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24 December 2009

REGISTERED MAIL

Mr Dominic John Allen James
5/18 Glen Street
BONDI, NSW, 2026,
AUSTRALIA

By Email: dom@cia.com.au
dominic.james@pelair.co.au

Dear Mr James

NOTICE TO UNDERTAKE EXAMINATIONS (regulation 5.38, *Civil Aviation Regulations 1988*)

NOTICE OF SUSPENSION OF COMMERCIAL PILOT (AEROPLANE) LICENCE, AIRLINE TRANSPORT PILOT (AEROPLANE) LICENCE AND COMMAND (MULTI-ENGINE AEROPLANE) INSTRUMENT RATING PENDING EXAMINATION (regulation 265, *Civil Aviation Regulations 1988*)

On the basis of the facts and circumstances set out in this notice, and pursuant to regulation 5.38 of the *Civil Aviation Regulations 1988 (CAR)*, I am writing to give you notice that I, consider it necessary in the interests of the safety of air navigation for you to undertake certain examinations to demonstrate to me that you continue to possess the aeronautical skills and aeronautical knowledge appropriate to your Commercial Pilot (Aeroplane) Licence, Airline Transport Pilot (Aeroplane) Licence and Command (Multi-Engine Aeroplane) Instrument Rating.

I am also writing to give you notice that, pursuant to CAR 265(1)(a), I am suspending your Commercial Pilot (Aeroplane) Licence, Airline Transport Pilot (Aeroplane) Licence and Command (Multi-Engine Aeroplane) Instrument Rating pending your completion of the examinations mentioned above (and described more particularly in paragraph 14 below).

The facts and circumstances relating to my decision and the reasons why I consider it necessary for you to undertake this examination are set out in the following paragraphs.

Facts and circumstances

1. On 18 November 2009, you were the pilot in command of Israel Aircraft Industries Model: 1124A aircraft registration mark VH-NGA engaged in aerial work (ambulance function) operations on a flight conducted by Pel Air Aviation Pty Limited (**Pel-Air**) from Samoa to Melbourne with a planned refuelling stop at Norfolk Island.
2. Shortly after 1030 Universal Co-ordinated Time (**UTC**) on 18 November, VH-NGA ditched into the ocean off the coast of Norfolk Island after the aircraft nearly ran out of fuel attempting to land at Norfolk Island Airport. You, your co-pilot and four passengers of the aircraft managed to safely egress from the aircraft which subsequently sank.
3. You planned your leg from Samoa to Norfolk Island on the basis that your flight time would be 3 hours and 30 mins. You estimated that you would require 7200 pounds of fuel for this purpose, and thus refuelled the aircraft at Samoa with full wing tanks. You did not refuel the aircraft's wing-tip tanks.
4. CASA's investigation into the circumstances of this flight has revealed that the fuel planning exercise which you undertook in arriving at the figures of 3 hours 30 mins flight time and 7200 pounds required fuel was well below the standard required of an Airline Transport Pilot (Aeroplane) Licence (**ATPL**) holder. This investigation has included consideration of copies of your flight plan, transcript of the briefing which you received from an Airservices Australia briefing officer prior to commencing the flight, transcript of your in-flight communications with Air Traffic Control in Auckland, and your discussions with CASA officers in Sydney on 16 December 2009.
5. The most significant defects in your flight planning were that:
 - (a) You did not receive an area/route forecast for the route you intended to fly (Samoa – Norfolk), nor did you source any information relating to the strength of the prevailing high level winds along the route. In the absence of this critical data, there was no sound basis for your estimated flight time of 3 hours 30 mins, nor for your estimate of 7200 pounds required fuel; and
 - (b) It does not appear that you took into account contingencies such as the possibility of a depressurisation or an engine failure in calculating the amount of fuel which you took on board at Samoa.
6. Furthermore, having commenced your flight from Samoa to Norfolk Island, the transcript of your communications with Air Traffic Control in Auckland reveals that you received a weather forecast for Norfolk Airport at 0904 UTC which showed that the weather conditions at Norfolk Island were below the minimum criteria at which an alternate aerodrome is required. A further weather update received by you at 0932 UTC indicated that Norfolk Airport was no longer suitable as a destination.
7. When you received the weather forecast at 0904 UTC, you were approximately 1 hour from Norfolk Island and in a position where it would still have been a viable option for you to have diverted the aircraft to Noumea. The fact that you elected to pursue a landing at Norfolk Island in light of the weather forecast

which you received at 0904UTC indicates that you may not have the necessary aeronautical skill and knowledge to make appropriate command judgements about the likely effect of weather.

