



Australian Government
Civil Aviation Safety Authority

LEGAL, INTERNATIONAL & REGULATORY AFFAIRS DIVISION

CASA Ref: D23/412897

Your ref: CORC/BRO/21/2020 and CORC/BRO/20/2020

s47F

Coroners Court of Western Australia
Level 10, Central Law Courts
501 Hay Street
PERTH WA 6000

By email only: s47F

Dear s47F

Coronial investigation into the deaths of Amber Jess MILLAR and Troy Robert THOMAS

I refer to your letter of 8 August 2023 advising that the Coroner was presently considering whether a coronial inquest into the deaths of the individuals named above was desirable in the circumstances of this case. With a view to informing that decision, you requested the Civil Aviation Safety Authority (CASA) provide a report in respect of the matters set out in your letter.

We thank you for providing the opportunity to address the particular matters raised in your letter and for allowing additional time to enable us to ensure we provide you with useful information.

Responses to the questions set out in your letter are provided below. As agreed, our input is provided here in the form of a letter rather than a formal report. While we have endeavoured to be reasonably comprehensive, the information we provide here is not exhaustive. If more detail should be required, we will be happy to provide that. In the meantime, we would welcome the opportunity to clarify or elaborate on any of the information provided below, in writing or in discussion with you directly.

Recognising that no decision has yet been taken as to whether to proceed with an inquest, CASA wishes to assure the Coroner of our full cooperation if it is decided that an inquest should be held. Moreover, we signal here our support for the conduct of an inquest, with a view to ensuring that the important issues a coronial inquest would canvass are fully and objectively explored.

Please note that important terms and concepts relevant to the issues to hand are defined, described and explained in the **Appendix** accompanying this letter.

Your Questions & CASA's Responses

1. What is the role of CASA in regulating:

- a. Private flights organised between friends; and
- b. Commercial flights, including tourism operators.

1.1 Under the *Civil Aviation Act 1988 (CA Act)*, CASA's key role is to conduct the safety regulation of civil air operations in Australian territory and the operation of Australian aircraft outside Australian territory by means that include:

- developing appropriate aviation safety standards;
- developing effective enforcement strategies;
- issuing certificates, licenses and other permissions; and
- conducting aviation industry surveillance.¹

1.2 CASA also has the safety-related function of encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety through:

- comprehensive safety education and training programs;
- accurate and timely aviation safety advice; and
- fostering awareness of the importance of aviation safety and compliance with the relevant legislation.²

1.3 The main object of the CA Act 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'*.³

1.4 At this level, there is no distinction between CASA's regulatory remit in respect of *private flights* (whether organised between friends or otherwise) and *commercial flights* (including but by no means limited to air tour operations).

1.5 In keeping with our duty to ensure that safety is always the most important consideration,⁴ however, CASA's approach to its regulatory responsibilities is governed by sound and sensible risk-based considerations, having regard to:

- the safety risks inherent in and attendant on the conduct of particular kinds of air operations; and
- the practical ability of the people exposed to those risks to make informed and responsible judgements about the risks to which they are prepared to be exposed.

Civil aviation activities are classified accordingly, guiding the commensurate allocation of CASA regulatory oversight resources.⁵

1.6 On this basis, commercial passenger transport operations—flights carrying passengers for hire or reward—are subject to the most stringent entry control requirements and levels of

¹ See subs. 9(1) of the *Civil Aviation Act 1988 (CA Act)*

² See subs. 9(2) of the CA Act. CASA's other statutory functions are set out in subs. 9(3) of the CA Act.

³ See s. 3A of the CA Act.

⁴ See subs 9A(1) of the CA Act.

⁵ CASA's policy for the classification of aviation activities is set out and discussed in the Advisory Circular (AC), *Understanding the Legislative Framework*, AC 1-01, v. 3 (May 2023), which can be found on CASA's public website at <https://www.casa.gov.au/sites/default/files/2021-08/advisory-circular-1-01-understanding-legislative-framework.pdf>.

oversight. Private flights—flights that are not conducted on a commercial basis (i.e., not for hire or reward)—are subject to appropriate, but less stringent regulatory requirements and corresponding levels of regulatory oversight.

