

**Introduction.**

Although the Transport Safety Investigation Act 2003 was loosely modelled on the USA National Transport Safety Board (NTSB) administration of transport accident/incident investigation there are some fundamental differences. These differences are perceived to be destroying the integrity and reputation of a once proud Australian institution the ATSB.

The following series of excerpts and quotes are taken from Hansard for the Senate Inquiry into 'Aviation accident investigations' and from the ATSB website.

**Hansard p 55:** Mr Dolan's tenure at the ATSB.

**Mr Dolan:** "When, nearly 3½ years ago, I joined the newly independent ATSB as chief commissioner, we had over 100 aviation investigations on hand, including four that we classified as level 2—so substantial investigations requiring major and continuing use of our resources. We were averaging about 18 months for the completion of investigations, with some serious outliers in that. We had more work on hand than we knew how to deal with, and we would normally expect in any given year to get one of those level 2 investigations. So we had a lot more work than we were used to. That led to delays in a range of reports and, as new investigations came in, the shifting of resources to different priorities as they arose. It is clear that, in managing that allocation of resources to always shifting priorities, we did not give enough attention to getting to an expeditious conclusion of this Norfolk Island report. However, that is the context in which that happened."

**Senator FAWCETT:** "Did you have an under spend in your budget this year, last year or the year before?"

**Mr Dolan:** "There have only been three complete financial years now. In the first year—in the first of my years of stewardship of the organisation—we had a slight under spend. In the last two years we have had slight overspends, but always within less than one per cent of our allocated budget."

**Senator FAWCETT:** "You have not considered outsourcing any of the work or in sourcing extra capacity to expedite the production of reports?"

**Mr Dolan:** "Our resources are largely tied up in maintaining our existing investigative capability, who are permanent staff of the organisation. We have a longstanding view that in almost all circumstances it is better to have, if possible, the range of expertise available to us on a permanent basis and therefore immediately available than to rely on potentially risky."

**Senator FAWCETT:** "I am not talking about normal operations. I am talking about a situation where you have a budget under spend and a clear excess of work. Was it even considered? That is all I am asking."

**Mr Dolan:** "In that small under spend, no, we did not consider it".

**Opinion:** This passage from the inquiry highlights what is believed to be Mr Dolan's primary focus i.e. balancing the books. This maybe by Mr Dolan's definition his primary administrative role; but should it be to the detriment of the ATSB function as the lead investigator in transport accidents/incidents.

The provisions contained within ICAO Annex 13 make it very clear that if a signatory state needs assistance then other signatory states are obliged to offer that assistance.

It is also interesting to note that the year where there are under spends and a backlog of investigations, the ATSB chose not to investigate the Hempel fatal accident. There was undoubtedly CASA influence in the ATSB decision not to investigate; the provisions of Annex 13 clearly stipulate that the ATSB are obliged to investigate, yet they didn't. Could it be that Mr Dolan was mindful (like with the recovery of the CVR/FDR with Norfolk) that the ATSB would be liable for the salvage of the accident aircraft?

**Hansard p 57:**

**Mr Dolan:** "There are two things there and I will go to the question of recommendations before I get to the specifics of your question. The ATSB at the point where it **became independent of the Department of Infrastructure and Transport** also got a shift in its powers in relation to the making of recommendations which raised the ante with recommendations and their significance."

**Opinion:** Although the ATSB is in principle regarded as independent of DoIT they are still answerable to and influenced by the Minister for Transport and therefore the Department.

The Minister and the Department control the ATSB funding and therefore the direction and/or the functionality of the ATSB. This also dictates that the ATSB must adhere to the government of the day's fiscal policy. As an example of this government influence/control you need look no further than the 'Ministers statement of expectations'.

[http://www.atsb.gov.au/about\\_atsb/ministers-expectations/ministers-statement-of-expectations.aspx](http://www.atsb.gov.au/about_atsb/ministers-expectations/ministers-statement-of-expectations.aspx)

The NTSB Board is directly and only answerable to the people through the Congress, funding comes from the public purse, totally devoid of any Government Department influence and not subjected to the dictates of government fiscal policy.

**Hansard p 58:**

**Senator FAWCETT:** "Do any of the commissioners have a background or qualification in aviation accident investigation?"

**Mr Dolan:** "I do not believe any of the three commissioners are qualified in aviation accident investigation. I have a reasonably **significant background in aviation safety**— air security and various other things—and a broader background in safety, including work health and safety and the systems approach to that. The other two commissioners have backgrounds in marine safety and rail safety."

**Opinion:** If we look at Mr Dolan's "significant background in aviation safety" we will find that he is totally devoid of any aviation operational experience.

**From the ATSB website:**

*"Mr Dolan has worked as a Commonwealth public servant for 30 years. Prior to the ATSB, he was Chief Executive Officer of Comcare, with responsibility for the occupational health and safety and workers' compensation of Commonwealth employees.*

*From 2001/2005 he was Executive Director, Aviation and Airports at the Department of Transport and Regional Services, with responsibility for airport sales and regulation, aviation security, aviation safety policy and international aviation negotiations.*

*Previously, Mr Dolan had undertaken various corporate management roles in the Department of Agriculture, Fisheries and Forestry, including Chief Finance Officer and Head of Corporate Management. He started his public service career in 1980 with AusAid, managing aid projects in developing countries."*

**Opinion:** Essentially, the Chief Commissioner is a career bureaucrat who has no operational aviation experience. The other two Commissioner's have no aviation experience but they do have experience in the other two areas of the ATSB 's charter.