8. CASA's investigations to date have revealed that the medical and other personnel you were carrying on the flight, were given approximately 90 seconds warning of your intention to ditch the aircraft. This is insufficient time to ensure that the passengers and crew had sufficient time to deploy the aircraft's emergency equipment and to prepare adequately for the emergency landing.
9. On the basis of the above facts, I consider that, as pilot in command of VH-NGA on 18 November 2009, you breached the following provisions of the CAR and the *Civil Aviation Act 1988 (CAA)*:

Section/Regulation	Offence Description
CAR 233 (1)(d)	Obligation of pilot in command to ensure that fuel supplies are sufficient for intended flight
CAR 234	Obligation of the pilot in command to take reasonable steps to ensure that the aircraft carries sufficient fuel and oil to enable the proposed flight to be conducted safely
CAR 239	Obligation of the pilot in command to make a careful study of all available information appropriate to the intended operation and to plan the flight accordingly
CAR 224	Obligation of pilot in command to ensure safety of flight, including safety of passengers and other crew on board the aircraft.
CAA 20A (1) and (2)	Operated an aircraft in a reckless manner that could endanger the life or property of another person.

10. Furthermore, I am satisfied that, on the basis of the facts set out above, you failed to comply with the following parts of Pel-Air's operations manual Part A:
 - (a) Para 9.11.1(b) – fuel planning
 - (b) Para 9.11.5 – calculation of last diversion time
 - (c) Para 8.5.2.2(b) – In flight fuel check last possible diversion point (weather check)
 - (d) Para 1.2.8 – responsibility of pilot in command.
11. By reason of your failure to comply with these provisions of the operations manual, you were in breach of your obligations under CAR 215(9) to comply with the manual.

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12. On the basis of these facts and circumstances I consider you may not possess the aeronautical skills and/or aeronautical knowledge required of you as the holder of a Commercial Pilot (Aeroplane) Licence, Airline Transport Pilot (Aeroplane) Licence and Command (Multi-Engine Aeroplane) Instrument Rating.
13. I believe that you pose a serious and continuing threat to the safety of aircraft, any occupants you may be carrying, other airspace users and people on the surface in the vicinity of the airspace in which you are operating. For these reasons I have decided to require you to undertake the examinations set out below.

Theory subjects to be examined

14. You are required to pass the following ATPL theory subjects:

(a) Flight Planning - Aeroplanes	AFPA
(b) Performance and Loading - Aeroplane	APLA
(c) Aerodynamics & Aircraft Systems - Aeroplane	AASA
(d) Navigation - Aeroplane	ANAV
(e) Meteorology – Aeroplane	AMET
(f) Human Factors – Aeroplane	AHUF
(g) Air Law – Aeroplane	AALW
(h) IREX Theory Exam	IREX

15. The examination of the theory subjects is to be conducted through Assessment Services Pty Ltd (**ASL**) and the first examination is to be conducted no later than 31 January 2010. All examinations are to be conducted at the ASL facility at Bankstown unless otherwise agreed to by CASA. The booking process for examinations is to be made in two parts. Booking for the respective examination is to be made through the CASA Office at Bankstown by contacting the Team Leader Flying Operations. Once notified that the examination is ready for assessment you are to make a booking with ASL to sit the examination. (There will be no examination fee levied by CASA however you will be responsible to pay the supervision fee required by ASL).