- 1.7 The rationale for this is based on reasons quite similar to the reasons why persons licensed to conduct commercial passenger carrying activities in motor vehicles (e.g., taxis, limousines and buses) or commercial vessels are subject to more stringent licensing and oversight standards than private motor vehicle drivers or recreational boat operators are.
- 1.8 Pilots conducting passenger-carrying flights for commercial purposes, the companies authorised to conduct those kinds of operations and the maintenance organisations responsible for maintaining the aircraft involved in those operations are all governed by regulatory requirements designed to mitigate the risks associated with those activities, and the practical ability of the passengers involved in those kinds of activities to control the risks to which they may be exposed.
- 1.9 Licensing and medical certification standards for pilots engaged in commercial passenger carriage, maintenance regimes for the aircraft involved in commercial passenger carriage and other safety-related requirements for the organisations conducting such operations are similarly aligned to the risks attendant on those activities.
- 1.10 For all that, private pilots conducting non-commercial operations are subject to relevant and appropriate safety requirements governing their training, qualifications, competency and experience, the manner in which they exercise their privileges as private pilots and their responsibilities in relation to the airworthiness of the aircraft they fly.
- 1.11 The primary legislative requirements for the regulation of civil aviation in Australia are set out in the CA Act, the *Civil Aviation Regulations 1988* (**CAR**) and the *Civil Aviation Safety Regulations 1998* (**CASR**). Subordinate legislation, such as Civil Aviation Orders and Manuals of Standards, also govern important aspects of the operations and personnel to which they apply.

Commercial flights

- 1.12 ‘Commercial flights’ is not a term defined in the CA Act, CASR or CAR. **Commercial operations** is defined in regulation 2 of CAR as ‘civil air operations other than private operations’ (discussed below)
- 1.13 Commercially conducted passenger transport operations in aeroplanes and helicopters must be conducted under the authority of an Air Operator’s Certificate (**AOC**) issued under the CA Act. All such operations are governed by the requirements set out in the CA Act, CASR Part 119 (Australian air transport operators—certification and management), and by the more specific requirements set out in and under:
 - CASR Parts 121 and 135, covering air transport operations in larger and smaller aeroplanes respectively; and
 - CASR Part 133, covering air transport operations in helicopters (*rotorcraft*).
- 1.14 As said, commercial flights involving passenger transport are subject to more stringent regulatory requirements.
- 1.15 The pilot of a commercial flight must hold at least a Commercial Pilot Licence (**CPL**). A CPL allows a pilot to fly for private and commercial operations. To obtain a CPL, the applicant must:
 - be at least 18 years old;
 - have passed the aeronautical knowledge examination for the relevant aircraft category;
 - have completed flight training with an organisation authorised to conduct flying training under the relevant CASR Parts;

- meet specified minimum aeronautical experience requirements; and
 - pass the flight test for the licence.⁶
- 1.16 CASA's role in overseeing passenger-carrying commercial operations is extensive. *Scheduled surveillance* of these operators is conducted by way of periodic site visits, the frequency of which is further informed by CASA's assessment of the risks associated with a particular operator⁷. Among other things, scheduled surveillance of a passenger-carrying commercial operation will include operational checks involving the examination and testing of systems, sampling of products, and gathering evidence, data, information and intelligence. Surveillance assesses an authorisation holder's ability to manage its safety risks and willingness to comply with applicable legislative obligations.
- 1.17 Surveillance is also conducted *in the context of entry control activities*. Beyond the assessments carried out when a person initially applies for an AOC authorising passenger transport operations, surveillance activities may be carried out when an operator applies for permission to do something new or different to what they are already authorised to do, such as:
- adding a new aircraft to their fleet;
 - adding another base of operations; or
 - seeking to appoint a new key position holder, (e.g., a new chief executive officer, head of flying operations, head of aircraft airworthiness and maintenance control, head of training and checking).
- 1.18 CASA also conducts *unscheduled surveillance* when an operator comes to CASA's attention as a result of:
- credible reports from members of the public or another industry participant about alleged unsafe conduct involving an aircraft operated, or a pilot employed, by the operator;
 - information provided by a CASA inspector arising in the context of an entry control or surveillance task, or on the basis of credible 'intelligence';
 - information provided by the Australian Transport Safety Bureau (**ATSB**) or Airservices Australia (**AsA**);
 - the resumption of operational activities after a period of inactivity or enforcement action.

Private flights

1.19 The term 'private flights' is not defined in the CA Act, CASR or CAR. A **private operation** is defined in CASR as follows:

private operation: an operation of an aircraft is a **private operation** if the operation is *not* one of the following: [emphasis provided]

- (a) an operation that is required to be conducted under the authority of an AOC under Part 119, 129 or 131 or regulation 206 of CAR;
- (b) an operation that is required to be conducted under the authority of an aerial work certificate under [CASR] Part 138;
- (c) [CASR] Part 141 flight training (within the meaning of Part 141);

⁶ See CASR 61.580.

⁷ See *CASA Surveillance Manual V5.1* (December 2022) - <https://www.casa.gov.au/search-centre/manuals-and-handbooks/surveillance-manual#Download>.

