



**Australian Government**

**Australian Transport Safety Bureau**



**Australian Government**

**Department of Defence**

**Memorandum of Understanding**

**Between**

**the Australian Transport Safety Bureau**

**and**

**the Department of Defence**

**on cooperation relating to transport safety  
investigation**

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## 1. THE PARTIES

### a. Department of Defence

- i. The Directorate of Defence Aviation and Air Force Safety (DDAAFS) is an agency administered by the Deputy Chief of Air Force responsible for Department of Defence (DOD) aviation safety matters, including aircraft accident investigations and aviation safety promotion.
- ii. The DDAAFS mission is to support Chief of Air Force, as the Senior DOD Aviation Adviser, in the preservation of all human and materiel resources in the DOD aviation operations through facilitating continuous improvement in DOD aviation safety management, and to act as the DOD centre of excellence for aviation safety training; for aviation safety promotion; and the independent investigation of aircraft accidents.
- iii. The principal function of the Defence Science and Technology Organisation (DSTO) is to support the Australian Defence Force (ADF) through application of science and technology, and from time to time may have capacity to provide services to the Australian Transport Safety Bureau (ATSB). DSTO maintains a small group of experienced aircraft accident technical specialists that assists DDAAFS Aviation Accident Investigation Teams (AAIT) and the Defence Technical Airworthiness system. This DSTO group can access other diverse technical specialists available in DSTO.

### b. Australian Transport Safety Bureau

- i. The ATSB is an operationally independent bureau within the Australian Government Department of Infrastructure, Transport, Regional Development and Local Government (Department of Infrastructure).
- ii. Under the *Transport Safety Investigation Act 2003* (Cth) (TSI Act), the Executive Director (ED) of Transport Safety Investigation in the ATSB is responsible for the investigation of transport safety matters. The ATSB conducts its safety investigations in accordance with 'no-blame' principles and independently of other government agencies and private organisations.
- iii. Under the TSI Act, a responsible person with knowledge of a transport safety matter is required to report that matter to the ATSB. Such reports concern safety related events that involve a transport vehicle in Australia, or an Australian transport vehicle overseas, or where information concerning the event is found within Australia. Australian Defence aircraft and air traffic control are exempt from such reporting, except in specific circumstances. Such circumstances include, but are not limited to: events where a civil aircraft is involved in a transport safety matter in Australian Defence airspace; or an Australian Defence aircraft is involved in a

transport safety matter that relates to a civilian air transport facility or civilian aircraft. (Refer to the TSI Act and TSI Regulations).

- iv. An investigation may be commenced into a transport safety matter, at the discretion of the Executive Director, with the aim of furthering transport safety. The ATSB's primary focus is the investigation of fatal accidents and serious incidents and other serious safety matters involving commercial passenger-carrying operations.
- v. The ATSB may, on occasion, seek assistance from DSTO technical services in the transport field including aerospace, marine and other surface transport vehicles and related technologies (hereafter referred to as DSTO Services—see Clause 8(c)).

## **2. DEFINITIONS**

- a. Unless otherwise stated the following terms have the same meaning as provided for in the TSI Act:
  - Australian defence aircraft, Australian defence ship, transport vehicle, exempt transport vehicle, restricted information, transport safety matter, on-board recording (OBR) information.
- b. See Appendix 1 for abbreviations used in this Memorandum of Understanding (MoU).

## **3. PURPOSE**

- a. This MoU seeks to provide a framework to support the intention of the DOD and the ATSB to cooperate in the investigation of transport safety matters.
- b. In seeking to provide a cooperative framework the MoU is intended to:
  - i. acknowledge the limited and dispersed national resources available for transport safety investigation should a major accident occur and the need to mutually provide a national transport safety investigation capability;
  - ii. confirm that both the DOD and ATSB subscribe to the objective enshrined in Annex 13 to the Convention on International Civil Aviation ('the Chicago Convention'), that the sole object of the investigation of an aircraft accident or incident shall be the prevention of accidents and incidents and that it is not the purpose of the investigation activity to apportion blame or provide a means of determining liability (and that this principle extends to all transport investigations by the parties);
  - iii. encourage mutual assistance and the sharing of expertise, training opportunities, experience and equipment in transport safety investigations; and
  - iv. commit the parties to build on their existing capabilities and professionalism.

- c. The parties acknowledge that this (MoU) is not legally binding and that nothing in this MoU can legally restrict the statutory discretion and powers under relevant legislation.

