



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2022 005430

FINDING INTO DEATH FOLLOWING INQUEST

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of Mathew Martin Farrell

Delivered On:	14 February 2025
Delivered at:	Southbank, Victoria
Hearing Dates:	29 January to 2 February 2024 and 30 April 2024
Findings of:	Coroner Paul Lawrie
Representation: (during hearing)	for Ms Karen Waller Mr Patrick Over of Counsel instructed by Maurice Blackburn for Recreational Aviation Australia Inc Mr Tom Storey of Counsel instructed by GSG Legal

Further Representation:
(submissions post hearing)

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for Ms Jillian Bailey
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Keywords

Light sports aircraft – recreational aviation – flight training
– pilot certification – pilot endorsements – human factors –
spatial disorientation – icing – loss of control in flight –
Approved Self-Administering Aviation Organisations –
investigator conflict of interest

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STATUTORY FINDINGS PURSUANT TO SECTION 67(1)

I, Coroner Paul Lawrie, having investigated the death of Mathew Martin Farrell, and having held an inquest in relation to this death on 29 January to 2 February 2024 and 30 April 2024 –

at Southbank, Victoria

find that the identity of the deceased was Mathew Martin Farrell born on 18 May 1980

and the death occurred on 18 September 2022

at Lucyvale, Victoria

from:

Multiple injuries sustained in a light plane incident (pilot)

I find, under section 67(1) (c) of the *Coroners Act 2008* (**the Act**) that the death occurred in the following circumstances:

INTRODUCTION

1. Mathew Martin Farrell was 42 years of age when he was killed in an aeroplane crash on Sunday, 18 September 2022, in remote and mountainous terrain in north-east Victoria, at Lucyvale. He was the pilot and sole occupant of a light sports aircraft, a Jabiru J230-C registered 24-5067 (**the aeroplane**).
2. Mr Farrell took off from the airport at Mt Beauty, intending to fly to Wollongong, NSW. The weather conditions were poor, and Mr Farrell was required to fly within Visual Flight Rules (**VFR**) – neither he nor the aeroplane were equipped to fly into cloud.
3. Mr Farrell was airborne for approximately 40 minutes before the aeroplane impacted terrain. Although there was no radar record of the flight and the aeroplane was not fitted with a flight data recorder, data recovered from an onboard Garmin GPS device revealed the flight path and other parameters.
4. The registration of the aeroplane and Mr Farrell's licence to fly it were regulated, in the first instance, by Recreational Aviation Australia (**RAAus**).

5. RAAus is an Approved Self-Administering Aviation Organisation (**ASAO**) formed under Part 149 of the *Civil Aviation Safety Regulations* and ultimately answerable to the Civil Aviation Safety Authority (**CASA**).

PERSONAL BACKGROUND

6. Mr Farrell was born in the UK on 18 May 1980. When he was three years of age his parents emigrated to Australia in 1983, and he grew up in Diamond Creek. After secondary school he studied mechanical engineering and served in the Australian Army Reserve.
7. After completing his university studies, Mr Farrell travelled back to the UK and worked for his uncle in an engineering role.
8. In 2010, Mr Farrell married Kim Tyson and they lived in Melbourne, Perth and Hobart. They remained together for eight years before an amicable separation in 2018.
9. Mr Farrell had many diverse talents. He worked professionally as a photographer and cinematographer. He was passionate about the environment and outdoor activities including hiking, climbing, abseiling, cycling and fly fishing. He was also a musician (playing guitar and saxophone) and composer. He was experienced in adventure activities including having worked as a polar guide and a rock climbing guide. He began flying paragliders in 2019.
10. In April 2021 he met Karen Waller through their mutual involvement in paragliding. They began their relationship soon afterwards and were engaged in October 2021. The following month they purchased a property together in Tawonga. Ms Waller and Mr Farrell shared a passion for flying, and Ms Waller was training for her Private Pilot's Licence (**PPL**)¹ at Moorabbin Airport.
11. In October 2021, Mr Farrell began training for his Recreational Pilot's Certificate (**RPC**)², and he received his licence from RAAus in April 2022.

