12th October, 2012

The Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear sir,

It has most recently been brought to my attention that the Senate has raised the following enquiry, in respect of which I have something to present for consideration: Aviation Accident Investigations

Terms of Reference

On 13 September 2012, the Senate agreed that the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 29 November 2012:
(a) the findings of the Australian Transport Safety Bureau into the ditching of VH-NGA Westwind II, operated by Pel-Air Aviation Pty Ltd, in the ocean near Norfolk Island airport on 18 November 2009;
(b) the nature of, and protocols involved in, communications between agencies and directly interested parties in and aviation accident investigation and the reporting process;
(c) the mechanisms in place to ensure recommendations from aviation accident investigations are implemented in a timely manner; and
(d) any related matters.

SUBMISSION

My concern is in respect of points (c) and (d).

I am a lawyer in private practice. I also hold a Private Pilot licence and have gained a Multi Engine Instrument Rating. I have been actively operating aircraft for many years. My law practice is concerned with clients in aviation businesses and operations and includes pilots, owners, operators, business financiers.

My clients include many people who have suffered because of death or injury in air crash events. In that respect I have had regular occasion to read and review ATSB reports. I regularly have to conduct enquiries into the facts and circumstances of the same air crash events.

From time to time this puts me in a position to see differences between my personal findings and those of the ATSB. I have no relevant opportunity to test the evidentiary basis supporting the differences, nor any useful way to share the information, or outcomes of my enquiries with ATSB, which will receive information but provide only the most guarded responses, shielded by its Statutory entitlement to secrecy and silence.

This state of affairs requires review.

I am aware of the concerns regarding litigation and the exposure of material to the forensic process, but this should not be a fear of anything legitimate being traduced. If litigation is accepted as part of the social structure of this country, which is the case, then it should be fairly integrated into the information identified by the ATSB.

My own experience is that the silence attending ATSB information is adversely received by the Aviation industry, whilst the wider public may not be as aware of deficiencies. Further, legitimate concerns about the rigour of the ATSB enquiry are not satisfactorily resolved by silence.

In short (and certainly subject to appropriate checks and balances), a form of Audit, or review committee with appropriate obligations to ensure personal anonymity or to protect witnesses where required should be introduced into the legislation.

I also express some concern about the connection between the CASA and the ATSB. Plainly, again, the circumstances of outright breaches of the law, the CASA ought to be informed.

On the other hand, were the ATSB to be seen as no more than an adjuct to the CASA and a series of exceptions in the rule of silence be allowed between the two agencies, the central matter of security of information provided bona fide to the ATSB could be compromised.

In that respect, it has long been my view that the adopted by the United States of America in the manner of management of the National Transport Safety Board should be adopted in this Country. That US agency is wholly independent of its parallel organisations (such as CASA and Air Services Australia) and reports to the Congress.

My submission is to that effect. Personally my concern about the integrity of the ATSB is that it should be protected. That protection must come from two directions: first, protection from the errors that can and do arise when relevant information is dealt with wholly in secret, and second, protection from incursions into its integrity because of close relationship with other Departments which may or do have a different obligation to the Public.

The ATSB can and does identify matters of safety, particularly concerning air crash events. It should be well funded, and at liberty to form and publish opinions that are more than anodyne statements of events. Those opinions should be based on high integrity facts, established with the confidence that an audit from an external audit authority will provide.

I am prepared to speak to this submission if requested.

Spencer Ferrier