

# Senate Rural and Regional Affairs and Transport References Committee

**Questions on Notice – Monday, 22 October 2012**  
**Committee Room 2S1, Parliament House, Canberra**

## Inquiry into aviation accident investigations

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
REFERENCES COMMITTEE**

**Inquiry into aviation accident investigations**

**Public Hearing – Monday, 22 October 2012**

**Questions Taken on Notice – Mr Michael Quinn**

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**1. HANSARD, PG 14**

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**Mr Quinn:**...CASA did not provide Captain James with the special audit information in the AAT in 2010. The letter to Captain James from CASA advising him of the suspension of his licence contains factual errors. I find this bizarre as the letter basically accuses Captain James of being incompetent, yet the author has made mistakes in the letter suspending his licence. I would ask the committee, particularly from this point of view, to investigate if the ATSB have breached the Transport Safety Investigation Act in terms of omission or coercion. The content of this report—

**Senator XENOPHON:** What section are you referring to?

**Mr Quinn:** That is section 24. I am not sure of that paragraph, but I can check if that helps the committee. I think it is 24(1).

**CHAIR:** We will take that on notice.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
REFERENCES COMMITTEE**

**Inquiry into aviation accident investigations**

**Public Hearing – Monday, 22 October 2012**

**Questions Taken on Notice – Mr Michael Quinn**

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**1. HANSARD, PG 14**

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**Mr Quinn:**...CASA did not provide Captain James with the special audit information in the AAT in 2010. The letter to Captain James from CASA advising him of the suspension of his licence contains factual errors. I find this bizarre as the letter basically accuses Captain James of being incompetent, yet the author has made mistakes in the letter suspending his licence. I would ask the committee, particularly from this point of view, to investigate if the ATSB have breached the Transport Safety Investigation Act in terms of omission or coercion. The content of this report—

**Senator XENOPHON:** What section are you referring to?

**Mr Quinn:** That is section 24. I am not sure of that paragraph, but I can check if that helps the committee. I think it is 24(1).

**CHAIR:** We will take that on notice.

**Answer:** Yes. It was section 24(1) of the TSI Act.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
REFERENCES COMMITTEE**

**Inquiry into aviation accident investigations**

**Public Hearing – Monday, 22 October 2012**

**Questions Taken on Notice – Civil Aviation Safety Authority**

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**2. HANSARD, PG 34**

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**CHAIR:** It has been suggested to us that the chief pilot, who is now the CASA Bankstown person, did not really have a lot of experience himself with these types of aircraft. Do you know what his experience was with Westwind aircraft? I presume he was endorsed to fly the damn things—was he?

**Mr McCormick:** He was, but I do not have the figure in front of me showing what his experience was at the time. It may be in some of the documents we gave you.

**CHAIR:** Could you take that on notice?

**Mr McCormick:** Sure.

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**3. HANSARD, PG 36**

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**Senator NASH:** Could you clarify what the desktop work was that Mr Wickham was doing on Pel-Air and when that was?

**Mr McCormick:** Could you give us a couple of minutes to look for that, Senator.

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**4. HANSARD, PG 37**

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**Senator FAWCETT:** How many FOIs thought it was a legal requirement to divert — your flying operations inspectors?

**Mr McCormick:** I do not have that information. We can find that on notice, if you like.

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**5. HANSARD, PG 44**

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**Senator XENOPHON:** Let us go back 11 years. An ATSB investigation identified a safety issue with the classification of passenger-carrying operations in terms of flights being characterised as aerial work and not being afforded the same level of safety as fare-paying passengers. That relates to aeromedical flights. That was back in September 2001. CASA was going to look at that. Has that been rectified? Has it been resolved?

**Mr McCormick:** The actual classification of aeromedical flights as aerial work is contained in CAR 206.

**Senator XENOPHON:** Is that the same as it was 11 years ago, or has it been—

**Mr McCormick:** It goes back significantly further than 2001.

**Senator XENOPHON:** No, but there was a recommendation made back in 2001 raising issues about having aeromedical flights being in the same category as aerial work, which includes crop dusting—that is correct, isn't it?

**Mr McCormick:** Aerial work does include crop dusting.

**Senator XENOPHON:** So there were issues raised by ATSB back in 2001 about the classifications and that something needed to be done about them. That was a recommendation made to CASA; are they still under the same category 11 years later?

**Mr McCormick:** They are still classified as aerial work of a CAR 206, that is right.

**Senator XENOPHON:** So it has not been rectified?

**Mr McCormick:** No—well, I do not know the recommendation out in front of you, but if that is the case—

**Senator XENOPHON:** Perhaps you could take this on notice: it is ATSB investigation BO/200100348. You could take that on notice.

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## 6. HANSARD, PG 44-46

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**Senator Xenophon:** ...Could I just go to an issue back, again, on the 22 February 2000? The ATSB made a recommendation to the Bureau of Meteorology about aviation safety issues inactions in terms of the reliability of Norfolk Island forecasts. Are you familiar with that at all?

**Mr McCormick:** No, I am not.

**Senator XENOPHON:** Okay. Perhaps you could take that on notice; it talks about the safety deficiency and the unreliability of the weather forecasts at Norfolk Island—

**Mr McCormick:** Sorry, that is a recommendation to BOM?

**Senator XENOPHON:** Yes, to the Bureau of Meteorology. But it does actually make reference to:

### SAFETY ACTION

As a result of these occurrences, the Civil Aviation Safety Authority has commenced a project to review the fuel requirements for flights to remote islands.

The report on Norfolk Island, the recommendations to the Bureau of Meteorology and the safety action is that CASA had commenced a project to review the fuel requirements for flights to remote islands. Can you tell me when that review was concluded?

**Mr McCormick:** We did have a project on—

**Senator XENOPHON:** No, perhaps you mistake me. This is back on 22 February 2000—

**Mr McCormick:** Oh, I see.

**Senator XENOPHON:** saying that a recommendation was issued to the Bureau of Meteorology and there was a safety action. There was analysis and it said:

The present level of reliability of meteorological forecasts and the current regulatory requirements are not providing an adequate level of safety for passenger-carrying services to Norfolk Island.

That was the analysis, and therefore the safety action was:

As a result of these occurrences, the Civil Aviation Safety Authority has commenced a project to review the fuel requirements for flights to remote islands.