#### **4. JOINT AND PARALLEL TRANSPORT SAFETY INVESTIGATION**

- a. Where the circumstances of a transport safety matter result in the capacity for both the ATSB and DDAAFS to conduct a transport safety investigation, the ATSB and DOD agree to consult with a view to conducting a joint transport safety investigation. Such consultation shall include determination of which agency will be the principal investigation agency for that transport safety investigation. The obligation to consult in these circumstances does not derogate from either the ATSB's or the DOD's right to conduct its own, separate, investigation.
- b. The parties agree to the following where there is a joint investigation:
  - i. Where a transport safety matter occurs involving a non-exempt transport vehicle and an exempt transport vehicle that is operated by the DOD, the ATSB, where it elects to investigate, will be the principal investigation agency unless the circumstances reveal DDAAFS would be the most appropriate principal investigation agency.
  - ii. Circumstances that may be taken into account include those that involve defence security matters or that will significantly involve specialist expertise resident in the DOD, and appropriate protection of investigation data and evidence.
- c. Where there are separate investigations, both parties will cooperate to ensure, to the extent practicable, that an investigation conducted by one party does not impede on an investigation or functions of the other party.
- d. If either party considers an investigation is creating an unreasonable impediment to the performance of their functions, they will raise the matter with the other party.

#### **5. ATSB PARTICIPATION AS A TEAM MEMBER IN A DOD INVESTIGATION**

- a. Team Members:
  - i. At the request of the DOD and subject to ATSB commitments and available resources, the ATSB agrees to provide TSI(s) to participate in a DDAAFS AAIT, or other DOD Investigation Teams, when formed. Where participation is agreed, the ATSB will seek to make the TSI(s) from the requested speciality available within 24 hours, or sooner if they are urgently required.
  - ii. Where DOD has not requested ATSB participation in an investigation, the ATSB, if it seeks more than an Observer role as detailed under clause 7, may make a request to DDAAFS for active participation of its personnel. DDAAFS will consider the request, noting that an Observer role would not satisfactorily meet the needs of the ATSB.

- iii. The TSI(s) will be attached to the AAIT and will be responsible to the OIC AAIT while attached. ATSB TSI contribution to the DOD investigation will be determined by the DOD and will be to the extent necessary to ensure effective participation.
  - iv. Any ATSB participation in a DOD investigation will be initiated by the ATSB as an investigation under the TSI Act, and therefore subject to the TSI Act confidentiality provisions. At the time of negotiating ATSB TSI participation in a DOD transport safety investigation, DOD shall advise the ATSB of any possibility of ATSB TSI(s) subsequently being required for blame, liability, or DOD Board of Inquiry proceedings. The ATSB may take this into account when making its decision about participation of TSI(s) in a DOD transport safety investigation.
- b. Confidentiality:
- i. A TSI will be required to sign a security release prior to participating in or observing a DOD investigation. A TSI may also be excluded from some aspects of a DOD investigation due to the security classification of some information.
  - ii. Information gained during a DOD investigation can only be released by the relevant Aviation Accident Investigation Team (AAIT) Appointing Authority, with initial requests for release of information being referred to DDAAFS.
  - iii. The ATSB acknowledges that any confidentiality agreement signed by a TSI prevents disclosure of confidential investigation information gained by that TSI during an investigation to the ATSB or any other party without authorisation. The DOD recognises that a TSI participating in a DOD investigation has a responsibility to inform the ATSB of any matter that is relevant to an ATSB investigation or civil aviation safety more generally. Where a TSI participating in a DOD investigation believes that such information is evident, the TSI should bring the matter to the attention of the Officer in Charge (OIC) of the AAIT. Where the DOD, in consultation with the TSI, agrees that the information indicates a need for safety action, the DOD agrees to release it to the appropriate authority as expeditiously as possible to enable safety action to be taken.

## **6. DOD PARTICIPATION IN AN ATSB INVESTIGATION**

- a. External Investigator:
- i. An external investigator is someone who is to contribute to the investigation as an active participant. Their participation is to be to the extent necessary to afford them, or the DOD, their rights under this MoU, or to the extent necessary to fulfil the needs of the ATSB's investigation.

