.2. Attachment B to the MOU provides guidance on the circumstances in which the ATSB may consider the release of restricted information.

12.3. The parties will ensure that Ministers and the Executive of affected agencies are kept informed of the progress of incident investigations. Regular progress reports will be provided to the nominated contact points within the ATSB and AMSA for this purpose.

12.3.1. The parties recognise that information may be required by the Minister's office for media and other briefings. Both parties will ensure that appropriate information is made available to the Minister's office in a timely manner.

12.4. Where AMSA considers it appropriate, AMSA will commence administrative or enforcement actions against relevant persons or organisations, notwithstanding any ATSB investigation in progress, and may disclose information it has obtained during its own investigations, as necessary, in the interests of maritime safety.

13. Contact points

13.1. The AMSA contact for matters related to this MOU is the General Manager, Maritime Operations (refer Attachment A).

13.2. The ATSB contact for matters related to this MOU is the Deputy Director, Surface Safety Investigations (refer Attachment A).

14. Transition Arrangements

14.1. ATSB marine or aviation investigations commenced on or after 1 July 2003, in so far as they relate to AMSA, will be covered by the terms of this MOU.

14.2. ATSB marine investigations commenced on or before 30 June 2003, will be covered by the terms of the pre-existing MOU between AMSA, the AFP and ATSB.

15. Commencement, Variation or Termination

15.1. This MOU will operate from the date of signing by the parties.

15.2. This MOU may be terminated or varied at any time by agreement in writing by both of the parties.

15.3. The attachments may be updated at any time by the party responsible for the information. The other party will be notified immediately of any changes.

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16. Signatories


16.1. Signed and dated this 14th day of Dec - 2004

SIGNED for and on behalf of the
Australian Maritime Safety Authority

SIGNED for and on behalf of the
Australian Transport Safety Bureau by



.....
Clive Davidson
Chief Executive Officer
Australian Maritime Safety Authority



.....
Kym Bills
Executive Director
Australian Transport Safety Bureau

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Attachment A

Notification Contacts:

ATSB:

Pager: [REDACTED]

Alternative (Team leader): [REDACTED]

Fax: [REDACTED]

AMSA:

Telephone [REDACTED]; or

Fax [REDACTED]

MOU Contacts:

ATSB:

Deputy Director Surface Safety –

Telephone: [REDACTED]; or

Fax: [REDACTED]

AMSA:

General Manager, Maritime Operations –

Telephone: [REDACTED]

Mobile: [REDACTED]

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Attachment B

The following policy shall apply to the release of various types of Restricted Information by the ATSB:

(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 AMSA 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 seek to provide AMSA 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, 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

- The ATSB will advise AMSA 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 AMSA.

(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

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- The ATSB will advise AMSA 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

- The ATSB will advise AMSA 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 AMSA.

(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 AMSA 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 AMSA but may be obtained from the original source.