Flight Test

16. A Commercial Pilot Licence (CPL) flight test is to be conducted in an aircraft type and at a place and time to be determined and duly notified, but not prior to completion of the theory examinations. The CPL flight test will be conducted [according to the requirements specified on] against the criteria set out in the Commercial Pilot Licence Form 090 (<http://casa.gov.au/manuals/regulate/fcl/form090.pdf>) and will also include an en-route assessment for Critical Point/Point of No Return and the decision to apply a diversion to an alternate, focusing on weather with a minimum fuel scenario.
17. A Command Instrument Rating (CIR) flight test is to be conducted in a twin engine aircraft of a type and at a place and time to be determined and duly notified, but not prior to completion of the theory examinations. The CIR flight test will be conducted according to the requirements specified on the Instrument Rating Application Form 645 (<http://casa.gov.au/manuals/regulate/fcl/form645.pdf>). The test will assess performance against all navigation aids identified on the test form being, NDB, VOR, ILS, DME/GPS arrival and GNSS/RNAV with associated sector entry and holding patterns. The test is to include en-route assessment for Critical Point/ Point of No Return and the decision to apply a diversion to an alternate, focusing on weather with a minimum fuel scenario.
18. The CPL and CIR flight tests may be undertaken separately or CASA may, at your request, combine the elements of the assessments into a single flight test, if that can be practicably managed. The aircraft in which the flight tests will be conducted must necessarily be sophisticated enough to permit CASA to make an effective assessment of your skills, ability and competence to hold an ATPL and CPL. You are responsible for supplying the aircraft in which the flight tests are to be conducted.

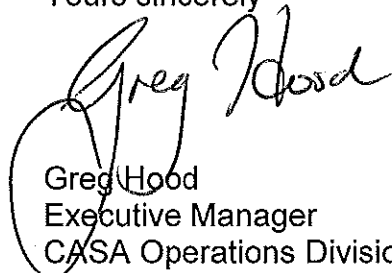
SUSPENSION OF LICENCES AND RATING

19. In accordance with CAR 265(1), I hereby suspend your Commercial Pilot (Aeroplane) Licence, Airline Transport Pilot (Aeroplane) Licence and Command (Multi-Engine Aeroplane) Instrument Rating as you have been required to undergo an examination under CAR 5.38. I have suspended your licences and rating because the matters raised above indicate you may not have the aeronautical skills and knowledge appropriate to the licences and rating.
20. This suspension is effective immediately and will remain in effect until the results of your examinations become known to CASA, and in accordance with the provisions of CAR 265(2) or (3), as the case may be.

REVIEW OF DECISION

You are hereby advised that, subject to the *Administrative Appeals Tribunal Act 1975*, you, or any person whose interests are affected by my decision, may apply to the Administrative Appeals Tribunal for review of my decisions to require you to undergo an examination and to suspend your pilot licence within 28 days of the date on which this notice is furnished to you. I attach, for information, a document titled "Notice of Review Rights", advising generally in relation to the commencement of any such proceedings. The attached notice is not provided by way of procedural or legal advice. You should seek and rely upon your own legal advice in relation to your rights of review.

Yours sincerely

A handwritten signature in black ink, appearing to read "Greg Hood". The signature is written in a cursive style with a large, looping initial "G".

Greg Hood
Executive Manager
CASA Operations Division
Civil Aviation Safety Authority

CC:

Ms Emma Maiden
Slater and Gordon Lawyers
11th Floor
51 Duritt Street
Sydney NSW 2001
Email: Emma.Maiden@slatergordon.com.au

Attachment

NOTICE OF REVIEW RIGHTS

If you are not satisfied with any aspect of the decision you, and any other person whose interests are affected by the decision, may apply to the Administrative Appeals Tribunal to review the decision under the *Administrative Appeals Tribunal Act 1975*.

How to apply

An application form is available from the AAT, but the use of the form is not essential and an application for review can be made by a letter including the following information:

- the date and details of the decision;
- the name of the person who made the decision;
- the reason(s) for your request; and
- your address and contact details.

The letter must be accompanied by the application fee of \$682.00 (this amount is subject to change and you should check this at the time of lodging your claim).

The application fee is not payable if you have been granted legal aid for the matter, or if you are:

- (i) the holder of one of the following cards issued by the Department of Social Security:
 - (A) a health care card;
 - (B) a health benefit card;
 - (C) a pensioner concession card;
 - (D) a Commonwealth seniors health card; or
- (ii) the holder of any other card issued by the Department of Social Security or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions; or
- (iii) an inmate of a prison or is otherwise lawfully detained in a public institution; or
- (iv) a child under the age of 18 years; or
- (v) in receipt of AUSTUDY within the meaning of the AUSTUDY Regulations; or
- (vi) in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme.