- ii. Before participating in an ATSB transport safety investigation, an external investigator will be required to sign an External Investigator Agreement (EIA) as required under ATSB policy and procedures. The EIA is an ATSB administrative arrangement under which the external investigator acknowledges their rights and duties appropriate to their level of involvement in the investigation and agrees to follow ATSB requirements.
- b. Team Members:
- i. At the request of the ATSB and subject to DOD commitments and available resources, DDAAFS agrees to provide ASI(s) to participate in an ATSB Investigation Team, when it is formed. Where participation is agreed, DDAAFS shall endeavour to make the ASI(s) from the requested speciality available within 24 hours, or sooner if they are urgently required.
  - ii. Where the ATSB has not requested DOD participation in an investigation, DDAAFS, if it seeks more than an Observer role as detailed under clause 7, may make a request to the ATSB for active participation of its personnel. The ATSB will consider the request, noting that an Observer role would not satisfactorily meet the needs of DDAAFS.
  - iii. An ASI will be attached to the ATSB Investigation Team and will be responsible to the Investigator in Charge (IIC) while attached. The ASI(s) will be required to sign an EIA. DOD ASI contribution to the ATSB investigation will be determined by the ATSB and will be to the extent necessary to ensure effective participation.
  - iv. At the discretion of the ED, an ASI may be delegated powers under the TSI Act to facilitate the ASI's participation in an investigation.
- c. Confidentiality:
- i. Depending on an ASI's status of involvement in an investigation, the ASI may be required to sign specific confidentiality agreements as part of the EIA that permit access to different forms of confidential information gathered during the investigation process.
  - ii. Where the ASI is delegated powers or provided access to restricted information or OBR as defined under the TSI Act, the confidentiality provisions with respect to the TSI Act shall apply.
  - iii. The DOD acknowledges that any confidentiality agreement signed by an ASI prevents disclosure of confidential investigation information gained by an ASI during an investigation to the DOD or any other party without authorisation. The ATSB recognises that an ASI participating in an investigation has a responsibility to inform the DOD of any matter that indicates a need to take safety action. Where an ASI participating in an ATSB investigation believes that such information is evident, the ASI should bring the matter to the attention of the IIC. Where the ATSB, in consultation with the ASI, agrees that the information indicates a need for DOD to take safety

action, the ATSB agrees to release it to DOD as expeditiously as possible to enable appropriate safety action to be taken.

#### **7. REQUESTS FOR OBSERVER STATUS AT AN INVESTIGATION**

- a. An observer is a person who is present to watch a transport safety investigation, or parts of it, for their own interests or those of their organisation, rather than for the purpose of contributing to the investigation. Observers will not be authorised to:
  - interview witnesses and survivors,
  - seek information from a person who is the subject of an investigation, or
  - observe the output (in any form) of an OBR.
- b. The DOD and the ATSB agree to facilitate arrangements for Investigators of the other party to observe an investigation, or aspects of an investigation, that it is conducting, where such observation results in a safety or training benefit for that organisation.
- c. The extent to which an Observer may view an investigation, or aspects of an investigation, will be at the discretion of the party conducting the investigation.
- d. The confidentiality requirements expressed in clauses 5 and 6 of this MoU apply with respect to Observers.

#### **8. SPECIALIST ASSISTANCE**

- a. DOD may request specialist assistance from the ATSB during the course of a DOD investigation. The specialist assistance may include but is not limited to: materials failure analysis; cockpit voice recorder and flight data recorder analysis; analysis of head-up display and maintenance tapes; computer graphics etc. Having regard to the seriousness of the occurrences and the resources available at the time, the ATSB will seek to give priority to the request.
- b. The ATSB may request specialist assistance from DOD, through DDAAFS, during the course of an ATSB investigation. The request may be made in the areas of, but not limited to, aviation medicine, flight safety, systems engineering, avionics etc. Having regard to the category of occurrence and the resources available at the time, DOD will seek to give priority to the request.
- c. At the request of the ATSB, DOD agrees to provide DSTO Services to the ATSB. Such agreement will be subject to DSTO priorities and its principal obligation to the DOD. Unless agreed on a quid pro quo basis, the ATSB will contract for the DSTO Services provided in accordance with the *Financial Management and Accountability Act 1997*, relevant regulations and other legislative instruments, as well as Department of Infrastructure Chief Executive Instructions. Both parties will implement and maintain appropriate evidence handling procedures.