¹ Licence under Part 47 *Civil Aviation Safety Regulations*.

² Licence under Part 149 *Civil Aviation Safety Regulations*.

THE CORONIAL PROCESS

12. Mr Farrell's death was reported to the coroner as it fell within the definition of a reportable death in the *Coroners Act 2008 (the Act)*. Reportable deaths include deaths that are unexpected, unnatural or violent or result from accident or injury.³
13. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death, and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.
14. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.
15. This finding draws on the totality of the coronial investigation and inquest into the death of Mathew Farrell, including the evidence contained in the coronial brief and the two volumes of additional materials. Whilst I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity. In the coronial jurisdiction, facts must be established on the balance of probabilities.⁴

THE INQUEST

Scope and witnesses called

16. A mention hearing was conducted on 15 June 2023 followed by a directions hearing on 29 August 2023 at which the scope of the inquest was set as follows:
 1. *The cause(s) of the aircraft crash at Lucyvale on 18 September 2022.*
 2. *The training received by Mathew Farrell in respect of 3-Axis (Group A) aircraft in 2021 and 2022.*

³ Section 4 of the Act.

⁴ Subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters, taking into account the consequences of such findings or comments.

3. *The training, testing and certification processes for the issue of Mathew Farrell's Converting Pilot Certificate and endorsements, including the roles of Geoffrey Wood (Flight Instructor) and Recreational Aviation Australia.*
 4. *The investigative roles and responsibilities of Recreational Aviation Australia and the Australian Transport Safety Bureau.*
17. The inquest was conducted over six days with evidence received from 29 January to 2 February 2024. The final day of hearing (not involving the receipt of evidence) was conducted on 30 April 2024. The following witnesses were called:
- Mark Bland – witness to events at Mt Beauty on 18 September 2022
- Anthony Edwards – witness to events at Mt Beauty on 18 September 2022
- Paul Davenport – previous owner of the Jabiru J230 aircraft
- Karen Waller – partner of Mathew Farrell
- Darren Barnfield – Aviation Mechanical Engineer, RAAus
- Geoffrey Monck – Chair, RAAus
- Captain Matthew Gray – aviation expert⁵
- Captain Paul McKeown – aviation expert⁶
- Jillian Bailey – Head of Flight Operations, RAAus
18. It had been planned that Geoffrey Wood, the flight instructor who provided training to Mathew, would give evidence. However, Mr Wood passed away unexpectedly before the inquest commenced.

⁵ Captain Gray was retained by the Court. At the time of his testimony, he was the Acting Boeing 787 Training Manager for Qantas Airways with command experience on multiple Boeing airliners and extensive experience as a flight instructor and examiner in both civil and military aviation. His expertise includes human factors in aviation. His background relevant to expertise is more fully detailed at Exhibit 8 and T199 to 202.

⁶ Captain McKeown was retained by GSG Legal on behalf of RAAus. At the time of his testimony, he was a Boeing 737 captain with Bonza Airlines. He has extensive experience as a flight instructor and examiner in civil aviation. He has been a Chief Flying Instructor and Pilot Examiner at RAAus. His background relevant to expertise is more fully detailed at Exhibit 9 and T278 to 281.

19. Following the sixth day of the hearing, further investigations became necessary as additional material was gathered from RAAus, the Sports Aviation Federation of Australia (SAFA), and CASA.

THE AIRCRAFT

20. The aircraft was a Jabiru J230-C light sports aeroplane. Its configuration resembles a Cessna, and a detailed description is found in the *Pilot's Operating Handbook & Flight Manual*:

The J230 aircraft is a strut braced, high wing, fixed tricycle undercarriage, single engine, two seat aircraft that has been designed primarily for recreational operations.

The fuselage, wings and empennage are constructed from composite materials. A single integral fuel tank is located in each wing, supplying the engine through a header tank located behind the baggage shelf.