- (d) a [CASR] Part 142 activity (within the meaning of Part 142);
- (e) an adventure flight for a limited category aircraft;⁸
- (f) a specialised balloon operation that is conducted for hire or reward;
- (g) an operation authorised by a New Zealand AOC with ANZA privileges that is in force for Australia;
- (h) an operation under a permission under subsection 25(2) or (3) (non-scheduled flights by foreign registered aircraft) or section 27A (permission for operation of foreign registered aircraft without AOC) of the Act.⁹

1.20 A pilot undertaking a private flight must hold a Private Pilot Licence (**PPL**) or at least a Recreational Pilot Licence (**RPL**). To obtain a PPL, the applicant must:

- be at least 17 years old;
- have passed the aeronautical knowledge examination for the private pilot licence and the associated aircraft category rating;
- have completed flight training for the private pilot licence and the associated aircraft category rating;
- have passed the flight test mentioned in the Part 61 Manual of Standards for the private pilot licence and the associated aircraft category rating; and
- have met the applicable aeronautical experience requirements mentioned in CASR Subpart 61.H.¹⁰

1.21 Because private pilots do not conduct operations under the control and oversight of an organisation authorised to conduct those operations (that is, an AOC holder), they are not subject to the regular scheduled surveillance regime to which commercial operators (and the pilots they engage) are subject. Neither are the same continuing airworthiness requirements to which aircraft operated for commercial passenger transport are subject applicable to aircraft flown by (if not necessarily owned by or registered to) a private pilot.

1.22 This does not mean that private pilots are free from personal responsibility for compliance with a host of relevant and appropriate regulatory requirements governing the way in which they fly aircraft and ensure the airworthiness of the aircraft they fly. These requirements are set out in the civil aviation legislation, and non-compliance with those requirements can attract significant penalties.¹¹

1.23 Even in the absence of scheduled surveillance of the kind CASA conducts in respect of commercial passenger carrying operations, private pilots are subject to random audits ('ramp checks') conducted by CASA to ensure their licences, ratings, endorsements and medical certificates are current and that the aircraft they are operating meet applicable airworthiness requirements.

1.24 Third-party reports from passengers, members of the public other operators and the sources identified in paragraph 1.18 above, about individual private pilots and the aircraft they operate can invite responsive inquiries, investigations by CASA, where there are clear, and credible allegations of safety-related misconduct or shortcomings of a sufficiently serious and significant nature. Where necessary, such investigations may lead to appropriate enforcement action by CASA.

⁸ Flights conducted in historic or ex-military aircraft under the oversight of an organisation authorised to administer those kinds of operations under CASR Part 132.

⁹ CASR Dictionary, Part 1.

¹⁰ See CASR 61.515.

¹¹ See Part III Division 1 of the CA Act and CASR Part 91.

1.25 Because commercial aviation maintenance organisations carry out maintenance on both private and commercially operated aircraft under authorisations issued by CASA,¹² those organisations are governed by appropriately rigorous regulatory requirements, and subject to correspondingly rigorous surveillance regimes.

2 Please explain the reasoning of CASA in respect of whether the fatal crash of VH- NBY on 4 July 2020 was a private flight, or a commercial flight, and the impact, if any, this has on CASA's regulatory role.

- 2.1 Consistent with the definition of a private operation under CASR, as discussed above and as discussed more specifically below, because there was no evidence the accident flight was conducted for hire or reward, CASA is satisfied that the flight was conducted as a private operation.
- 2.2 To CASA's knowledge, no payment was made by or for the passengers carried on the accident flight to the pilot of the aircraft, Mr Thomas, or to anyone else.
- 2.3 Mr Thomas did not hold a CPL, but he did hold a PPL at the time of the accident and was purportedly flying the aircraft in the exercise of the privileges of that licence.
- 2.4 Please note that it is a requirement under the CASR that the holder of any flight crew licence must also hold a current and valid medical certificate, and have successfully completed any required periodic flight reviews, when exercising the privileges of their licence. Mr Thomas did not hold a current and valid medical certificate at the time of the accident flight, nor does it appear that he had completed a required flight review in the aircraft type he was flying at the time of the accident. In these circumstances, Mr Thomas could not lawfully exercise the privileges of his PPL at the time of the accident. Thus while he was not unlicensed for the purpose of conducting a private operation, he was not legally authorised to conduct that flight in the absence of a current and valid medical certificate or without having completed the required flight review.¹³
- 2.4 On the basis of the considerations discussed in our response to question 1 above, the implications of the classification of the accident flight as a private operation bear accordingly on the stringency of the regulatory requirements with which the pilot was required to comply and the level of scrutiny by CASA to which the pilot, the aircraft and the operation in which VH-NBY would have been subject.

3 Did CASA commence, or [Does CASA] have any present intention to commence, an investigation into the fatal crash of VH-NBY on 4 July 2020?