This would appear to be directly in conflict with the annual report statistics for the separate areas of the ATSB remit:

**Reference ATSB website (Annual Report):**

Aviation safety investigations. The aviation investigation teams completed 113 aviation accident and incident investigations in the past year, several of which attracted substantial national and international interest. Many of those investigations, and the remaining ongoing investigations, have helped to identify important safety issues and to bring about significant safety improvements.

Marine safety investigations. The marine investigation team completed 11 safety investigations. While all investigations are conducted by the ATSB with the aim of identifying and promulgating useful safety messages, three raised significant issues for transport safety.

Rail safety investigations. The rail investigation team completed nine transport safety investigations in the past year and issued six preliminary factual reports. Three of these investigations identified significant safety issues.

**The decline of the "Safety Recommendation"**

**Mr Dolan:** "There are two things there and I will go to the question of recommendations before I get to the specifics of your question. The ATSB at the point where it became independent of the Department of Infrastructure and Transport also got a shift in its powers in relation to the making of recommendations which raised the ante with recommendations and their significance. **There is a legal requirement to respond to each of the recommendations we make. In recognition of that we set up the system of identifying safety issues that said there needs to be a critical or a significant safety issue before we will explicitly use that power to make a recommendation and require a response, and we would generally limit recommendations to those sorts of things. What you are talking about we would in our normal framework, given what you said about likelihood and consequence, deal with as a safety issue without going to recommendation. That is the context: it is still there but your question remains.**"

**Opinion :** The following data compares ATSB v NTSB Safety Recommendations over a ten-year period (2000-2010). This data highlights that Mr Dolan has used the above philosophy in regards to Safety Recommendations to significant affect:

**Safety Recommendation Comparison.**

**NTSB:** (methodology)

The NTSB issues safety recommendations as a result of its investigation of transportation accidents and other safety concerns. Recommendations usually identify a specific problem uncovered during an investigation or study and specify how to correct the situation. Letters containing the recommendations are directed to the organization best able to act on the problem, whether it be public or private.

**ATSB:** (methodology)

Safety issues are broadly classified in terms of their level of risk as follows:

**Critical safety issue:** associated with an intolerable level of risk and generally leading to the immediate issue of a safety recommendation unless corrective safety action has already been taken.

**Significant safety issue:** associated with a risk level regarded as acceptable only if it is kept as low as reasonably practicable. The ATSB may issue a safety recommendation or a safety advisory notice if it assesses that further safety action may be practicable.

**Minor safety issue:** associated with a broadly acceptable level of risk, although the ATSB may sometimes issue a safety advisory notice. Safety action: the steps taken or proposed to be taken by a person, organisation or agency in response to a safety issue.

The table below shows the number of "Safety Recommendations" (SR) issued in the USA by the NTSB and in Australia by the ATSB for the years 2000, 2005 and 2010. The number of those SR which affect the 'regulator' and the percentage issued to the regulator are of significant interest.

<b>YEAR 2000</b>				%. .
NTSB - Aviation Safety Recommendations	144	To FAA	119	82.6
ATSB - Aviation Safety Recommendations	45	To CASA	12	26.6.
<b>YEAR 2005</b>				%. .
NTSB - Aviation Safety Recommendations	35	To FAA	35	100
ATSB - Aviation Safety Recommendations	19	To CASA	6	31.5
<b>YEAR 2010</b>				%. .
NTSB - Aviation Safety Recommendations	168	To FAA	143	85.1
ATSB - Aviation Safety Recommendations	11	To CASA	0	0

**Opinion:** This data clearly shows the demise of the Safety Recommendation in Australia but it does not mirror the 'tremendous' savings made by not having to administer such an essential database. Which seems to be Mr Dolan's primary focus.

What the data also clearly shows is that the leading transport investigation authority the NTSB do not share the ATSB philosophy on the issuing of safety recommendations. The NTSB know that safety recommendations are indeed the cornerstone of their existence and the safety information contained within recommendations will be disseminated across the aviation industry, the travelling public and indeed around the world.

The following is an excerpt of the generic 'Safety Action' statement issued with nearly all ATSB Final Reports within the last two years:

### **SAFETY ACTION.**

Whether or not the ATSB identify safety issues in the course of an investigation, relevant organisations may proactively initiate safety action in order to reduce their safety risk. The ATSB has been advised of the following proactive safety action in response to this occurrence

**Opinion:** Translated this means is that unless an interested party actually reads the report the safety action information contained within the report is effectively 'invisible' and will not be disseminated across worldwide industry stakeholders.

Generating Safety Recommendations ensures that the safety action information is totally transparent.

PAIN has several substantial volumes of information that show the demise of the 'Safety Recommendation' in Australia, such is our concern on this issue.

We have also examined the final reports on the Pel Air ditching event off Norfolk Island and the fatal Sydney 'Canley Vale' and Darwin Brasilia fatal accidents; we believe they provide further examples of compromised ATSB Final Reports.