The cockpit is designed to accommodate the pilot in command on the left side and all controls, instruments, selectors and switches are located so as to be within easy reach of the occupant of that seat. Conventional 3 axis flight controls, and variable wing flaps are provided. Duplicated flight controls are provided on the right side of the cockpit. The centrally located control pedestal and radio stack are accessible from either of the two cockpit seats.

The cockpit is accessed by forward hinging doors that are located on each side. A baggage compartment with it's own door is located behind the pilots' seats.

21. The aircraft was powered by a six cylinder Jabiru 3300A naturally aspirated engine rated to 120 BHP⁷ and driving a fixed pitch, twin blade propellor. Its maximum take-off and landing weight is 600 kg. It has a range of approximately 1,500 km and can cruise at 120 kts (220 km/h) in calm conditions. The aircraft's stall⁸ speed is 45 kts (83 km/h).⁹
22. The aircraft's instrumentation did not include the necessary additional instruments for flight in Instrument Meteorological Conditions (IMC) and it was limited to operations in

⁷ Brake Horsepower – 120 BHP = 89.5 kW

⁸ A "stall" is an aerodynamic condition where the angle between the relative wind and the chord of the wing (angle of attack) exceeds a critical value and after which flow separation occurs, resulting in a loss of lift. In a fully developed stall the wing can no longer produce effective lift.

⁹ The stall speed is dependent on bank angle and aircraft loading, and is increased as each of these parameters increases. At a 60 degree angle of bank the stall speed for the aircraft is 64 kts (118 km/h).

Visual Meteorological Conditions (VMC). Also, it did not have any anti-icing / de-icing capability.

23. The aircraft did not have any automated flight control system, including basic functions such as “wing leveller”, “heading hold” or “altitude hold”.
24. The engine was substantially rebuilt in 2014 after a propellor strike, and this work is detailed in the maintenance records.¹⁰
25. Paul Davenport purchased the aircraft second hand in 2015 and sold it to Mr Farrell on 26 July 2022. Registration was transferred to Mr Farrell on 2 August 2022¹¹. At that time it had flown approximately 388 hours, which is considered “low hours”.
26. Ms Waller stated that Mr Farrell had told her the engine had “stopped” as he landed at Wangaratta, after a flight from Mount Beauty on 6 September 2022. He flew the aircraft back to Mount Beauty that day without any apparent difficulties.¹² There are no relevant remarks in his Pilot Logbook for this flight¹³ and Ms Waller said that he described the incident in a very “matter of fact” manner, although she encouraged him to speak about it with Paul Davenport or Geoffrey Wood. There is no evidence that Mr Farrell did this.
27. According to the Pilot Logbook there was a further flight on an unknown date before 18 September 2022, when Mr Farrell flew circuits at Mount Beauty for 20 minutes.
28. Apart from the incident described by Mr Farrell on 6 September 2022, there is nothing to suggest any defect or problems with the airframe or aircraft systems at the time of the flight on 18 September 2022.

THE PILOT

29. Mathew Farrell was 42 years old and had lived in Tawonga with his partner, Karen Waller, since August 2021. He had a diverse work history which included cinematography, photography and adventure tourism. He also a strong interest and experience in adventure sports and outdoor activities.

