



Australian Government
Civil Aviation Safety Authority

OFFICE OF THE DIRECTOR OF AVIATION SAFETY

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12 October 2012

Mr Stephen Palethorpe
Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
PO Box 6100
CANBERRA ACT 2600

Dear Mr Palethorpe

**Senate Rural and Regional Affairs and Transport Committee Inquiry into
Aviation Accident Investigations (Pel-Air)**

I attach for the Committee's consideration CASA's submission to this Inquiry.

Yours sincerely

Terry Farquharson
Acting Director of Aviation Safety

**Submission of the Civil Aviation Safety Authority
to the Senate Standing Committee
on Rural and Regional Affairs and Transport**

Inquiry into Aviation Accident Investigations (Pel-Air)

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 an 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.*

1. Legal basis for the investigation of aviation accidents by the Civil Aviation Safety Authority

- 1.1 The Civil Aviation Safety Authority (CASA) is established under the *Civil Aviation Act 1988*,¹ the main object of which is 'to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, *with particular emphasis on preventing aviation accidents and incidents*'.²
- 1.2 Pursuant to this objective, CASA's primary function is to conduct the safety regulation of civil air operations in Australian territory and the operation of Australian aircraft outside Australian territory,³ by means that include:
- developing and promulgating appropriate, clear and concise aviation safety standards;⁴

¹ Civil Aviation Act, s. 8.

² Civil Aviation Act, s. 3A, emphasis provided.

³ Civil Aviation Act, paras 9(1)(a) and (b).

⁴ Civil Aviation Act, para 9(1)(c).

- developing effective enforcement strategies to secure compliance with aviation safety standards,⁵
- issuing certificates and licences,⁶
- conducting comprehensive aviation industry surveillance, including assessment of safety-related decisions taken by industry management at all levels; and⁷
- conducting regular reviews of the system of civil aviation safety in order to monitor the safety performance of the aviation industry, to identify safety-related trends and risk factors and to promote the development and improvement of the system.⁸

1.3 Consistent with the main object of the Civil Aviation Act the performance of its core functions, CASA may conduct regulatory investigations of aviation accidents and incidents as a natural and integral element of its safety-related responsibilities, in order to better understand:

- how a particular event occurred—with a view to informing such action, if any, as CASA might properly take in response to that event; and
- how the recurrence of a similar or related event may be avoided in the future.

1.4 The vast majority of the aviation-related matters that CASA investigates will not usually involve an *accident*, as that term is commonly understood.⁹ By their very nature, however, most aviation accidents will almost certainly have regulatory and other safety-related implications, involving issues, facts and circumstances that fall squarely within CASA's jurisdiction.

1.5 In some cases, based on the information derived from its investigation into an accident, it may be necessary for CASA to initiate enforcement action of one kind or another in respect of persons found, or reasonably believed to have been, responsible for the accident. Such enforcement action, if any, as CASA may be obliged to take, will be pursued in accordance with CASA's enforcement policy, and consistently with the applicable provisions of CASA's *Enforcement Manual*.¹⁰

⁵ Civil Aviation Act, para 9(1)(d).

⁶ Civil Aviation Act, para 9(1)(e)—and perforce, where necessary, varying, suspending or cancelling such authorisations. See *Acts Interpretation Act 1901*, subs. 33(3).

⁷ Civil Aviation Act, para 9(1)(f).

⁸ Civil Aviation Act, para 9(1)(g).

⁹ The term 'accident' is not defined in the civil aviation legislation. It is defined in subs 3(1) of the Transport Safety Investigation Act 2003, however, and CASA properly has regard to that definition when referring to an aircraft accident for its regulatory purposes.

¹⁰ See especially Chapter 2 of the then-current version of the Manual. See **Attachment A**.

- 1.6 In accordance with CASA's enforcement policy, action to vary a civil aviation authorisation (by imposing conditions on an Air Operator's Certificate, for example), and the suspension of an authorisation pending the successful completion of specified tests and/or examinations, are demonstrably safety-related in their nature, object and purpose and are not properly regarded as punitive in nature.
- 1.7 On occasion, CASA may also conduct investigations into breaches of the civil aviation legislation with a view to the preparation and submission of a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP).¹¹ It is then a matter for the CDPP to determine whether or not to mount a prosecution for specified offences.

2. Relationship between CASA's regulatory investigative functions and the investigative functions of the Australian Transport Safety Bureau

2.1 The Australian Transport Safety Bureau (ATSB) is established under the *Transport Safety Investigation Act 2003* (TSI Act).¹² The ATSB's primary function is to improve transport safety by means that include, amongst other things:

- independently investigating transport safety matters;¹³
- identifying factors that contribute, or have contributed to, transport safety matters; or affect, or might affect, transport safety;¹⁴
- communicating those factors to relevant sectors of the transport industry and the public;¹⁵ and
- reporting publicly on those investigations.¹⁶

2.2 The ATSB also has the function of 'cooperating with an agency of the Commonwealth . . . that has functions or powers relating to transport safety or functions affected by the ATSB's function of improving transport safety.'¹⁷

¹¹ Civil Aviation Act, Part IIIA.

¹² TSI Act, s. 12.