- (a) **If the answer to 3 is no, please explain the reasons why CASA is not investigating, or does not have jurisdiction to investigate, this fatal crash.**

Investigation into the fatal crash of VH-NBY on 4 July 2020

- 3.1 CASA has not commenced, and does not intend to commence, an investigation into the accident, because CASA is not authorised to conduct investigations into aircraft accidents per se.
- 3.2 As discussed above, CASA's regulatory and safety-related functions are specified with particularity in subsections 9(1) and (2) of the CA Act. The conduct of accident investigations is not a specified function of CASA.
- 3.3 Under the *Transport Safety Investigation Act 2003 (TSI Act)*, one of the primary functions of the ATSB is to 'independently investigate' accidents of the kind in which VH-NBY was

¹² See CAR 30 and CASR Part 145.

¹³ See CASR 61.400 and CASR 61.800.

involved,¹⁴ and the ATSB duly conducted a comprehensive investigation into the accident.¹⁵

- 3.4 While CASA's responsibilities in relation to the *prevention of aviation accidents*, and the ATSB's responsibilities in relation to the investigation of *the factors contributing to aviation accidents* are complementary, these are separate and distinct functions.
- 3.5 This separation is deliberate and - consistent with Australia's obligations under the Convention on International Civil Aviation - in keeping with the need to maintain the integrity of the distinctive roles of the aviation safety regulator and the aviation accident investigator. This is reflected in CASA's function under subsection 9(3) of the CA Act to *cooperate* with the ATSB in relation to investigations by the ATSB under the TSI Act that relate to aircraft accidents.

Related safety investigations—pilot in command

- 3.6 If the accident flight had occurred in the course of a commercial passenger transport operation under an AOC, CASA would normally have conducted a surveillance event on the AOC holder to ascertain whether it was safe to permit operations under the AOC to continue, and whether there might be any basis on which CASA should take other action in relation to the AOC holder's operations.
- 3.7 Similarly, even if the accident flight had not been conducted as a commercial operation (which it was not), if the pilot of the aircraft were to have survived the accident, CASA would consider initiating an enforcement investigation into the facts and circumstances related to the pilot's conduct, with a view to determining whether responsive regulatory action might be necessary or appropriate.
- 3.8 In the immediate interests of safety, CASA's regulatory investigative processes are initiated relatively soon after an accident, cognisant of the fact that, as in this case, an ATSB accident investigation report can take several years to finalise.
- 3.9 In this instance, as VH-NBY was engaged in a private operation, the owner-pilot of the aircraft was killed in the accident and the aircraft was destroyed, CASA conducted a summary review of the factual and relevant regulatory circumstances surrounding the accident and awaited the outcome of the ATSB investigation.

Related safety investigations--maintenance service provider

- 3.10 In relation to any surveillance events conducted on the maintenance provider of VH-NBY, CASA relied on the ATSB to provide CASA with safety information relating to the aircraft and any maintenance related considerations, once that information became available. In this instance, information relating to the pilot's possible concerns as to some form of vibration possibly from the tail rotor was not available to CASA until after the accident when an airworthiness inspector in the Perth office contacted the maintenance provider on 6 July 2020.
- 3.11 The maintenance provider for VH-NBY was Pearl Coast Heli Maintenance Pty Ltd (**PCHM**). CASA conducted two surveillances on PCHM—one before and one after the accident. The first surveillance was carried out on 8 April 2019 and the second surveillance audit was carried out after the accident on 8 September 2020. The earlier audit resulted in the issue of one Safety Observation (being a recommendation for improving existing practices) and no Safety Findings (which are issued where there is an identified non-compliance with the regulations). The audit in September 2020 resulted in the issue of three Safety Observations and two Safety Findings – relating to internal auditing and compliance with documented

¹⁴ See s. 12AA of the TSI Act.

¹⁵ *In-flight break up, Robinson R44 Raven I helicopter, VH-NBY*, Aviation Occurrence Investigation AO-2020-033 (12 April 2023)

procedures. The Safety Findings were subsequently acquitted.

