



PNG AIC Office, Level 1, NAQIA Haus, 6 Mile
PO Box 1709
BOROKO 111

National Capital District
Papua New Guinea

Telephone : (675) 323 2911
Facsimile : (675) 323 2139
Email : hnamani@cic.gov.pg

Safety recommendation: AIC 16-R04/15-2028

Addressed to: The Director of the Civil Aviation Safety Authority of PNG

Date issued: 2 June 2016

Investigation link: AIC 15-2028

Action status: Issued

Safety deficiency description

On 21 August 2015, at 02:47 (UTC)¹ a Fokker F27 Mk 050 (F50) registered P2-TAE (TAE) operated by Travel Air and a Bombardier DHC-8-102 (Dash 8) registered P2-MCW (MCW) operated by Airlines PNG, were involved in a breakdown of separation about 9.5 nm (17.5 km) northwest of Lae (Morobe Province).

During the Accident Investigation Commission's (AIC) investigation, the crew of MCW reported that shortly after they had levelled off at 8,000 ft and were above cloud, they received a traffic alert and collision-avoidance system² (TCAS) Traffic Alert (TA), followed by a Resolution Advisory (RA) instruction, and observed TAE descending to within 600 ft vertical separation with MCW. They took immediate (visual) avoidance manoeuvring action to avoid TAE, based on the RA instruction.

The crew of MCW reported the breakdown of separation serious incident to their operator on 22 August when they returned to Port Moresby, but did not report the serious incident to the Civil Aviation Safety Authority as required by the Civil Aviation Act Section 60. The operator sent a serious incident notification to CASA by email 4 days after the serious incident (and cc'd the email to the AIC). However, CASA did not forward a notification to the AIC as required by the Civil Aviation Act Section 62, but appears to have solely relied on the cc'd email from Airlines PNG rather than telephoning the AIC with such important information.

Due to the elapsed time between the breakdown of separation and the AIC being notified of the serious incident, the recorded TCAS data, Flight Data Recorder (FDR) and Cockpit Voice Recorder (CVR) data were overwritten, resulting in the data for the flight on 21 August 2015 no longer being available for the AIC's investigation. The AIC also sought to analyse the TCAS data to check the functionality and integrity of the TCAS system in TAE. Time and date data were not logged which further hampered the accuracy of the AIC's analysis of the TCAS data.

The AIC determined that the reporting requirements of the Civil Aviation Act (Act) and the Civil Aviation Rules (CAR) were not met by the pilots, the operators, and subsequently CASA.

¹ The 24-hour clock, in Coordinated Universal Time (UTC), is used to describe the local time as specific events occurred. Local time in the area of the accident, Papua New Guinea Time (Pacific/Port Moresby Time) is UTC + 10 hours.

² Specific type of Airborne Collision Avoidance System.

The delayed notification to the AIC prevented the timely download of the recorded flight data to assist the AIC's investigation into the breakdown of separation involving the Fokker F27 Mk 050, P2-TAE, and the Bombardier DHC-8-102.

The Act and Rules make no provision for an organisation to delay on-forwarding an accident or serious incident notification to CASA, for the purpose of first conducting their own internal investigation or analysis of the notification. It is evident that the PNG aviation industry, including personnel at the administration levels in CASA, do not have a clear understanding of their statutory obligations under the Act Sections 60 and 62.

It is evident that the PNG aviation industry, including personnel in ASL and CASA, do not have a clear understanding of their statutory obligations under the Act sections 60 and 62 and CAR Part 12 and in the case of ASL as a CAR Part 172 certificate holder, their statutory obligations under CAR Part 12.55.

The AIC also found that the reporting and investigation requirements and obligations imposed on the Accident Investigation Commission (AIC) through the PNG Civil Aviation Act (Act) and the PNG Civil Aviation Rules (CAR), and ICAO Annex 13 to the Convention on International Civil Aviation³, may not be understood by the aviation industry, including pilots, operators, and personnel of CASA.

Recommendation number AIC 16-R04/15-2028 to the Director of the Civil Aviation Safety Authority of PNG

In order to clarify the obligations imposed by the Civil Aviation Act for the notification and investigation of accidents and serious incidents in Papua New Guinea, and to meet the Standards of Annex 13 to the Chicago Convention on International Civil Aviation imposed on PNG as a signatory State, the Accident Investigation Commission recommends that the Director of the Civil Aviation Safety Authority of PNG, under the powers vested in him by the Minister of Transport, should amend Civil Aviation Rules Part 12 as soon as possible, to include:

At Part 12.1 Purpose. After sub part (b) add the following note:

NOTE: All references to the Authority apply equally to the Civil Aviation Safety Authority and the Accident Investigation Commission with respect to sub-parts A; B; C; and Appendix A of CAR Part 12.

And insert a new Part 12.2

Part 12.2 Purpose of the Accident Investigation Commission.

The Accident Investigation Commission is a statutory agency of the Papua New Guinea Government. The Commission is independent of transport regulators, policy makers and service providers. The Commission shall perform its functions in accordance with the provisions of the Civil Aviation Act, the Civil Aviation Rules, and the Commissions of Inquiry Act, and Annex 13 to the International Convention on Civil Aviation and, where applicable, other relevant international agreements. Annex 13 *Standards* shall be applied in all Commission investigations, unless a *Difference* against a *Standard* has been filed with the International Civil Aviation Organization.