That was nearly 12 years ago—sorry, more than 12 years ago; what has happened since then?

**Mr McCormick:** I cannot speak for what the then regime did 12 years ago with those recommendations—

**Senator XENOPHON:** But you can tell me, surely? CASA obviously dealt with this pretty promptly. It was back in 2000. When was the review in relation to the fuel requirements for flights to remote islands concluded by CASA?

**Mr McCormick:** As far as that report goes and the recommendation and what the disposition was, we will have to take that on notice. None of us were involved, unfortunately, in the year 2000. There is a project at the moment involved in fuel for remote islands—

**Senator XENOPHON:** Surely, it cannot be the same project? Surely, it cannot be the same project from a recommendation issued on 22 February 2000? It cannot be!

**Mr McCormick:** That is the first I have heard of that recommendation, myself personally, so I do not connect the two. As I said, we will take on notice that particular report—

**Senator XENOPHON:** I reckon that we are going to have to have you back here, because it relates to a number of incidents in relation to a BAe 146 aircraft, a Piper Navajo Chief, a Chieftain and another BAe 146; it gives a number of instances where things got pretty hairy because of the unreliability of weather forecasts at Norfolk Island. CASA was undertaking a review in relation to fuel requirements for flights to remote islands—this is over 12 years ago—surely, it has been resolved? It must be! Please do not tell me that there is still an ongoing review of fuel requirements for remote islands 12 years after it was raised—nearly 13 years, rather, after it was raised.

**Mr McCormick:** Senator, I appreciate that what you have raised there is that people should be very prudent when they are flight-planning to Norfolk Island. I agree with that, whereas the project—

**Senator XENOPHON:** No, no, no! I am sorry, Mr McCormick—there was a role for CASA to take:

... the Civil Aviation Safety Authority has commenced a project to review the fuel requirements for flights to remote islands.

Can anyone at this table please tell me what the review involved? When was that review concluded?

**Mr McCormick:** Sorry, Senator, we were not involved in this. We were not in these positions in the year 2000. I do not know what has happened to that report; I will find it out on notice.

...

**Senator XENOPHON:** Let's not take it any further, other than to ask you to please advise us on notice what action CASA took following recommendations made on 22 February 2000.

**Mr McCormick:** Yes, we will take that on notice.

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## 7. HANSARD, PG 47

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**Senator XENOPHON:** I have just a couple more issues, because time is of the essence. There is a suggestion that Mr James received his endorsement or his approval to captain this aircraft from two check and training pilots at Pel-Air who in fact do not have approval to do so. They do not have the authority to give him the approval to fly that sort of aircraft. Are you able to comment on that from a regulatory point of view?

**Mr McCormick:** It is in the audit report, but Mr Quinn also said he thought the command endorsement was illegal. The endorsement training is five hours of training and, to our knowledge, was conducted legally by people who have signatures acceptable to CASA.

**Senator XENOPHON:** Could you please take that on notice so we can clear that up?

**Mr McCormick:** As I say, it is in the audit report. The command training to fly in the left seat, which is what he was undertaking, does not require CASA's approval. The people who conducted that—and it is in the special audit report—were not at the time approved by CASA as supervisory pilots. That is in our audit report.

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## 8. HANSARD, PG 51

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**Senator XENOPHON:** I am just trying to work out this: when a pilot gives information about an incident, can that person be identified by virtue of the information that goes from the ATSB to CASA? Because I think you would find that 99 per cent of pilots think that whatever they tell ATSB does not lead them to be identified with CASA.

**Mr McCormick:** The accident or incident notification form from the ATSB—and I am not sure whether you have that, Chair; we can table a copy—has the following note at the bottom of it:

Privacy notice: The Australian Transport Safety Bureau collects information for the purposes of enhancing transport safety. The collection of aviation incident information is required in connection with the Transport Safety Investigation Act 2003. Some information may be disclosed to the Civil Aviation Safety Authority (CASA) and other bodies or individuals for the purpose of enhancing aviation safety. Where possible the identity of individuals will be protected. If the information is the subject of an investigation, it will only be used and disclosed in accordance with the *Transport Safety Investigation Act 2003*.

That is printed on the form that people select.

**Senator XENOPHON:** In practical terms, what does that mean? Anything that is notified to ATSB you can track down the pilot on?

**Mr McCormick:** No, we do not know everything that ATSB knows, and we do not need to know everything the ATSB knows.

**Senator XENOPHON:** But you can still identify the pilot, because you have the actual aircraft.

**Mr McCormick:** The risk comes—and the invidious situation the ATSB can find itself in—is if it knows of something that is a safety risk that could lead to an accident or a serious incident and withholds that from CASA. That would be an indefensible position.

**Senator XENOPHON:** I understand that.

**Mr McCormick:** The protections that are around it, though, are rugged and they are just. I do not know whether Mr Farquharson wants to add much about what reports we have or just culture.

**Senator XENOPHON:** Could you just take that on notice, and that might clear it up for the satisfaction of the pilots association.

**Mr McCormick:** We certainly will. Also, we will give you some information on how the NTSB and the FAA operate.

**Senator XENOPHON:** That would be very useful.

**Senator NASH:** Mr McCormick, I just want to clarify something. When I was asking you the questions around Qantas and the information regarding Mr James, you made a comment that Mr James had referred to that in camera. I was just trying to clarify what you meant. Maybe it was just an assumption that he may have.

**Mr McCormick:** It was just assumption.

**Senator NASH:** Can I ask you to take on notice also, just because of time, the issue of the black box. Whose call is it to require the retrieval of a black box?

**Mr McCormick:** I can answer that one. That is the ATSB.

Senator NASH: There are two to take on notice. In terms of the information regarding the weather, the initial weather report you referred to earlier was 6,000 feet in terms of the cloud, but then a second one was issued very shortly after with different information. How do you know it was received? Given some of the issues around the radiofrequency—and of course I understand that you know it was sent—how do you know it was received?

**Mr McCormick:** I can look to the ATSB report.

**Senator NASH:** Can I ask you to take on notice, given the evidence around, how do you and CASA know that information was received by the pilot? Also, just regarding Mr Wickham and his appointment to CASA, could you—again on notice, if you would not mind—provide for the committee how many applicants there were for that position and who was on the selection panel? I think, as the chair has raised, it looks extremely odd that CASA would employ the chief pilot from Pel-Air while ATSB was currently conducting the investigation around the report. It is very, very strange. So if you could take on notice for us the applicants and who was on the selection panel.