- 3.12 PCHM supplied its maintenance worksheet for a reported “tail rotor vibe” on VH-NBY dated 3 July 2020, being the day before the accident. The worksheet notes that a balance check of the tail rotor found it to be within limits and no adjustments were made. It also states that the owner of “NDF” (Mr Thomas) was told that a check flight should be carried out. According to the ATSB report, however, it appears that a check flight was not carried out in VH-NBY. Moreover, there are differing accounts as to whether Mr Thomas had been notified by PCHM that a check flight should have been conducted.
- 3.13 On 28 February 2022, CASA conducted a level 2 operational check and site visit. This was due to the company having suspended operations in August 2021 while looking to fill the position of Chief Engineer. No Safety Findings or Safety Observations were issued as a result.
- 3.14 Having taken the actions described above and in light of the ATSB report and the absence of further information or evidence indicating some safety utility in doing so, CASA does not presently intend to conduct an investigation into the conduct of PCHM in relation to the accident involving VH-NBY.
- 4 Does CASA have any record or reports of accidents or incidents involving the registered operator of VH-NBY (Avanovna Ply Ltd) or the deceased pilot, Troy Robert Thomas?**
- a. If yes, please explain:**
- (i) What was reported to CASA; and**
- (ii) What, if any, action was taken by CASA in response to the report.**
- 4.1 CASA is aware that multiple incidents have been cited in media reports and the ATSB report in connection to Troy Thomas. CASA has prepared a table (see **Attachment A**) which outlines details of these incidents, including when CASA was notified and any action taken by CASA in response.
- 4.2 As at the date of the accident on 4 July 2020, CASA was aware of only one previous incident in which enforcement action was taken against Troy Thomas.¹⁶ For items 1, 8 and 10 as set out in **Attachment A**, CASA reviewed the reports provided at that time and concluded that no regulatory non-compliance was identified and therefore no enforcement action was warranted. **Attachment A** also shows that for a number of items, CASA was not notified prior to the accident of 4 July 2020 or there was no identified connection with Troy Thomas.
- 5. Is CASA aware of any mechanism in relation to private flight (beyond a passenger making personal inquiries with a pilot) that would allow a passenger to discover:**
- a. Whether a pilot is licensed to fly and compliant with aviation regulations; and**
- b. Whether a helicopter is experiencing a fault and/or mechanically sound?**
- 5.1 In much the same way as it is not possible to obtain information about whether a private car driver or boat owner is licenced or the maintenance history of a car or a boat, there is no legal or administrative mechanism currently available that would enable a person to seek to obtain information from CASA about:
- an individual pilot’s licensing status and compliance history; or
 - to the extent such information might be in CASA’s possession, the maintenance and related airworthiness records in relation to a particular aircraft.
- 5.2 A person could make an application under the *Freedom of Information Act 1982 (FOI Act)*

¹⁶ See item 11 in Attachment A.

seeking information of the above nature, however, as the information would likely constitute personal information under the *Privacy Act 1988*, it is unlikely that consent would be given by the private individual for the information to be released.

- 5.3 An application for release of that kind of information under the FOI Act would require CASA to consult with the individual involved and, in the absence of the individual's consent, there would need to be a sufficiently compelling justification allowing for the disclosure of that kind of personal information. Any such application would need to be assessed on its individual merits.
- 5.4 As said, information relating to the airworthiness and maintenance of a particular aircraft would not normally be in CASA's possession in any case. Were an application under the FOI Act made for access to such information of that kind as CASA might have in its possession, CASA would need to consider that application having regard to the provisions of the FOI Act limiting the disclosure of information that is commercially sensitive, obtained in confidence or might otherwise be subject to an exemption under the FOI Act. Any such application would need to be assessed on its merits.
- 5.5 As a practical matter, even if an application under the FOI Act were to be successful, it takes significant time and is unlikely to serve the needs of a prospective passenger considering issues related to an immediately contemplated flight.
- 5.6 To the extent someone may want to confirm whether an Australian aircraft is registered, CASA does provide public access to the Australian Civil Aircraft Register on its website, which allows members of the public to readily obtain the current registration details, including the registered operator and owner of an aircraft bearing an Australian registration mark.

6 How is non-compliance with safety rules on the part of pilots (and/or registered operators) brought to the attention of CASA?

- 6.1 As mentioned in the response to Question 1 above, suspected and alleged contraventions of the applicable safety rules by pilots and registered operators of aircraft, as well as the air service providers who may be using a particular aircraft in their operations and maintenance organisations responsible for the conducting maintenance on those aircraft, may come to CASA in various ways.

Members of the public including passengers

- 6.2 Members of the public can submit complaints or reports regarding safety concerns they observe relating to aviation operations, a pilot, the registered operator of an aircraft or a maintenance organisation directly to CASA.
- 6.3 Such reports can be submitted via the CASA website (see https://help.casa.gov.au/csp?id=sc_cat_item&sys_id=8154df17dbe3e1907558065bd39619b4) or by telephoning CASA at 131 757. Calls involving safety-complaints are referred to the most appropriate area in CASA on receipt. These reports can be made anonymously.

Industry

- 6.4 Aviation professionals, such as air traffic controllers, Designated Aviation Medical Examiners,¹⁷ maintenance personnel, or fellow pilots can report instances of non-compliance with safety rules if they become aware of non-compliance by pilots or registered operators. Any individual within the aviation industry can also report safety violations to CASA if they have knowledge of non-compliances.
- 6.5 These kinds of reports can be made in the same way members of the public may make them. Where the matter concerns compliance with air traffic control requirements, reports

¹⁷ A person appointed under CASR Part 67 to perform certain functions related to the assessment of an individual's medical fitness for the purposes of CASR.

can be made to the appropriate air traffic control officials.