¹⁰ Exhibit 19 – CB348

¹¹ Date of transfer of RAAus registration – Exhibit 5.5

¹² T069

¹³ Exhibit 5.2

30. Mr Farrell suffered a painful lower back condition¹⁴ for which he was prescribed Pregabalin, Meloxicam and Oxycodone. However, none of these drugs or their metabolites were found on post-mortem toxicology.
31. Mr Farrell had 257.5 hours of paragliding experience. He began paragliding in November 2019¹⁵ in north-east Victoria. Between February and August 2021, he flew at various sites in Tasmania, before returning to fly in north-east Victoria. His last recorded paragliding flight was on 25 April 2022.
32. On 27 October 2021, Mr Farrell began flight training for his RPC with Geoffrey Wood at the Geoff Wood Flying School in Wangaratta.
33. On 25 April 2022, Mr Wood applied for Mr Farrell to be issued a Converting Pilot RPC for Group A (3-axis) aircraft on the basis of his paragliding experience and claiming flight training of 11.1 hours dual and 3.6 hours solo flight time in Group A aircraft.¹⁶
34. The converting pilot RPC application included an application for the following endorsements: Cross-Country; Human Factors; Nose Wheel; and Radio Operator.
35. Mr Farrell's Membership Certificate dated 20 May 2022 records the following endorsements as having been granted: Human Factors; Nose Wheel; and RAAus Flight Radio.¹⁷
36. A reissued membership certificate dated 16 June 2022 records the above endorsements with the addition of Cross-Country and Passenger Carrying.¹⁸ These were added on 9 June 2022.¹⁹
37. In the process of buying the Jabiru 230, Mr Farrell took part in a series of familiarisation flights with the owner, Paul Davenport. Mr Farrell's Pilot's Logbook records six flights with Mr Davenport between 9 May and 2 August 2021 around Wangaratta, Myrtleford, Mt Beauty and Porepunkah.
38. At the time of the accident flight on 18 September 2022, Mr Farrell had a total of 24.4 flying hours, with 9.7 hours on the Jabiru 230 and 7.2 hours in the preceding three months.

¹⁴ Lumbosacral spondylolithesis

¹⁵ Exhibit 5.2

¹⁶ Exhibit 12

¹⁷ Exhibit 5.8

¹⁸ Exhibit 5.10

¹⁹ Exhibit 20 – AM1.84

THE FLIGHT

Purpose

39. The purpose of the flight was for Mr Farrell to travel to Wollongong to visit Ms Waller's father, who had recently been injured in an accident, and to do some house repairs. Ms Waller was to drive there separately with tools and their dog. In evidence, Ms Waller revealed an overarching reason for travelling separately – she was too scared to get in the aircraft with Mr Farrell.²⁰
40. On 8 September 2022, Mr Farrell replied to a text message from Mr Davenport asking about recent flights in the aircraft:

*A little – Been to wang and back. Was hoping to go to Wollongong this weekend, but the weather is so ordinary we'll have to go by car.*²¹

41. Mr Farrell and Ms Waller did travel to Wollongong by car the following weekend (11 to 12 September). The flight on 18 September would be the longest and most complex cross-country flight yet undertaken by Mr Farrell.

Planned route

42. In evidence, Ms Waller stated that Mr Farrell told her the route he planned to take to Wollongong (Shell Harbour).²² It is evident from Ms Waller's oral evidence and the description of the planned route recounted in her written statement that Mr Farrell communicated it to her in only basic terms:

*He told me it would take around 2 hours to reach Wollongong, he would head towards Tumut, then stay below the 3500 feet step of Canberra airspace, before heading via Goulburn to Wollongong. Mat told me he had looked up the weather stations along the route, had written down all the radio channels along the way, and had alternate landings for the whole route, and his main concern was the westerly wind at Wollongong airport.*²³

43. An obvious route would be to follow the Kiewa Valley NNW to Albury before turning NE to fly via Holbrook, Gundagai and Yass – thereby avoiding the extensive high country

²⁰ T082
²¹ Exhibit 5.18
²² T086
²³ Exhibit 5

to the NE of Mount Beauty. However, there is a significant difficulty with this route, namely the controlled airspace surrounding Albury, which Mr Farrell was not permitted to enter.