**Mr McCormick:** Certainly, Senator.

**Rural and Regional Affairs and Transport References Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Inquiry into Aviation Accident Investigations (Pel-Air) 22 October 2012  
**Civil Aviation Safety Authority**

**CASA01: Experience of Pel-Air Chief Pilot**  
**Hansard: p.34**

CHAIR: It has been suggested to us that the chief pilot, who is now the CASA Bankstown person, did not really have a lot of experience himself with these types of aircraft. Do you know what his experience was with Westwind aircraft? I presume he was endorsed to fly the damn things—was he?

Mr McCormick: He was, but I do not have the figure in front of me showing what his experience was at the time. It may be in some of the documents we gave you.

CHAIR: Could you take that on notice?

Mr McCormick: Sure.

**Answer:**

Mr Wickham completed a co-pilot endorsement on the Westwind on 23 September 1992. Mr Wickham has 50 hours experience on the aircraft as a co-pilot.

A chief pilot need not, in all cases, be endorsed to fly all of the aircraft types covered by an Air Operator's Certificate as pilot-in-command. In such cases, the Civil Aviation Orders permit the chief pilot to delegate his or her operational duties to another member of the operator's staff. In this case, the chief pilot's operational duties in relation to Pel-Air's Westwind aircraft had been delegated to the fleet manager, Mr Ian 'Wally' Meyer. At the time of the accident, Mr Meyer was fully endorsed on the Westwind aircraft, had over 20,000 hours total aeronautical experience with 147 hours as pilot-in-command on the Westwind in the 12 months preceding the accident.

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**ANSWERS TO QUESTIONS ON NOTICE**  
Inquiry into Aviation Accident Investigations (Pel-Air) 22 October 2012  
**Civil Aviation Safety Authority**

**CASA02: FOI views on diversion**  
**Hansard: p. 37**

Senator FAWCETT: How many FOIs thought it was a legal requirement to divert your flying operations inspectors?

Mr McCormick: I do not have that information. We can find that on notice, if you like.

**Answer:**

As part of CASA's own investigation into the Pel-Air accident, the officer in charge took an informal sample of the views of six CASA Flying Operations Inspectors (FOIs) regarding the appropriate decision to divert, in relation to the actions of the captain of the aircraft involved in the accident. The three FOIs experienced on large aircraft were of the opinion that if a pilot whilst enroute, became aware of the weather at the destination going below alternate minima but remained above the landing minima, then a diversion was not required. The three FOIs who flew smaller aircraft were of the opinion that, in the circumstances of the weather going below alternate minima, whilst enroute, a diversion was required.

It should be noted that, in March 2010, the details of the accident were not widely known amongst the CASA inspectorate. CASA's position with respect to the diversion issue was and remains that, in all the circumstances of the accident flight, good airmanship should have resulted in a diversion, even if there was no explicit, mandatory requirement that the accident pilot do so.

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Inquiry into Aviation Accident Investigations (Pel-Air) 22 October 2012

**Civil Aviation Safety Authority**

**CASA03: ATSB recommendation on aeromedical flights**

**Hansard: p.44**

Mr McCormick: The actual classification of aeromedical flights as aerial work is contained in CAR 206.

Senator XENOPHON: Is that the same as it was 11 years ago, or has it been—

Mr McCormick: It goes back significantly further than 2001.

Senator XENOPHON: No, but there was a recommendation made back in 2001 raising issues about having aeromedical flights being in the same category as aerial work, which includes crop dusting—that is correct, isn't it?

Mr McCormick: Aerial work does include crop dusting.

Senator XENOPHON: So there were issues raised by ATSB back in 2001 about the classifications and that something needed to be done about them. That was a recommendation made to CASA; are they still under the same category 11 years later?

Mr McCormick: They are still classified as aerial work of a CAR 206, that is right.

Senator XENOPHON: So it has not been rectified?

Mr McCormick: No—well, I do not know the recommendation out in front of you, but if that is the case—

Senator XENOPHON: Perhaps you could take this on notice: it is ATSB investigation BO/200100348. You could take that on notice.

**Answer:**

An ATSB Investigation in 2001 (BO/ 200100348) makes a number of references to the classification of operations (pp.75, 80). While the reference on page 80 advises that CASA in a recent Notice of Proposed Rule Making (NPRM 0102OS, August 2001) had summarised the situation with regard to classification of aircraft operations, the reference on page 75 of the same report refers to safety recommendation R20010195, which is also quoted in another ATSB report. This ATSB report is Investigation Number 200003130 into the accident involving Bell helicopter 206L3, registration VH-FFI, on 23 July 2000 northwest of Rockhampton. This flight was a helicopter patient transfer carried out as aerial work.

The recommendation in question R20010195 stated:

*The Australian Transport Safety Bureau recommends that the Civil Aviation Safety Authority consider proposing an increase in the operations' classification, and/or the minimum safety standards required, for organisations that transport their own employees and similar personnel (for example contractors, personnel from related organisations, or prisoners, but not fare-paying passengers) on a regular basis. This recommendation applies to all such operations, regardless of the take-off weight of the aircraft involved.*

CASA responded in part:-

*As you are aware, CASA is presently reviewing the standards contained within the existing Civil Aviation Regulations (CARs) and Civil Aviation Orders (CAOs) with regard to the Classification of Aircraft Operations. The input and recommendations*

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**ANSWERS TO QUESTIONS ON NOTICE**

Inquiry into Aviation Accident Investigations (Pel-Air) 22 October 2012

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*contained within Air Safety Recommendation R20010195 will be taken into consideration and addressed as part of this project.*

*The outcome of the review will determine which category employees (and similar personnel such as contractors) are placed and the standards that will apply to their transportation in aircraft. I trust that this review will satisfactorily address the issues raised in this Air Safety Recommendation. ... CASA has prepared a draft amendment to the Classification of Operations Policy that increases the requirements for operators who carry employees and similar types of passengers. The proposal is currently with the Standards Consultative Committee, and will be presented to the Aviation Safety Forum on 6 December 2002. It is anticipated that an NPRM to amend CAR 206 will then be issued for public comment in early 2003.*

In March 2003 CASA issued NPRM0304OS, which canvassed possible amendments to the provisions of the Civil Aviation Regulations (CAR) covering aerial work (CAR 206). Consistent with the endorsement of the CASA Board in 2001, the NPRM made no recommendation to reclassify what had been (and remains) aerial ambulance operations.