CASA inspections and audits

- 6.6 For commercial operations, CASA conducts regular surveillance of the operations to ensure compliance with safety regulations. Non-compliances can be identified during either scheduled or non-scheduled surveillance activities.
- 6.7 Surveillance teams prepare reports of their findings, which are provided to the operator. If regulatory contraventions have been identified, appropriate Safety Findings will be issued which require the operator to undertake remedial action. Breaches of regulatory requirements may also be referred to CASA's Coordinated Enforcement Process, where such further action as may be appropriate is considered.¹⁸
- 6.8 For private operations, instances of non-compliance may be discovered during the course of non-scheduled response surveillance events (including ramp checks). They may also be identified by an inspector responding to information provided by one or another of the means noted above.

ATSB

- 6.9 As in the current circumstances, investigations conducted by the ATSB may reveal potential non-compliances with safety regulations. The ATSB prepares and publishes investigation reports about the accidents the investigate. If, in the course of an investigation, the ATSB becomes aware of a safety-related matters requiring CASA's immediate attention, the Bureau advises CASA accordingly, so appropriate action can be taken in as timely a manner as possible.
- 6.10 Airservices Australia (**AA**), Australia's air navigation service and air traffic management provider, provides the ATSB with information about occurrences from AA's Corporate Integrated Reporting and Risk Information System (**CIRIS**), which is regularly passed on to CASA.

Other sources

- 6.11 CASA may receive notice of suspected non-compliance by pilots and/or operators from State, Territory and Commonwealth law enforcement bodies, the CASA's Industry Complaints Commissioner, mass media reporting and social media posts.

7 What are the consequences for pilots (and/or registered operators) should they be found to have been non-compliant with safety rules?

- 7.1 As with any civil aviation authorisation holder, pilots and registered operators found to be non-compliant with safety rules may face a range of consequences, which are intended to address identified safety shortcomings, and prevent or deter future breaches.
- 7.2 These consequences can vary in severity depending on the nature of the non-compliance, seriousness of the offence and the potential impact on aviation safety and a person's previous history of compliance. Based on the facts and circumstances, one or another of the following responsive options are available to CASA:
- **Education** - CASA may advise pilots or operators about the specific safety regulations that were breached and the potential risks that were involved.
 - **Counselling**—CASA may issue a notice of counselling putting the recipient on notice that they have breached specific safety rules and, although no further action might be taken on

¹⁸ The Coordinated Enforcement Process (CEP) is the mechanism by which CASA considers whether enforcement or compliance-related action should be taken in response to an apparent contravention of a regulatory requirement, and if so, what the nature of that action should involve. The CEP is described in CASA's *Enforcement Manual*, which can be found online at <https://www.casa.gov.au/enforcement-manual#Download>.

that occasion, a record of the counselling notice will be kept and taken into account should a subsequent breach be identified.

- **Retraining**—a pilot or operator may be required to undergo additional training or testing to address the areas of non-compliance and ensure they fully understand and are capable of complying with the safety requirements.
- **Aviation Infringement Notices**—CASA has the authority to impose administrative monetary penalties on pilots or operators who have breached applicable safety regulations. The amount of the penalties vary depending on the offence, and are a fraction of the amount a court could impose if the person were convicted or found guilty of the offence.
- **Administrative action to vary, suspend or cancel a civil aviation authorisation**—Where it is necessary to do so in the interests of safety, CASA may impose conditions on a licence or certificate, limiting or otherwise affecting the way in which the privileges of that authorisation may be exercised by the holder. For the same reasons, CASA may act to suspend or cancel a civil aviation authorisation.
- **Referral for prosecution**—Where non-compliance with the safety rules is wilful, deliberate, egregious or repetitive, and there is sufficient evidence to support the allegation, CASA may refer the matter to the Commonwealth Director of Public Prosecutions, with a view to a criminal prosecution for the offences involved. If convicted or found guilty by the court, the offender may be required to pay a substantial fine. For some offences under the CA Act, a custodial sentence may be imposed.

7.3 The processes and considerations CASA takes into account in assessing and acting on matters that may invite compliance or enforcement action are set out in detail in CASA's *Enforcement Manual*, which is available on CASA's public website.¹⁹

8 Noting the conclusions of the comprehensive ATSB Transport Safety Report, does CASA have any further information that would assist the Coroner to understand the circumstances of this fatal crash? If so, I invite you to address any such matters in your response.

Important differences in the information available to the ATSB and to CASA

- 8.1 The comprehensive investigation report prepared by the ATSB is based on the Bureau's investigation into the accident, carried out under the ATSB's powers set out in the TSI Act. Under the TSI Act, the ATSB is empowered to compel a person to produce and provide testimonial and documentary evidence related to the accident investigation—a power that is governed by the constraint that none of the evidence produced or provided can be used in any civil or criminal proceedings (although it may be used in coronial proceedings).
- 8.2 The same protections apply to a person who voluntarily provides the ATSB with information and evidence related to an accident investigation.
- 8.3 As a regulatory authority, with the power and the obligation to exercise its safety regulatory responsibilities—including mounting enforcement action where that is necessary in the interests of safety—CASA cannot compel anyone to provide information or evidence about an aviation safety matter. Nor are there any extraordinary constraints on the use of information and evidence CASA obtains in the course of our regulatory investigations in administrative or criminal proceedings.²⁰

¹⁹ Available online at <https://www.casa.gov.au/enforcement-manual>.