¹³ TSI Act, para 12AA(1)(b). The term *transport safety matters* is defined in section 23 of the TSI Act, and clearly contemplates an aircraft *accident* as an *investigable matter* under the TSI Act (both of which terms are also defined in the TSI Act), where the criteria set out in para 3(1)(a) to (c) of the TSI Act are satisfied.

¹⁴ TSI Act, para 12AA(1)(c).

¹⁵ TSI Act, para 12AA(1)(d).

¹⁶ TSI Act, para 12AA(1)(f).

¹⁷ TSI Act, subpara 12AA(2)(i).

- 2.3 Corresponding to the ATSB's cooperative functions, as these implicitly relate to CASA, the Civil Aviation Act includes amongst CASA's functions 'cooperating with the Australian Transport Safety Bureau in relation to investigations under the *Transport Safety Investigation Act 2003* that relate to aircraft.'¹⁸
- 2.4 Significantly, whereas CASA has explicit enforcement-related functions and powers, which may necessarily involve the identification of persons responsible for breaching requirements of the civil aviation legislation and taking such further action in relation to those persons as may be appropriate in the circumstances, the TSI Act expressly provides that it is *not* a function of the ATSB 'to apportion blame for transport safety matters', or 'to allow any adverse inference to be drawn from the fact that a person was involved in a transport safety matter.'¹⁹
- 2.5 The differences in the nature of the particular actions that may follow on from their respective investigative efforts notwithstanding, CASA and the ATSB have clearly complementary safety-related functions generally, and more specifically in relation to their investigations of aviation accidents.
- 2.6 Since 1996, with a view to better ensuring that the performance of their complementary safety-related functions proceeds effectively, fairly and efficiently, without undue complication and without confusing the nature of their respective investigative roles in the eyes of the persons with whom they deal or the public, CASA and the ATSB have earnestly endeavoured to adhere to the principles and practices set out in a comprehensive Memorandum of Understanding (MoU).²⁰
- 2.7 In response to the findings of the coroner in the inquest conducted into the tragic loss of life resulting from the aircraft crash at Lockhart River on 7 May 2005,²¹ and pursuant to the recommendations in the report to the Minister prepared by Russell Miller AM on Mr Miller's review 'into the relationship between the Civil Aviation Safety Authority and the Australian Transport Safety Bureau aimed at identifying potential areas for improved aviation safety

¹⁸ Civil Aviation Act, para 9(3)(a).

¹⁹ TSI Act, paras 12AA(3)(a) and (d). In relation to the latter proposition, however, subsection 12AA(3) of the TSI Act further provides: '[E]ven though blame or liability may be inferred, or an adverse inference may be made, by a person other than the ATSB, this does not prevent the ATSB from carrying out its functions.'

²⁰ See **Attachment B**.

²¹ Office of the State Coroner (Queensland), *Finding of Inquest into the Aircraft Crash at Lockhart River* (17 August 2007).

outcomes through better cooperation and co-ordination',²² the MoU was 'strengthened and improved to achieve better working relationships between the agencies'.²³

- 2.8 The current version the CASA/ATSB MoU²⁴ reflects and supports this strengthened and improved relationship, and it is CASA's firm view that the conduct of relations between CASA and the ATSB under the MoU clearly conduce to the enhancement of aviation safety.

3. Conduct of CASA's regulatory investigation and related inquiries into the accident involving VH-NGA on 18 November 2009

- 3.1 In conjunction with other aspects of CASA's regulatory inquiries into the facts and circumstances giving rise to the accident involving VH-NGA, and in keeping with the letter and spirit of the MoU, CASA carried out a 'parallel investigation' into the accident. A report of that investigation was completed on 21 July 2010.²⁵
- 3.2 All aspects of CASA's investigation and associated regulatory inquiries and investigations were carried out in accordance with the applicable provisions of the Civil Aviation Act, the TSI Act, the MoU and other relevant CASA policies and procedures.
- 3.4 All actions CASA has taken in relation to the operator, Pel-Air Aviation Pty Ltd, and the pilot in command of the aircraft at the time of the accident, Dominic James, have been consistent with CASA's powers and functions under the civil aviation legislation, in accordance with applicable CASA policies and practices and in the demonstrable interests of safety.
- 3.3 In CASA's view, insofar as the ATSB's actions involved matters of which CASA was aware, and with which CASA would properly have been involved, the ATSB likewise conducted its investigation into the accident in accordance with the letter and spirit of the MoU.

²² *ATSB/CASA Review 2007*, para 1.1 (21 December 2007) (Miller Review). See **Attachment C**.

²³ See Recommendation 17, Miller Review, p. 80.

²⁴ 9 February 2010.

²⁵ CASA Accident Liaison and Investigation Unit, *Accident Investigation Report 09/3 – Westwind VH-NGA Operated by Pel-Air Aviation Pty Ltd, Norfolk Island, 18 November 2009* (21 July 2010). See **Attachment D**.

4. Conclusion

- 4.1 CASA welcomes the opportunity to elaborate on any aspect of this matter, any of the issues mentioned in this submission and any relevant related matters at the time of its appearance before the Committee.
- 4.2 A considerable amount of documentary material has been provided to the Committee in connection with this matter. CASA stands ready to provide such further information as the Committee may require.

12 October 2012