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**ANSWERS TO QUESTIONS ON NOTICE**

Inquiry into Aviation Accident Investigations (Pel-Air) 22 October 2012

**Civil Aviation Safety Authority**

**CASA04: ATSB recommendation in 2000 on weather forecasts at Norfolk Island and fuel requirements**

**Hansard: p.44-45, 46**

Senator XENOPHON: Could I just go to an issue back, again, on the 22 February 2000? The ATSB made a recommendation to the Bureau of Meteorology about aviation safety issues inactions in terms of the reliability of Norfolk Island forecasts. Are you familiar with that at all?

Mr McCormick: No, I am not.

Senator XENOPHON: Okay. Perhaps you could take that on notice; it talks about the safety deficiency and the unreliability of the weather forecasts at Norfolk Island—

Mr McCormick: Sorry, that is a recommendation to BOM?

Senator XENOPHON: Yes, to the Bureau of Meteorology. But it does actually make reference to:

**SAFETY ACTION**

As a result of these occurrences, the Civil Aviation Safety Authority has commenced a project to review the fuel requirements for flights to remote islands.

The report on Norfolk Island, the recommendations to the Bureau of Meteorology and the safety action is that CASA had commenced a project to review the fuel requirements for flights to remote islands. Can you tell me when that review was concluded?

Mr McCormick: We did have a project on—

Senator XENOPHON: No, perhaps you mistake me. This is back on 22 February 2000—

Mr McCormick: Oh, I see.

Senator XENOPHON: saying that a recommendation was issued to the Bureau of Meteorology and there was a safety action. There was analysis and it said:

The present level of reliability of meteorological forecasts and the current regulatory requirements are not providing an adequate level of safety for passenger-carrying services to Norfolk Island.

That was the analysis, and therefore the safety action was:

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That was nearly 12 years ago—sorry, more than 12 years ago; what has happened since then?

Mr McCormick: I cannot speak for what the then regime did 12 years ago with those recommendations—

Senator XENOPHON: But you can tell me, surely? CASA obviously dealt with this pretty promptly. It was back in 2000. When was the review in relation to the fuel requirements for flights to remote islands concluded by CASA?

Mr McCormick: As far as that report goes and the recommendation and what the disposition was, we will have to take that on notice. None of us were involved, unfortunately, in the year 2000. There is a project at the moment involved in fuel for remote islands—

Senator XENOPHON: Surely, it cannot be the same project? Surely, it cannot be the same project from a recommendation issued on 22 February 2000? It cannot be!

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Mr McCormick: That is the first I have heard of that recommendation, myself personally, so I do not connect the two. As I said, we will take on notice that particular report—

Senator XENOPHON: I reckon that we are going to have to have you back here, because it relates to a number of incidents in relation to a BAe 146 aircraft, a Piper Navajo Chief, a Chieftain and another BAe 146; it gives a number of instances where things got pretty hairy because of the unreliability of weather forecasts at Norfolk Island. CASA was undertaking a review in relation to fuel requirements for flights to remote islands—this is over 12 years ago—surely, it has been resolved? It must be! Please do not tell me that there is still an ongoing review of fuel requirements for remote islands 12 years after it was raised—nearly 13 years, rather, after it was raised.

Mr McCormick: Senator, I appreciate that what you have raised there is that people should be very prudent when they are flight-planning to Norfolk Island. I agree with that, whereas the project—

Senator XENOPHON: No, no, no! I am sorry, Mr McCormick—there was a role for CASA to take:

... the Civil Aviation Safety Authority has commenced a project to review the fuel requirements for flights to remote islands.

Can anyone at this table please tell me what the review involved? When was that review concluded?

Mr McCormick: Sorry, Senator, we were not involved in this. We were not in these positions in the year 2000. I do not know what has happened to that report; I will find it out on notice.

.... Senator XENOPHON: Let's not take it any further, other than to ask you to please advise us on notice what action CASA took following recommendations made on 22 February 2000.

Mr McCormick: Yes, we will take that on notice.

**Answer:**

The ATSB issued Recommendation R20000040 on 22 February 2000 to the Bureau of Meteorology:

***SUBJECT - RELIABILITY OF NORFOLK ISLAND FORECASTS  
SAFETY DEFICIENCY***

*The meteorological forecasts for Norfolk Island are not sufficiently reliable on some occasions to prevent pilots having to carry out unplanned diversions or holding.*

Prior to 1991, the then Civil Aviation Authority published specific requirements for flights to island destinations. For example, flights to Lord Howe Island were required to carry fuel for flight to an alternate aerodrome on the mainland Australia, and flights to Norfolk Island and Cocos Island, where no alternate aerodromes were available, were required to carry a minimum of 2 hours of holding fuel.

In 1991 Civil Aviation Regulation (CAR) 234 was enacted and provided that an aircraft would not commence a flight unless the pilot in command and the operator had taken



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reasonable steps to ensure that the aircraft was carrying sufficient fuel and oil to enable the proposed flight to be undertaken in safety. The regulation did not specify the method for determining what was sufficient fuel in any particular case. Civil Aviation Advisory Publication (CAAP) 234-1(0) dated March 1991 provided guidelines which set out one method that could be used to calculate fuel requirements that would satisfy CAR 234. CAAP 234-1 did not contain any special considerations or requirements when planning a flight to an island destination.

In August 1999, Civil Aviation Order 82.0 was amended to require all charter passenger-carrying flights to Norfolk Island and other remote islands to carry fuel for the flight to their destination and to an alternate aerodrome. The alternate aerodrome must not be located on a remote island. This requirement to carry additional fuel does not apply to regular public transport flights to a remote island.

In a response to the ATSB dated 27 April 2000 regarding recommendation R20000040, the Bureau Of Meteorology advised that it had explored a number of possible ways to increase the reliability of forecasts for flights to the Island and was actively participating in the review of fuel requirements for flights to remote islands being undertaken by the Civil Aviation Safety Authority.