²⁰ Limitations on the use to which CASA may put any information that comes to our attention is governed, as a matter of policy, by principles set out in the directive on *Just Culture in the Exercise of CASA's Enforcement Powers and the Use of Safety Information* (available online at <https://www.casa.gov.au/search?keys=Directive+on+Just+Culture>). In

- 8.4 The ATSB's comprehensive investigation reports, normally published quite some time after an accident has occurred, therefore reflect information about occurrences and reports unknown to and, as a practical matter, effectively 'unknowable' by CASA until after a report has been published.
- 8.5 CASA recognises and supports the very good reasons why the ATSB is able to conduct its investigations with the twin advantages of compelled evidence and legal immunity for those providing that information. In the absence of those statutory powers, however, CASA is reliant upon the ATSB providing timely notice of any alleged contraventions (or other forms of reporting as described above). The respective roles of CASA and the ATSB also differ in that the ATSB's role is to retrospectively assess the reasons why an accident or incident occurred as opposed to CASA seeking to prospectively preventing an accident or incident.

Enabling members of the public to better understand the differences between private and commercial operations

- 8.6 As discussed in our response to question 5 above, there is no effective legal or administrative mechanism by which CASA can make information about an individual private pilot's licensing status and compliance history readily available to members of the public. Importantly, however, this is no different to the situation in relation to private operators of motor vehicles or boats.
- 8.7 The nature of the relationship between a private pilot and a prospective passenger is meant to provide the basis on which relevant questions might be asked, and the answers taken into account, when deciding whether to assume the risks that might attend a flight, just as in the case of a private drive in a motor vehicle or a private trip in a privately operated boat.
- 8.8 With a view to better enabling prospective passengers to understand the differences in the way private and commercial pilots, and the operations in which they engage, are governed by the civil aviation legislation and overseen by CASA, we will be making more information about these matters available to the public.
- 8.9 In addition to the information about the owners and operators of registered aircraft that is already available to the public on CASA's website, we are resuming the publication of enforcement decisions we take, as well as decisions by the courts when a person has been prosecuted for an offence under the civil aviation legislation.
- 8.10 While it is only in the case of a conviction or finding of guilt by a court where the identify of an individual may be published, it is CASA's expectation that providing this kind of information will raise public consciousness and understanding about the need to make judgements about flying on as informed a basis as possible.

In conclusion, we reiterate that our intention is to respond fully to the particular questions you have asked and, in doing so, to provide such additional information as may shed instructive light on the responses we have provided.

As said, we have not exhaustively canvassed these issues, and we would welcome the opportunity to clarify and expand on any of these points, provide any further information that might prove useful in the Coroner's determination as to whether a coronial inquest should be conducted. And in the event an inquest is convened, we reaffirm our commitment to be as cooperative as we might be in that process.

accordance with those internationally recognized principles, safety information is not provided with the unqualified protection afforded to information provided to the ATSB under TSI Act.

In the meantime, please do not hesitate to contact me if you have any further questions or would like to discuss any of the issues raised in our response to your questions.

Yours sincerely
s47F

Legal, International and Regulatory Affairs

19 September 2023

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APPENDIX

Owners, operators, registered operators, pilots and maintenance organisations—clarifying some of the differences

This appendix is provided to briefly clarify certain aspects of the regulatory and administrative arrangements bearing on the operation of an aircraft at any given time, and the regulatory accountability of certain persons in relation to the aircraft and those operations. While not dissimilar in many respects to arrangements commonly governing responsibility for the operation of a motor vehicle, there are some important differences in the terminology used in the civil aviation legislation.

the **owner** of an aircraft is the person who has legal title to that aircraft or proprietary authority to deal with the aircraft, or to nominate a person who may do so on the owner's behalf.

*Note: While a private pilot may own the aircraft they fly, it is just as likely that they might not. A pilot who owns the aircraft they are licensed to fly is defined in CASR as a **pilot-owner**. The driver of a private motor vehicle might own the car they drive, or it may be owned by the company from whom they lease that vehicle, or the bank that has financed their purchase of the vehicle.*

Subject to certain exceptions not relevant to matters related VH-NBY, the CA Act requires that aircraft are registered in accordance with the provisions of CASR Part 47. The owner of an aircraft is authorised under CASR to nominate an **eligible person** to be the **registered operator** of the aircraft. Under CASR, an eligible person must be:

- a resident of Australia who is:
 - 18 years of age or older; and
 - an Australian citizen or the holder of a permanent visa (within the meaning of the *Migration Act 1958*);
- a corporation incorporated under the *Corporations Act 2001*;
- a body incorporated under a law (other than the *Corporations Act 2001*) in force in Australia;
- the Commonwealth, a State or a Territory;
- an agency of the Commonwealth, a State or a Territory; or
- a foreign corporation that is lawfully carrying on business in Australia.¹

If they qualify as an eligible person, the owner of the aircraft may be the registered operator of that aircraft.