44. Mr Farrell's route notes were among documents recovered from the crash site by Ms Waller. The first two fully discernible entries in the route notes refer to Mitta Mitta and Tumut.²⁴ The top left corner of the document is missing but enough can be made out to read "...BT" with other details²⁵ applicable to "YMBT" – Mount Beauty. Before the line for Mitta Mitta there are two entries for altitude which may be applicable to other features or locations, but these are not discernible. It is not clear whether Mitta Mitta was intended as a waypoint or simply noted as a landing option. If it was to be a waypoint, the overall route resembles a "straight shot" from Mount Beauty NE towards Wollongong with little regard for mountainous terrain. If it was noted as an alternate landing site rather than as a waypoint, there is little detail, at least in the route notes, to reveal a precise route between Mount Beauty and Tumut.
45. Ms Waller was critical of the route, as she understood it, when she described it in her written statement. She could not understand why Mr Farrell planned to fly on the eastern side of Albury controlled airspace over mountainous terrain instead of to the western side over flatlands. She did not consider this to be a route that an experienced pilot, or a pilot well instructed in cross-country and navigation skills would choose.²⁶ Ms Waller's criticisms of the route are well founded.
46. In Captain McKeown's opinion, at the flight planning stage, the forecast weather conditions and terrain along Mr Farrell's proposed route represented an extremely complex and challenging scenario for any aircraft.²⁷

Visual Flight Rules

47. Visual Flight Rules are the rules that govern the operation of aircraft restricted to Visual Meteorological Conditions (VMC). The flight was not being conducted in accordance with a formal flight plan and it was outside controlled airspace. Both the aircraft and Mr Farrell were limited to operations in VMC.
48. When VMC is not present and IMC prevails, flights must be conducted under Instrument Flight Rules (IFR). This requires specialised training in aircraft sufficiently equipped to

²⁴ There is an intermediate waypoint that is illegible.

²⁵ These details are the altitude and Common Traffic Advisory Frequency (CTAF) for Mount Beauty.

²⁶ Exhibit 5

²⁷ Exhibit 9 at [5]

enable the pilot to fly safely by reference to instruments rather than visual cues outside the aircraft. An IFR flight also requires a formal flight plan.

49. In uncontrolled airspace²⁸ VFR requires:²⁹
- (a) Below 1,000 ft AGL³⁰ or 3,000 ft AMSL³¹ (whichever is the higher) –
 - (i) minimum horizontal visibility of 5,000 metres; and
 - (ii) being clear of cloud and in sight of ground or water.
 - (b) Below 10,000 ft AMSL (and more than 1,000 ft above terrain) –
 - (i) minimum horizontal visibility of 5,000 metres;
 - (ii) minimum horizontal distance from cloud of 1,500 metres; and
 - (iii) minimum vertical distance from cloud of 1,000 ft.

Weather at departure

50. Mark Bland is an experienced pilot and a member of the Mount Beauty Airport Committee. He had planned to fly that morning but noted that the weather forecasts suggested it was unsuitable for recreational flying. The weather radar had shown rain across the state and strong winds at altitude.
51. Mr Bland saw Mr Farrell’s aircraft take off from Mount Beauty – Runway 32³² to the north. He was surprised by this considering the prevailing weather. Although it wasn’t raining at the time of take-off, there was still low cloud on the ridges and hills surrounding the Kiewa Valley and he estimated the cloud base was 2,000 to 3,000 ft “at best”.³³
52. In evidence, Mr Bland provided further detail concerning the weather at the time of Mr Farrell’s departure. He had a “reasonably confident” recollection that the top of Mount Emu was in cloud.³⁴ The summit of Mount Emu is approximately 1,020 metres (3,400 ft)

²⁸ Class G airspace

²⁹ Exhibit 19 – CB146. VFR requirements above 10,000 ft AMSL are not relevant to the flight and have been excluded.

³⁰ Above Ground Level

³¹ Above Mean Sea Level

³² “32” denoting that the runway is aligned on a magnetic bearing of approximately 320°

³³ Statement of Mark Bland – Exhibit 1

³⁴ Mount Emu sits on the east side of the Kiewa Valley, approximately 8 km north-east of the Mount Beauty airport. Its summit is at 1,081 metres (4,460 ft) above sea level – 975 metres (3,200 ft) AGL.

above Mount Beauty airport. Mr Bland also recalled that Tawonga Gap was in cloud.³⁵ The lookout at Tawonga Gap is approximately 550 metres (1,800 ft) above Mount Beauty airport. Reference to these landmarks supports the lower end of the range of Mr Bland's estimated height of the cloud base and I am satisfied the lower height of 2,000 ft "at best" is more likely.