This referred to a CASA review of the fuel requirements for flights to remote islands which resulted in an amendment to Civil Aviation Order (CAO) 82.0. An amendment to CAO 82 .0 was made in August 1999; however this was reviewed during 2000 and amended again in December 2000. These amendments deleted Cocos Island but retained Norfolk Island in the definition of a remote island. It also included the conditions for passenger carrying charter operations to remote islands and the fuel requirements for those flights. Regular Public Transport (RPT) operations were not included in the amendment to CAO 82.0 as it was already a condition on an RPT Air Operators Certificate (AOC) that CASA approved both the route over which an RPT was flown and the fuel policy of the operator. Thus for RPT operations, CASA already had in place a means to regulate the carriage of adequate fuel. The making of the amendment in December 2000 concluded that particular review project.

The CAO 82.0 requirements were in force at the time of the Pel Air accident. CASA initiated a project (OS 09/13) in 2009 to address ATSB concerns that fuel quantity issues were becoming problematic. That project remains in place and the CASA agreed action in the Pel Air accident report is to review in part the fuel and alternate requirements for operations to remote islands.

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Inquiry into Aviation Accident Investigations (Pel-Air) 22 October 2012

**Civil Aviation Safety Authority**

**CASA05: Qualifications of Pel-Air check and training pilots**

**Hansard: p.47**

Senator XENOPHON: I have just a couple more issues, because time is of the essence. There is a suggestion that Mr James received his endorsement or his approval to captain this aircraft from two check and training pilots at Pel-Air who in fact do not have approval to do so. They do not have the authority to give him the approval to fly that sort of aircraft. Are you able to comment on that from a regulatory point of view?

Mr McCormick: It is in the audit report, but Mr Quinn also said he thought the command endorsement was illegal. The endorsement training is five hours of training and, to our knowledge, was conducted legally by people who have signatures acceptable to CASA.

Senator XENOPHON: Could you please take that on notice so we can clear that up?

**Answer:**

Mr James' command endorsement for the Westwind aircraft was conducted by Rkqv4 and certified on 27 July 2007. Rkqv4 held a valid approval under the Civil Aviation Regulations to perform the training and to issue the endorsement. The endorsement met the requirements specified in the Civil Aviation Orders.

Following receipt of his command endorsement, Mr James flew as co-pilot from July 2007 to April 2008. From April 2008 to November 2008 Mr James undertook operations as Pilot in Command Under Supervision (ICUS) to gain the appropriate experience for commercial operations as a pilot in command (50 hours minimum required) as well as continuing operations as co-pilot during this time.

On 28 June 2008 Mr James undertook a command proficiency check however he did not attain the required standard and the check pilot recommended Mr James conduct a further 8 sectors as ICUS. The proficiency check was conducted by Rkqv4 who held the appropriate check pilot approval from CASA.

On 10 November 2008 Mr James passed a command proficiency check and was checked to line as the Pilot in Command. The check to line was conducted by Rkqv3, who held the appropriate check pilot approval from CASA. Mr James's ICUS line operations were conducted by the following Pel-Air pilots:

Rkqv4 (CASA Approved)

Rkqv3 (CASA approved for Supervisory Pilot and Training & Checking from 1 October 2008)

Rkqv5 (Not CASA approved)

Rkqv6 (Not CASA approved)

At the time of the accident the CASA position was that all Supervisory Pilots required CASA approval. During the Special Audit CASA identified some Westwind pilots who were conducting supervision of ICUS flying had not been approved by CASAA Request for

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Corrective Action (RCA) was issued to Pel-Air in regard to this perceived deficiency. Pel-Air implemented appropriate corrective action acceptable to CASA and the RCA was acquitted.

CASA is satisfied that Mr James lawfully gained the required command experience on the Westwind, was validly assessed by Pel-Air under their CAR 217 Training and Checking approval and met the required standards for operation as Pilot in Command at the time of the 10 November 2008 proficiency check.

CASA's *Air Operator's Certification Manual* now clarifies CASA application of Civil Aviation Order 82.3 by describing which supervisory pilots require CASA approval.

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**CASA06: CASA protections for information received from ATSB**  
**Hansard: p.51**

Senator XENOPHON: In practical terms, what does that mean? Anything that is notified to ATSB you can track down the pilot on?

Mr McCormick: No, we do not know everything that ATSB knows, and we do not need to know everything the ATSB knows.

Senator XENOPHON: But you can still identify the pilot, because you have the actual aircraft.

Mr McCormick: The risk comes—and the invidious situation the ATSB can find itself in—is if it knows of something that is a safety risk that could lead to an accident or a serious incident and withholds that from CASA. That would be an indefensible position.

Senator XENOPHON: I understand that.

Mr McCormick: The protections that are around it, though, are rugged and they are just. I do not know whether Mr Farquharson wants to add much about what reports we have or just culture.

Senator XENOPHON: Could you just take that on notice, and that might clear it up for the satisfaction of the pilots association.

Mr McCormick: We certainly will. Also, we will give you some information on how the NTSB and the FAA operate.

**Answer:**

CASA has documents to provide guidance to CASA staff on the use and protection of safety information and the assessment of aviation safety incident reports provided by the ATSB on a daily and weekly basis. This information includes the aircraft registration details, date of the occurrence and a brief description of the event. No pilot details are provided in any report. The ATSB also provides CASA with a regular data report which does not contain any registration details and is used primarily to analyse any trends in occurrences over a longer period. CASA may elect to gather further information on these occurrences and take appropriate action as necessary for aviation safety.

The details described above are essentially information which is reported to the ATSB as part of the Transport Safety Investigation Act (TSIA) reporting requirements and are not entitled to protection by the ATSB under the TSIA when that information is passed to CASA. The ATSB does gather other information in the course of its investigations, such as statements from pilots involved in incidents. This information is restricted information and is not released to CASA.