You may also apply for a waiver of the application fee on the ground that the payment would cause you financial hardship.

Time limits for applying to the AAT

There is a time limit for applying to the AAT of 28 days from the date on which the reasons in writing for the decision in question were furnished to you. However, the AAT has the power to grant an extension of time. You should make your own inquiries or seek legal advice concerning this time limit.

Contacting the Administrative Appeals Tribunal

The AAT can be contacted using the national telephone number:

The Tribunal has provided a national "local call fee only" number for the use of applicants in country areas of Australia. The telephone number is 1300 366 700. You can use the number to call the Tribunal's office in the capital city of the State in which you live, for the cost of a local call.

If you live in the Northern Rivers area of New South Wales (and have a post code between 2460 and 2490), for the cost of a local call you will be connected to the Brisbane Registry of the Tribunal, as your matter will normally be handled from that office. With the exception of the above, should you wish to contact an office of the Tribunal outside your State, the normal STD facilities should be used.

If you are hearing impaired the Tribunal has a TTY service available on 1800 650 662. Hearing (induction) Loops are available at each Tribunal counter and in hearing and conference rooms.

What the AAT can do

The AAT is a body independent of the Civil Aviation Safety Authority. It has the power to review the decision. If it determines that the decision was wrong it can vary or overturn the decision.

Legal advice

As the details in this notice are subject to change it is advisable that you make your own inquiries or seek legal advice.

How to contact the AAT in each State

Australian Capital Territory

Postal Address

GPO Box 9955
Canberra ACT 2601

Street Address

4th Floor, Canberra House
40 Marcus Clarke Street
Canberra City ACT 2600

Phone (02) 6243 4611
Fax (02) 6247 0962

New South Wales

Postal Address

GPO Box 9955
Sydney NSW 2001

Street Address

Level 7, Sydney Stock Exchange
55 Market Street
Sydney NSW 2000

Phone (02) 9391 2400
Fax (02) 9283 4881

Northern Territory

Postal Address

GPO Box 9955
Brisbane QLD 4001

Phone (07) 3361 3000
Fax (07) 3361 3001

Street Address

Level 4, Commonwealth Law Courts
Cnr Tank & North Quay
Brisbane QLD 4001

Queensland

Postal Address

GPO Box 9955
Brisbane QLD 4001

Phone (07) 3361 3000
Fax (07) 3361 3001

Street Address

Level 4, Commonwealth Law Courts
Cnr Tank & North Quay
Brisbane QLD 4001

South Australia

Postal Address

GPO Box 9955
Adelaide SA 5001

Phone (08) 8201 0600
Fax (08) 8201 0610

Street Address

11th Floor, Chesser House
91 Grenfell Street
Adelaide SA 5000

Tasmania

Postal Address

GPO Box 9955
Hobart TAS 7001

Phone (03) 6232 1712
Fax (03) 6232 1701

Victoria

Postal Address

GPO Box 9955
Southgate VIC 3001

Phone (03) 9282 8444
Fax (03) 9282 8480

Street Address

Commonwealth Law Courts
39-41 Davey Street
Hobart TAS 7000

Street Address

Level 16, HWT Tower
40 City Road
Southbank VIC 3006

Western Australia

Postal Address

GPO Box 9955
Perth WA 6001

Phone (08) 9327 7200
Fax (08) 9327 7299

Street Address

Level 5
111 St George Terrace
Perth WA 6000

How to contact the AAT's Principal Registry

The Tribunal's Principal Registry is split between Sydney and Brisbane. The Tribunal's President, Registrar and Policy and Research Section are located in Sydney. The rest of the Tribunal's Principal Registry is located in Brisbane. To contact the Principal Registry in Sydney please use the contact details provided for New South Wales. For Brisbane Principal Registry please phone (07) 3361 3062 or fax (07) 3361 3002. The postal address for Brisbane Principal Registry is the same as for Queensland.