53. He described the winds at ground level as "fairly stiff" and with some turbulence evident as the aircraft took off. He recalled that the main wind was forecast to be in excess of 30 kts.
54. Anthony Edwards is another experienced pilot and former president of the Mount Beauty Airport Management Association. He was walking home at about noon when he heard the aircraft take off. He could not see the airport from where he was, and initially thought he had misidentified the sound because he thought that no one would be going flying in the prevailing weather.
55. A few minutes later he had a telephone conversation with Mr Bland in which they discussed the departure of the aircraft and the weather. Mr Edwards thought it was "marginal" for VFR and noted that the freezing level that day was calculated to be at 1,200 m (4,000 ft).³⁶
56. In evidence, Mr Edwards recalled that the weather was "claggy" as he looked down the Kiewa Valley towards Dederang (to the NNW).³⁷

Weather to be expected during the flight

57. The Bureau of Meteorology Graphical Area Forecast³⁸ showed the expected weather for the area over which the flight was to take place. Captain Gray explained the forecast, including the prevailing wind – 25 kts (averaged) from the west.³⁹ In his written statement Captain Gray explained:

The Grid Area Forecast (GAF) indicated that the weather conditions valid for the time of the flight and planned track, would not support VMC conditions. Low cloud, rain, snow showers and a freezing level of 4,500 feet indicate that the weather was

³⁵ T024. Tawonga Gap is on the west side of the Kiewa Valley, approximately 5 km north-west of Mount Beauty airport. The elevation of the lookout at Tawonga Gap is 880 metres (2,900 ft) AMSL with higher ground at 970 metres (3,200) AMSL approximately 500 metres south.

³⁶ Statement of Anthony Edwards – Exhibit 3

³⁷ T034

³⁸ Exhibit 19 – CB146 to 149

³⁹ T206 to 207

*complex with a mix of precipitation types and no likelihood of improvement. The combination of reduced visibility, icing and mountainous terrain, where weather deteriorates rapidly, made this a hazardous undertaking.*⁴⁰

58. In his opinion the forecast data did not support a conclusion that VMC would prevail for a flight NE to Wollongong.⁴¹
59. Captain McKeown reached the same conclusion, stating that the forecast weather conditions would have prohibited VFR flight over the majority of the flight route between Mount Beauty and Shell Harbour.⁴²
60. I accept these opinions.

Flight path

61. The Australian Transport Safety Bureau (ATSB) recovered data from the Garmin GPS Map 296 device carried on the aircraft. This was mapped onto Google Earth images and shows the flight path and altitude.
62. Mr Farrell flew NNE from Mount Beauty down the Kiewa Valley for approximately 39 km, passing Gundowring before turning east and into mountainous terrain. His path was roughly ENE but, after approximately 18 km in this direction, the flight path becomes convoluted. After a short distance a tight 360° turn is evident as the aircraft approached a spur and following there are numerous large turns and reversals of course. Captain Gray described this path as:

*... snaking turns are indicative of deteriorating weather conditions and a reduction in visibility, with Mr Farrell attempting to stay visual, clear of cloud and in sight of the terrain.*⁴³

63. According to the GPS data, this phase of the flight began at approximately 12.30pm until impact with mountainous terrain east of Lucyvale at 12.44pm. The effective distance covered in this phase was approximately 25 km, although the distance flown was considerably longer.