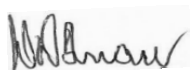
The Commission shall have independence in the conduct of investigations, and shall have unrestricted authority over the conduct of its investigations, without delay, consistent with the provisions of Annex 13 and the Commissions of Inquiry Act.

³ PNG is a signatory State to the Convention on International Civil Aviation and must comply with the Standards of the ICAO Annexes unless a difference against a specific Standard has been filed with ICAO. Annex 13 contains the Standards and Recommended Practices for Accident and Serious Incident Investigation.

Accident prevention is the sole objective of aircraft accident and serious incident investigations conducted by the Commission. Any investigation conducted by the Commission shall be separate from any judicial or administrative proceedings to apportion blame or liability. The non-disclosure provisions of Annex 13 shall be strictly applied.

Action requested

The AIC requests that the Director of the Civil Aviation Safety Authority of PNG (CASA) note recommendation AIC 16-R04/15-2028 above, and provide a response to the AIC within 60 days of the issue date, and explain (including with evidence) how CASA has addressed the safety deficiency identified in the AIC investigation report AIC 15-2028.



DAVID INAU, ML

Chief Executive Officer

Civil Aviation Safety Authority of PNG (CASA) response

On 9 February 2018, the Director CASA wrote to the AIC stating in detail the reasons for rejecting the AIC recommendation, sections of the letter are quoted below. The CASA response cited the Rule making requirements contained in *Ministerial Policy on Civil Aviation 2000*, which requires that:

- (i) *The Civil Aviation Act, Civil Aviation Rules, and Advisory Circulars are based on a modern aviation safety regulatory system;*
- (ii) *The Civil Aviation Act, Civil Aviation Rules, and Advisory Circulars reflect current international best practice;*
- (iii) *The aviation safety regulatory system model should be modified only where PNG conditions warrants;*
- (iv) *Extensive industry consultation will take place in drafting and formulating new Rules and Advisory Circulars; and*
- (v) *PNG adopt and incorporate the best practices and procedures from its regional neighbours, specifically Australia and New Zealand*

The CASA response also stated:

The objective of Part 12 is to prescribe rules for the notification, investigation, and reporting of accidents and incidents; the preservation of aircraft, aircraft contents, and aircraft records following an accident or serious accident, and reporting of aircraft operating statistical data.

The rules includes definitions of common terms used in more than one rule part and abbreviations used in more than one rule Part for continued compliance by organizations.

In this respect I do not support your recommendation to amend CAR Part 12 because of the sole reason that your proposal is not in accordance with the Interpretation Clause in Section 3 of the Civil Aviation Act 2000 (as amended), whereby the definition of the 'Authority' means the Civil Aviation Authority of Papua New Guinea established by Section 18"

The above therefore does not apply equally to the PNG Accident Investigation Commission because the interpretation of the 'Commission' means the Accident Investigation Commission established by Section 218.

The two organisations have two different safety responsibilities and the intent of the Act is to ensure that the separation of power exists. That is the reason the Act does not allow a Commissioner of the Commission to be a member of the CASA Board.

In respect to your proposal for a new rule insertion at Rule 12.2, it is my view that this is not a rule material, nor is it a safety statement supporting the provisions and objectives of the rule. I consider that your proposal

prescribing the purpose and functions of the PNGAIC is adequately stated in Section 219 and 220 of the Act. I further propose that this proposal be elevated to the primary legislation possibly in the proposed PNGAIC Act to state the purpose of the PNGAIC.

In view of the above I advise that I will not take the action as recommended by PNGAIC.

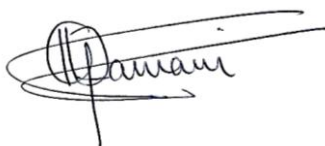
PNG Accident Investigation Commission (AIC) assessment of Civil Aviation Safety Authority of PNG (CASA) response

The AIC has reviewed the CASA PNG response addressing the recommendation AIC 15-R04/15-2028 addressed to CASA. Although not in total agreement, the AIC accepts, in part, the CASA rationale for rejecting the recommendation. However, the AIC does not agree that *Sections 219 and 220* of the Act, while addressing, respectively, the *Purpose of the Commission* and *Functions of the Commission* adequately meets the requirements of *Annex 13*.

The AIC therefore remains convinced that the recommendation has merit to ensure enhanced understanding by the aviation industry through articulating the independent role of the AIC in investigating accidents and incidents, and drawing attention to the International obligations to comply with the *Standards and Recommended Practices* of *ICAO Annex 13*. This is not found anywhere in current PNG Legislation, and was an adverse finding by the ICAO audit team.

Given the length of time taken to receive this CASA advice (20 months), and the time that would now be required for the AIC to develop a new Rule for the Minister's approval, then have industry consultation and promulgation, the AIC will no longer pursue this avenue to meet these ICAO requirements of *ICAO Annex 13*. New independent transport safety investigation legislation is anticipated, and is likely to be enacted before any Rule process could now be achieved. The anticipated legislation will ensure that the State of PNG meets its *ICAO Annex 13* obligations in this regard.

Accordingly, the AIC assigned this CASA response an **unsatisfactory** rating, and records the **Status of the AIC Recommendation: CLOSED RESPONSE NOT ACCEPTED.**



Hubert Namani, LLB

Chief Commissioner

15 February 2018