With respect to privately operated aircraft, the registered operator of an aircraft is the person primarily responsible for ensuring that the aircraft is maintained in accordance with applicable regulatory requirements² and, *unless it can be shown that someone else was flying the aircraft at the time*, the person to whom CASA will look in connection with matters concerning the safe or unsafe operation of the aircraft at that time.

The holder of an AOC authorising the conduct of commercial passenger transport operations is the **operator** of the aircraft, and is responsible under the civil aviation legislation for aspects of the continuing the airworthiness and safe operation of the

¹ CASR 47.010.

² See CASR Part 42.

aircraft, when it is engaged in operations conducted under the AOC. However, the AOC holder will not necessarily be the owner or even the registered operator of the aircraft it uses in the operations authorised by its AOC.

Note: a commercial taxi company is accountable for the roadworthiness of the vehicles it uses and for the safe operation of those vehicles by its drivers, when the vehicle is being used under the authorisation the company holds to conduct those operations. The taxi company may not necessarily be the owner or even the registration holder of the vehicles it uses for commercial purposes, and the same vehicle used commercially by the company on one day, may be driven privately by the owner, registration holder or another person on another day. Under those circumstances and for those private purposes, legal responsibility for the roadworthiness and safe operation of the vehicle may not be sheeted home fully, or even in part, to the taxi company.

When flying an aircraft as **pilot** in command in commercial and private operations alike, pilots have certain individual responsibilities under the civil aviation legislation to comply with safety requirements governing the airworthiness of the aircraft and the manner in which it is flown.³ In the context of a commercial operation, accountability for aspects of those safety-related requirements may be shared with the operator, but in no case is the pilot relieved of their personal responsibilities under the legislation.

When flying as pilot in command of an aircraft in a private operation, compliance with the critical safety-related requirements governing the flight and airworthiness of the aircraft will rest with the pilot.⁴

Approved maintenance organisations and **certificate of approval holders** are authorised under the civil aviation legislation to provide specified aviation maintenance services. In doing so, they must comply with the requirements specified in CASR Part 145 or regulation 30 of CAR. CASA conducts surveillance on and audits these organisations in a manner consistent with the risk-based approach we take to the oversight of commercial air operations, having regard to the complexity of the aircraft and the scope of the operations in which the aircraft they maintain are engaged.⁵

AOC holders authorised to conduct passenger transport operations have their own obligations in relation to the way in which the aircraft they operate are maintained, and in auditing AOC holders with integrated or outsourced maintenance arrangements for the aircraft they operate, CASA considers operators' compliance with those requirements.⁶

As noted above, an aircraft maintenance service provider has obligations under the legislation related to the conduct of their maintenance-related activities for which those organisations are accountable to CASA. These obligations complement, but do not supplant an AOC holder's responsibilities in relation to the airworthiness of the aircraft they operate. Nor do they supplant the maintenance-related obligations of a registered operator in respect of the aircraft registered to that person, or the obligations of the pilot in command in respect of the aircraft they fly.

The failure of an authorised maintenance service provider to comply with applicable regulatory requirements may give rise to enforcement action by CASA against that maintenance organisation. Where an AOC holder, the registration holder or the pilot in

³ See CASR Part 91.

⁴ See, e.g., CASR 91.055, 91.095, 91.145; 91.215; and 91.245.

⁵ See Annex 5 to the *CASA Surveillance Manual (Approved Maintenance Organisations)*, V5.1 (December 2022) on the CASA website at <https://www.casa.gov.au/search-centre/manuals-and-handbooks/surveillance-manual#Download>.

⁶ See CASR Part 42.

command of an aircraft falls short of *their* maintenance-related responsibilities under the regulations, because the maintenance service provider who carried out maintenance on an aircraft may have fallen short in carrying out their responsibilities, however, while that may well give rise to private legal claims against the maintenance organisation by the AOC holder, the registered operator, the pilot (and in some cases the owner of the aircraft), failures of that kind will not necessarily involve the contravention of a regulatory requirement on the part of the maintenance organisation.

Of course, where an accident or incident involving a maintenance-related deficiency in respect of an aircraft comes to CASA's attention for any reason, that may well provide the basis for CASA to investigate the conduct of the maintenance service provider whose acts or omissions may be seen to be related to the occurrence, insofar as this may reflect on the maintenance service provider's compliance with their regulatory obligations.

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