⁴⁰ Exhibit 8 at [8]

⁴¹ T205

⁴² Exhibit 9

⁴³ Exhibit 8 at [9]

Report to emergency services and search

64. Ms Waller was monitoring the flight with updates every 10 minutes from a Garmin inReach Mini device carried by Mr Farrell. The last of four updates she received was at 12.41pm which showed a low ground speed (94 km/h – 51 kts) and an altitude of 2,433 metres (8,030 ft).
65. Having received no updates after 12.41pm and no news of the aircraft having arrived at Wollongong, at 3.20pm Ms Waller called emergency services to report the aircraft missing. Local police ground units responded immediately and searched based on the GPS coordinates from the last Garmin inReach “ping” at 12.41pm. An immediate aerial search was not feasible due to the poor weather and diminishing light.
66. The search recommenced the following morning, 19 September 2022, and at 10.07am the crash site was located by a Victoria Police Airwing unit.
67. At 12.00 noon a paramedic was winched down from an air ambulance helicopter and confirmed that Mr Farrell was deceased.

IDENTIFICATION

68. On 28 September 2022, Coroner Olle determined the identity of Mr Farrell’s body based upon DNA analysis⁴⁴ and no further investigation has been required in this regard.

MEDICAL CAUSE OF DEATH

69. On 26 September 2022, Dr Gregory Young, Forensic Pathologist at the Victorian Institute of Forensic Medicine, conducted an autopsy and provided his report dated 7 December 2022.⁴⁵ Dr Young noted that Mr Farrell had suffered extensive high impact injuries and there was no post-mortem evidence of any significant natural disease which may have caused or contributed to death. Toxicological analysis showed no ethanol or common drugs or poisons.
70. Dr Young concluded that the cause of death was “Multiple injuries sustained in a light plane incident (pilot)”. I accept Dr Young’s opinion.

⁴⁴ Form 8; rule 35(5) *Coroners Court Rules 2019*

⁴⁵ Exhibit 19 – CB018

RAAUS (introductory)

71. RAAus operates as an ASAO under Part 149 of the *Civil Aviation Safety Regulations* and is ultimately answerable to CASA. RAAus Chair, Geoffrey Monck, explained that it had approximately 10,000 members⁴⁶ and 3,000 registered aircraft.⁴⁷ In 2023 it had revenue of approximately \$3.37M, of which the vast bulk derived from member contributions and 4 to 5% from funding via CASA.⁴⁸ RAAus is the largest administrator of pilots in Australia.⁴⁹
72. RAAus had historically played a primary role in accident investigations involving aircraft on its register. Mr Monck stated that RAAus was not funded to conduct accident investigations⁵⁰ and also recognised the conflict arising from an entity performing the dual roles of regulator and investigator.⁵¹

ANALYSIS OF THE PHYSICAL EVIDENCE

Crash scene investigation

73. The crash site⁵² was in dense mountainous terrain that was not accessible by vehicle, and only accessible with great difficulty on foot. However, by the afternoon of Tuesday 20 September 2022, an access track had been cut through the bush that could be used by specially equipped 4WD vehicles.
74. Police investigators were assisted at the crash site by Jillian Bailey (Head of Flight Operations – RAAus) and Darren Barnfield (Technical Manager and Assistant Head of Airworthiness and Maintenance – RAAus) who arrived on site at approximately 3.30pm on 20 September. The ATSB did not attend.
75. Examination of the aircraft wreckage revealed that all parts of the aircraft were present in a reasonably confined area, suggesting that the aircraft had not suffered a break-up in flight. The primary flight controls of the aircraft (rudder, elevator, ailerons and flaps) were examined to the extent possible, and all appeared intact other than damage attributable to

⁴⁶ T167
⁴⁷ T174
⁴⁸ T159
⁴⁹ <https://raaus.com.au/about/>
⁵⁰ T161
⁵¹ T170-171
⁵² S 36° 17' 45"; E 147° 32' 01"

impact forces. There was nothing to suggest an in-flight failure of any of the primary flight controls.⁵³

76. Initial examination of damage to the propellor suggested it had been turning under engine power at impact.
77. The Garmin GPSMap device was recovered, as were some of the documents carried on board.