The Committee's attention is drawn to the United States Federal Aviation Administration Order 8020.11C, which provides, in pertinent part:

*FAA must at all times have a coordinator (FAA IIC) designated as its principal representative until the [accident] investigation is complete. . . . Through this principal representative, NTSB will make available to FAA documents, reports, and other evidence from the investigation and any tentative recommendations so that the FAA may immediately take the necessary corrective actions.*

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A corresponding provision in the relevant United States National Transportation Safety Board (NTSB) aviation investigator's manual provides:

*By statute, the FAA is automatically a participant in Safety Board investigations. Many FAA personnel have worked closely with Board investigators over the years and are familiar with major investigation procedures. The role of the FAA representatives is to support the Safety Board's investigation and determine if immediate regulatory action is necessary to prevent another accident.*

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**CASA07: Receipt of weather information by Dominic James**  
**Hansard: p.52**

Senator NASH: There are two to take on notice. In terms of the information regarding the weather, the initial weather report you referred to earlier was 6,000 feet in terms of the cloud, but then a second one was issued very shortly after with different information. How do you know it was received? Given some of the issues around the radio frequency—and of course I understand that you know it was sent—how do you know it was received?

Mr McCormick: I can look to the ATSB report.

Senator NASH: Can I ask you to take on notice, given the evidence around, how do you and CASA know that information was received by the pilot?

**Answer:**

The transcripts of the contacts with air traffic services by the crew of the aircraft VH-NGA do not reveal any apparent communications difficulty. In interviews with CASA, Mr James did not express any views that there were any high frequency communications irregularities. The first CASA became aware of Mr James's views on HF communications difficulties was when he raised it on the recent *4 Corners* television program.

The transcript of the pilot's conversation with Fiji air traffic control reveals that the pilot acknowledged the second report on weather information indicating it was received.

*0802:32 from Nadi to VH-NGA. Roger this is the latest weather for Norfolk...SPECI... I say again special weather Norfolk at 0800 Zulu... auto I say again auto, alpha uniform tango oscar, wind 290 08 knots, 999 november delta victor, overcast one thousand one hundred, temperature 21, dew point 19, QNH Norfolk 1012...remarks... romeo foxtrot zero zero decimal zero oblique zero zero zero decimal zero go ahead.*

*0803:21 from VH-NGA to Nadi. Thank you Nadi... much appreciated NGA .*

A different response could be expected if the pilot experienced difficulty hearing the radio transmission. The ATSB accident report on page 17 also advised that no difficulties were identified by the flight crew with their radio communications during the flight.

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**CASA08: Recruitment of John Wickham to CASA**

**Hansard: p.52**

Senator NASH: Also, just regarding Mr Wickham and his appointment to CASA, could you—again on notice, if you would not mind—provide for the committee how many applicants there were for that position and who was on the selection panel? I think, as the chair has raised, it looks extremely odd that CASA would employ the chief pilot from Pel-Air while ATSB was currently conducting the investigation around the report. It is very, very strange. So if you could take on notice for us the applicants and who was on the selection panel.

Mr McCormick: Certainly, Senator.

**Answer:**

Mr Wickham originally applied for a position as a Flight Training Examiner in August 2010. That recruitment process involved 9 applicants, 4 of whom were interviewed. The panel consisted of \_\_\_\_\_ (Manager Flying Standards), \_\_\_\_\_ (Team Leader Flight Training) and \_\_\_\_\_, (Team Leader Administration).

In October 2010 Mr Wickham was selected as the second ranked candidate and placed on a merit list for future vacancies. The preferred applicant for the Flight Training Examiner subsequently withdrew and Mr Wickham was then offered the role. He elected to continue with the Flying Operations Inspector (FOI) application as outlined below.

When a vacancy for a FOI arose in June 2010, a review of candidates available from a merit lists was conducted and Mr Wickham was identified as meeting all the mandatory qualifications for an FOI position in December 2010. An additional interview and background checks were completed on Mr Wickham by a new panel made up of \_\_\_\_\_ (Acting Manager General Aviation GA Field Office Sydney) and \_\_\_\_\_ (Recruitment Consultant) to assess Mr Wickham for the FOI position. A report was submitted and following approval by the delegate an offer was made to Mr Wickham in late January 2011. He commenced in CASA on February 2011.

Both Flight Training Examiner and Flying Operations Inspector positions have similar mandatory and desirable criteria including holding a current Air Transport Pilot (Aeroplane) and Commercial Pilot (Aeroplane) Licences, a Command (Multi Engine Aeroplane) Instrument Rating, a current Class 1 Medical certificate and to hold or have held Approved Testing Officer delegations, Grade 1 Flight Instructor Rating, Chief Pilot and/or Chief Flying Instructor approval and have had extensive training and checking experience. Mr Wickham met or exceeded these criteria.

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**CASA 09: Desktop work by Mr John Wickham**

**Hansard:** p.36

**Senator NASH:** Could you clarify what the desktop work was that Mr Wickham was doing on Pel-Air and when that was?

**Mr McCormick:** Could you give us a couple of minutes to look for that, Senator.

**Answer**

On 11 November 2011 Mr Wickham participated as an observer for an assessment of a Pel-Air check pilot to gain approval to conduct Emergency Procedures Checks under the Civil Aviation Orders. The task was conducted by a CASA senior Flying Operations Inspector (FOI) and was necessary as part of Mr Wickham's development for the FOI role. There was no other work conducted on Pel-Air by Mr Wickham.



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**Senator XENOPHON:** Have you complied with those? Do you reckon this report complies with ICAO annex 13, the international benchmark for such reports?

**Mr Dolan:** In terms of the way we have viewed annex 13 and the way our procedures and internal standards draw on annex 13 in the light of the Transport Safety Investigation Act, our view was that yes, it did meet those requirements.

**Senator XENOPHON:** On what basis? Can you tell me by looking at ICAO annex 13 and the requirements in ICAO annex 13 how you say the Norfolk report prepared by the ATSB in any way remotely adheres to the principles set out in annex 13? You can take it on notice. You might want to consider it.

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**Senator NASH:** So at no stage did you ask them, 'Did the prescribed safety procedures work?' You are the Australian Transport Safety Bureau and at no stage did you ask the prescribed safety requirements work?

**Mr Sangston:** I do not know precisely what was asked in the interview.

**CHAIR:** Could we have a record of the interviews?

**Mr Dolan:** We can draw it to your attention. It should be amongst the material we have already supplied. We will find it for you.

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**Mr Sangston:** There was a second meeting whereby we met with a gentleman, John Grima, in CASA and we discussed the proposal again. If you peruse the letter that initially went to CASA, you will see that from our standpoint there was no proposal or intent to mandate any resolution. Indeed, the way we identify our safety issues is to identify the safety issue and then the owner, if you like—which in this case was CASA—would develop the response to the safety issue.

