

Storytelling: Operator investigations and privilege

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HYPOTHETICAL

BRISBANE

HOST CITY OF 2032 OLYMPIC
& PARALYMPIC GAMES





ACCIDENT HYPOTHETICAL

NEW AIRLINE

“ONYA”

ACCIDENT HYPOTHETICAL



ACCIDENT HYPOTHETICAL







bin chicken

ACCIDENT HYPOTHETICAL

INITIAL RESPONSE

RUN AWAY!





ACCIDENT HYPOTHETICAL

**THE INVESTIGATION REPORT
SAYS:**

“EVERYTHING WAS CRAP.”

ACCIDENT HYPOTHETICAL

MANAGEMENT RESPONSE:

“WE’LL DO BETTER NEXT TIME.”



'CONVINCING AND
COMPELLING'
DAILY MAIL



THE CORONER

DEATH IS HER LIVING . . .

QLD CORONERS ACT

Section 16

(2): The coroner may require the person to give the coroner information, a document or anything else that is relevant to the investigation.

(5): The person must comply with the requirement, unless the person has a reasonable excuse.

LEGAL PROFESSIONAL PRIVILEGE

Esso Australia Resources Ltd v Commissioner of Taxation (1999) 201 CLR 49:

Confidential communications between a legal adviser and client or a third party for the dominant purpose of giving or receiving legal advice or in relation to litigation existing or reasonably anticipated.

LEGAL PROFESSIONAL PRIVILEGE

The Commissioner of Taxation of the Commonwealth of Australia v Pratt Holdings Pty Ltd [2005] FCA 1247, per Deputy President Gostencnik:

“The assessment of whether documents in relation to which a claim for legal professional privilege or client legal privilege is made is a question of fact to be determined on an **objective basis**, having regard to the evidence, the nature of the documents or communications and the parties’ submissions. The purpose will ordinarily be that of the maker of the document or communication, but this will not always be the case. The evidence of the intention of the maker of the document or the communications, or of the person who authorised or procured it, is not conclusive of purpose...”

LEGAL PROFESSIONAL PRIVILEGE

The Commissioner of Taxation of the Commonwealth of Australia v Pratt Holdings Pty Ltd [2005] FCA 1247, per Finn J:

“If the purpose for the making of a document by a third party is to enable another party to make the communication necessary to obtain legal advice, then the document is protected by the privilege.”

LEGAL PROFESSIONAL PRIVILEGE

Waugh v British Railways Board [1980] AC 521

Sydney Airports Corporation Ltd v Singapore Airlines Ltd & Qantas Airways Ltd [2005] NSW CA 47

Perry v Powercor [2011] VSC 308

Ausnet Electricity Services v Liesfield [2014] VSC 474

CASRS 119.190 SAFETY MANAGEMENT SYSTEM REQUIREMENTS

- (1) An Australian air transport operator must have a safety management system that is appropriate for the size, nature and complexity of the operator's Australian transport operations.

- (2) The safety management system must include the following matters:
 - (a) a statement of the operator's safety policy and objectives including details of the following:
 - (i) the management commitment to, and responsibility for, safety.
 - ...
 - (b) a safety risk management process, including:
 - (i) hazard identification processes; and
 - (ii) safety risk assessment and mitigation processes;
 - (c) a safety assurance system, including details of processes for:
 - (i) safety performance monitoring and measurement; and
 - ...
 - (iii) continuous improvement of the safety management system;

CASA SAFETY MANAGEMENT SYSTEMS FOR AVIATION: A PRACTICAL GUIDE PART 4: SAFETY ASSURANCE

Safety investigations are conducted as part of your SMS to support hazard identification and risk assessment processes

You must have a clear policy, stating that the purpose of internal investigations is to find systemic causes and implement corrective actions, not to blame individuals. Your internal investigation procedures should state this which underlies the principles of a positive safety culture.

IS IT A PROBLEM?

ACCIDENT HYPOTHETICAL

HOW DOES THIS STORY
END?

TRAINING



ATSB signed a strategic partnership with RMIT to deliver training in transport accident investigation.