**9. PREREQUISITE TRAINING AND REQUIRED EQUIPMENT**

- a. Before DOD personnel will be permitted onto an ATSB accident site, the DOD personnel must have completed an ATSB recognised Blood Borne Pathogens course.
- b. The ATSB will ensure that TSI(s) participating in a DOD investigation have adequate personal protection equipment. TSI(s) will be required to present evidence of inoculation status to the OIC AAIT before deployment to a DOD accident investigation site.
- c. DDAAFS will ensure that ASI(s) participating in an ATSB investigation have adequate personal protection equipment. ASI(s) will be required to present evidence of inoculation status to the IIC before deployment to an ATSB accident investigation site.

**10. TRAINING**

- a. The ATSB and DOD agree to offer specialist or generalist training to the other organisation's investigators on a case-by-case basis.

**11. FINANCIAL MATTERS**

- a. Unless otherwise agreed, each Party should bear its own cost for the implementation of the matters set out in this MoU.
- b. Participation Costs:
  - i. Where the ATSB seeks to participate in a DOD investigation, or it is agreed that participation is of mutual benefit, the ATSB will bear its own costs.
  - ii. Where DOD seeks to participate in an ATSB investigation, or it is agreed that participation is of mutual benefit, DOD will bear its own costs.
  - iii. Where the ATSB requests that DOD participate in an ATSB investigation and DOD's participation will be solely for the purpose of the ATSB investigation, the ATSB will cover the reasonable costs of DOD's participation.
  - iv. Where DOD requests that the ATSB participate in a DOD investigation and the ATSB's participation will be solely for the purpose of the DOD investigation, DOD will cover the reasonable costs of ATSB's participation.
- c. Observer Costs:
  - i. Costs of personnel attending investigations as Observers will be borne by the parent agency.
- d. Training Costs:
  - i. The cost of any specialist or generalist training will be borne by the participant's parent agency.
- e. DSTO Services:

- i. The cost of any DSTO services will be met in accordance with contractual obligations as detailed under clause 8.c.
- f. Specialist Assistance Costs:
  - i. Any unique equipment or training required to carry out the replay and analysis of DOD aircraft flight recorders will be provided to the ATSB, by the DOD, at no cost to the ATSB.

## 12. CONTACTS

- a. To establish such cooperation the Parties will maintain regular direct working contacts:

The contact person in DOD DDAAFS for the implementation of this MoU is:

Director Defence Aviation and Air Force Safety  
Department of Defence  
CP4-1-100  
Campbell Park  
ACT 2600  
Australia

[REDACTED] 24 Hour Contact through 0410 626357

The contact person in ATSB for the implementation of this MoU is:

Director Aviation Safety Investigation  
Australian Transport Safety Bureau  
PO Box 967  
Civic Square ACT 2608  
Australia

[REDACTED] 24 Hour Contact through 1800020616

## 13. AMENDMENT, REVIEW AND TERMINATION

- a. This MoU will come into effect on the date of signing.
- b. Upon coming into effect, this MoU will revoke:
  - i. the Memorandum of Understanding between the Department of Transport and Regional Services and the Department of Defence on Cooperation Relating to Aviation Investigation dated 3<sup>rd</sup> February 1998.
  - ii. the Memorandum of Understanding between the Australian Transport Safety Bureau (ATSB) and the Defence Science and Technology Organisation (DSTO) dated 18<sup>th</sup> April 2001
- c. The operation and effectiveness of this MoU shall be formally reviewed by both parties in consultation within 3 years of its commencement.
- d. This MoU may be amended at any time by written consent of both Parties.
- e. This MoU may be terminated by either Party with 30 days written notice or sooner by mutual determination.

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For the  
Department of Defence



Air Vice-Marshal G.C. Brown, AM  
Deputy Chief of Air Force  
Department of Defence

13 August 2008

For the  
Australian Transport Safety Bureau



Mr Kym Bills  
Executive Director  
Australian Transport Safety Bureau

31 August 2008

## **APPENDIX 1**

AAIT	Aviation Accident Investigation Team
ADF	Australian Defence Force
ASI	Aviation Safety Investigator
ATSB	Australian Transport Safety Bureau
DDAAFS	Directorate of Defence Aviation and Air Force Safety
DOD	Department of Defence
DSTO	Defence Science and Technology Organisation
ED	Executive Director of the ATSB
EIA	External Investigator Agreement
IIC	Investigator-In-Charge
MoU	Memoranda of Understanding
OBR	On-board recording
OIC	Officer-in-Charge
TSI	ATSB Transport Safety Investigator
TSI Act	Transport Safety Investigation Act 2003