**CHAIR:** But you had a meeting with them to discuss their difference of position between yours and theirs.

**Mr Sangston:** We had an initial meeting to discuss the safety issue as I have just described and then there was a second meeting to discuss what CASA understood was the—

**CHAIR:** The tidying up meeting so that they did not have a public scrap with you: 'Hang on! We'd better'—that is what they are saying here.

**Mr Sangston:** I was not at that meeting, Senator, but I have got the letter back from CASA in which they outlined a lot of the in-place regulatory and other guidance in terms of the safety issue, but there was no—

**CHAIR:** They identified to you that they had a clear division of opinion within CASA?

**Mr Sangston:** No.

**CHAIR:** Because, obviously, speak no evil, hear no evil: we didn't talk. So to the best of your knowledge, they did not talk.

**Mr Sangston:** That did not come up in that meeting, no.

**CHAIR:** Or the other one that you were not at.

**Mr Sangston:** Not from what I understand.

**CHAIR:** So can you take that on notice and refer to us any email trail around that issue?

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**10. HANSARD, PG 61**

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**ATSB response:**

International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPS) for each area of ICAO responsibility are contained in ‘Annexes’. Each Annex deals with a particular subject area. Annex 13 contains the SARPS relating to *Aircraft Accident and Incident Investigation*. The ATSB is responsible for meeting Australia’s Annex 13 responsibilities for the notification and independent investigation of accidents and other safety occurrences involving civil aircraft in Australia and taking part in the investigation of accidents and other occurrences involving Australian aircraft overseas.

Standards and Recommended Practices are defined as follows:

**Standard(S):** Any specification for physical characteristics, configuration, materiel, performance, personnel or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Convention. In the event of non-compliance with a Standard by a contracting State, notification to the Council is compulsory under Article 38.

**Recommended Practice (RP):** Any specification for physical characteristics, configuration, materiel, performance, personnel or procedure, the uniform application of which is recognized as desirable in the interests of safety, regularity or efficiency of international air navigation, and to which Contracting States will endeavour to conform in accordance with the Convention. Australia notifies differences to ICAO in respect of aspects of non-adherence with the Recommended Practices contained in the SARPS.

Annex 13 SARPS are reflected in the *Transport Safety Investigation Act 2003* (TSI Act) and in the ATSB's policies, procedures and guidelines. Further, section 12AD of the TSI Act requires that the ATSB ensure that the powers under the TSI Act are exercised in a manner consistent with Australia's obligations under international agreements, including Annex 13.

The Annex 13 SARPS cover a range of investigation responsibilities, tasks and functions, including:

- the objectives of the investigation
- protection of evidence, custody and removal of aircraft
- international notification requirements
- various State responsibilities for initiating and conducting the investigation, and the rights and obligations of States associated with the occurrence
- designation of investigators in charge and access and control of accident sites and other evidence
- flight recorders
- medical and autopsy examinations
- coordination with judicial authorities and security authorities
- non-disclosure of records
- reopening of investigations
- report processes and administration
- safety recommendations
- ICAO international reporting requirements
- accident prevention measures, including reporting and occurrence data.

Australia has differences filed with ICAO across most of the Annexes, as detailed in Aeronautical Information Publication (AIP) Supplement H12/11. With respect to Annex 13, the following differences are specifically relevant to the QoN:

- **The definition of safety recommendation (Chapter 1):** The essence of the definition is adopted in legislation and in policy and procedures documents. However, Australia reserves the term safety recommendation for making formal recommendations which are used as a last resort (see later section of safety issues and actions).
- **Non-disclosure of records - para5.12 (S):** There are elements of 5.12 where Australia is more exacting and exceeds the standard, but in other areas its legislation is less protective.
- **Final Report - format - para6.1 (RP):** Australia endeavours to comply with the recommended format for international aviation accident and serious incident reports and the more complex domestic aviation occurrences. However, for some complex investigations Australia may use what it considers to be a more appropriate format to clearly disseminate the facts, analysis and findings. A simpler abbreviated format may be utilised for domestic occurrences of a less complex nature.
- **Final Report – safety recommendations - para6.8 (S):** Australia will notify desired safety action to a relevant organisation or person as soon as a safety issue is identified. Australian safety action may be in the form of agreed proactive remedy, a defined safety recommendation, safety advisory notice, or safety education.

The provision in Annex 13 relating to the format of the final report is not a 'Standard', rather it is a 'Recommended Practice', which also states that the format may be adapted to the circumstance of the accident or incident. Further, as noted above, Australia has filed a difference with respect to this 'Recommended Practice'.

ICAO Doc 9756 (Manual of aircraft Accident and Incident Investigation – Part IV – Reporting) provides guidance material that supports the suggested format contained in section 6 of Annex 13 and the associated Appendix. While that guidance material is useful, it is not mandatory. Doc 9756 makes specific reference to the collection of human factors material as an integral part of the investigation. That is consistent with the ATSB's approach to investigation, which considers human factors as an integrated part of the overall investigation and analysis methodology, aligned with the Doc 9756 that states:

...Thus, the Human Factors information should be integrated into the appropriate areas of the factual report, rather than being placed under a separate heading. Human Factors information should be presented in a language that is consistent with the presentation of the other factual information.

An investigation report will rarely be reflective of the full range of investigative activities undertaken throughout an investigation. However, the report needs to contain sufficient information to support the analysis and findings, while recognising and balancing the requirements of Annex 13 (para 5.12) with respect to non-disclosure of records and the associated 'restricted information' provisions of the TSI Act. At all times the ATSB endeavours to balance the use of material that could imply adverse comment with the need to properly explain what happened, and why, in a fair and unbiased manner.

Further, with respect to the inclusion of 'Recommendations', it is important to note the difference filed by Australia in relation to Annex 13 Para 6.8 noted above.

The focus of an ATSB investigation is on achieving safety outcomes; that is through the identification of the factors that increased risk, particularly those associated with ongoing/future risk (safety issues), such that action can be taken by relevant organisations to address the identified 'safety issue'. This does not in itself require the issuing of safety recommendations, although that is an option. Noting that safety recommendations are not enforceable, the issuing of a safety recommendation in itself may not achieve any tangible safety benefit, if the target organisation elects not to accept and react to the recommendation.

In this regard, the ATSB prefers to encourage proactive safety actions that address the 'safety issues' identified in its reports. Other benefits of this approach are that the stakeholders are generally best placed to determine the most effective way to address any 'safety issues' and the publication of the safety actions that address an issue proactively should be viewed as a positive step that provides for timely safety action prior to the release of the report and a level of completeness when the final report is published. This approach is reflected in the difference that Australia has filed with respect to Annex 13 para 6.8.

The response to a safety recommendation is most often unlikely to be any different to the safety action reported by an organisation in response to an identified safety issue, but the latter is likely to be more proactive and timely. That is specifically the case with respect to the Norfolk Island investigation, where the responses to any formal safety recommendations

to CASA and Pel-Air related to the two identified safety issues, are likely to be as per the safety action detailed in the report.

Noting the above, the ATSB investigation and report was completed in a manner consistent with the Annex 13 SARPS as reflected through domestic legislation and the ATSB's policies, procedures and guidelines.

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**Senator NASH:** So at no stage did you ask them, 'Did the prescribed safety procedures work?' You are the Australian Transport Safety Bureau and at no stage did you ask the prescribed safety requirements work?

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**CHAIR:** Could we have a record of the interviews?

**Mr Dolan:** We can draw it to your attention. It should be amongst the material we have already supplied. We will find it for you.

### **ATSB response:**

The survival aspects of the accident were reported on pp 20 to 24 of the investigation report. In light of other issues raised during the course of the inquiry, the following is additional information that the ATSB obtained in the course of the investigation but did not include in the report on the basis that it did not indicate broader safety issues:

- As indicated on p 21 of the investigation report, the liferafts were reported removed from their normal storage position and placed in the aircraft's central aisle ready for deployment after the ditching. There are advantages and disadvantages associated with this action. Access to the liferafts may be more readily available from a position in the central aisle; however, in anything but a low energy impact with the water, it could be expected a life raft might move/dislodge from that position.
- As indicated on pp 19 and 21 of the investigation report, the reported two or three large impacts with the water were sufficient in this case to fracture the fuselage immediately forward of the main wing spar. The fractured fuselage was reported to have remained aligned for a few seconds before the aircraft's nose and tail partially sank with the passenger cabin/cockpit section adopting a nose-down attitude.
- The copilot indicated that a quantity of equipment and baggage descended or rolled down the fuselage as it filled with water - this could be expected to have included the life rafts (p 22 of the investigation report refers).
- Given the insecure equipment and baggage in the darkened cabin/cockpit area, the difficulty experienced with the aircraft's main door, the requirement to assist the patient from the stretcher and then the aircraft and the increasing ingress of water, the priority given by the remaining aircraft occupants to exiting the aircraft over recovering and deploying the liferafts is understandable. Whether in that context their recovery and deployment would have been more likely from their stowed position is debatable.

- In interview with the ATSB, the PIC indicated that he was not wearing a life jacket and reported that the light on the nurse's life jacket was not working (although it is possible that the light was obscured by the patient she was supporting – see the nurse's interview notes below). The PIC also recalled that he may have inadvertently slightly deflated one of the survivors' life jackets in the water at some time but it was too dark to tell, and that the whistle lanyard on one of the three jackets was too short and could not be used. It was not possible to determine whether or not this was due to tangling or snagging of the lanyard.
- The passenger indicated at interview on 24 November 2009 that his life jacket rode up on him and he found that this pushed his head forward. In addition, the passenger reported that the whistles were not available on two of the jackets and that he only activated one inflation 'toggle'. Another of the survivors activated the second toggle on the passenger's life jacket.
- The copilot was interviewed on 2 December 2009. In this interview the copilot indicated that she did not wear a life jacket and that she initially attempted to open the aircraft's main door before the fuselage tipped down. This compelled the copilot to seek an emergency exit. The copilot reported that, once on the surface, the doctor helped her to remain afloat.
- The doctor was interviewed on 4 December 2009. The doctor confirmed that only three of the aircraft occupants had life jackets but that all three jackets worked satisfactorily. He reported that one life jacket light failed and that only one whistle was located. He indicated that, once near rescue, he wasn't sure that a whistle would have helped. He reported that at evacuation, the priority was assisting the patient from the aircraft, rather than deploying the life rafts.
- An interview with the patient on 10 December 2009 determined that the patient was not wearing a life jacket. This is consistent with the report from the doctor that he did not put a life jacket on the patient due to concerns about a jacket hindering the already difficult task of releasing the patient's restraints after the ditching (pp 20 and 21 of the investigation report refer).
- The flight nurse was interviewed on 10 December 2009. The nurse recalled that only half of her life jacket had inflated but that was all right. The nurse reported assisting the patient to stay afloat and that after one hour it was difficult to maintain the patient afloat. The flight nurse stated that two life jacket lights were working, but that hers was generally underneath the patient, who was being held afloat.

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**CHAIR:** Or the other one that you were not at.

**Mr Sangston:** Not from what I understand.

**CHAIR:** So can you take that on notice and refer to us any email trail around that issue?

**ATSB response:**

The ATSB held an initial meeting by videoconference with CASA staff on 3 February 2010 to discuss a developing safety issue in respect of the lack of guidance for pilots when exposed to previously unforecast meteorological conditions on long flights to destinations with no nearby alternates. Based on the evidence to hand at the time, this issue was represented and discussed from the ATSB standpoint as a critical safety issue.

Subsequently, CASA wrote to the ATSB (CASA letter AT10/23 of 26 March 2010 refers) and provided formal comment on the developing safety issue. CASA offered for the ATSB to contact \_\_\_\_\_, Manager, Flight Operations should there be any questions or the ATSB wish to meet and discuss this matter. The ATSB agreed to arrange a face-to-face meeting with the subject matter experts at CASA.

This follow-up meeting was held in CASA's Woden, ACT offices at 1430 on 22 April 2010. \_\_\_\_\_ and a number of other CASA staff met with ATSB investigators \_\_\_\_\_ and discussed the safety issue further. The CASA staff advised the ATSB that they believed the current Regulations and guidance material covered the issue satisfactorily, which was consistent with the content of CASA's letter of 26 March 2012. At no stage during the meeting did the CASA staff advise the ATSB investigators that there may have been a difference of opinion within CASA.