Engine examination

78. The engine and propellor were recovered from the crash site and inspected by a Licenced Aircraft Maintenance Engineer (LAME), Aaron Simmonds of Westernport Aviation Services.
79. Mr Simmonds conducted a “tear down” of the engine and concluded that it was likely under high power at impact. The propellor blades were broken evenly at their thickest section near the hub, consistent with the engine producing significant power. Internal examination of the engine revealed the impact damage but no signs of mechanical failure beforehand.
80. I accept Mr Simmonds’ conclusion and find that the engine was operating at impact, and likely producing useful power.

IMMEDIATE CAUSES OF THE CRASH

Expert analysis of the flight data

81. Captain Gray was asked to analyse the flight data and provide an opinion concerning the most likely “in flight” scenarios. He explained that, as Mr Farrell headed east after leaving the Kiewa Valley, he climbed at approximately 380 ft per minute (with a concomitant reduction in ground speed). This suggested that Mr Farrell may have been attempting to climb above clouds – although this was not possible as the weather forecast indicated cloud tops to 10,000 ft.
82. The final altitude was recorded as 8,697 ft which was very dangerous given the likelihood of moderate icing where even short encounters can be hazardous due to the rate of ice accumulation. Captain Gray stated:

⁵³ T131

It is very likely that Mr Farrell went into either cloud or rain showers during this eastward climbing track in which case icing was a very real threat. Ice would have started to accumulate on the leading edges of the wings and tail, struts and propellor. Ice on the windscreen would have decreased the forwards visibility markedly. It would have also increased the aircraft's stall speed.⁵⁴

83. In the later stage of the eastward portion of the flight, where the flight path becomes more convoluted, Captain Gray reached conclusions based on information including: ground speed, prevailing wind, estimated climb air speed, extent and rates of turn, and stall speeds at various angles of bank. He considered that Mr Farrell had lost control of the aircraft, and the primary loss of control event began between 12.40pm and 12.42pm. The likely reasons for the loss of control were Mr Farrell losing visual reference as a result of being in cloud, and ice accretion affecting the airframe and propellor. He stated in summary:

...from 12:30 the aircraft is likely in cloud with icing and being poorly and dangerously controlled.⁵⁵ At approximately 12:40 to 12:44 the aircraft has stalled while turning left, causing a rapid descent at high speed and then "restalling" during a sustained high angle of bank level left turn caused by Mr Farrell in all likelihood, trying to arrest the rate of descent and speed by pulling back on the controls. At this "restalling" point the aircraft has naturally pitched down again due to the stall, continuing to turn left without effective pilot input and re-entered a high rate of descent, high speed profile from which recovery was not possible due to the proximity of the terrain. From just prior to 12:40 to impact the aircraft is effectively out-of-control.⁵⁶ ...

Considering the high likelihood of loss of visibility, ice accretion, the nature of the final manoeuvring and reactive and ineffective control inputs, the most likely cause of this accident is a Loss of Control Inflight (LOCI) event with no chance of recovery.⁵⁷

84. The extremely dangerous situation of a VFR pilot flying into cloud and losing visual references is colloquially called "VFR into IMC". It is notorious for the speed of onset of

⁵⁴ Exhibit 8 at [11]

⁵⁵ Referring principally to manoeuvring at low airspeed and high bank angles.

⁵⁶ Exhibit 8 at [19]

⁵⁷ Exhibit 8 at [21]

spatial disorientation and loss of control – so much so that CASA safety publications⁵⁸ have employed the headline “178 seconds to live”.

85. Robbed of any external visual reference, the pilot is subject to vestibular effects that can create powerful illusions of the aircraft’s attitude that are far from real. For example, lateral acceleration may be misperceived as climbing or descending, and turns at a constant rate may be indistinguishable from straight and level flight. Added to these dangers is the ideomotor phenomenon which leads to subtle unconscious control inputs. Without a proper visual reference, these remain unchecked.
86. With only the basic flight instruments available in the aircraft, Captain Gray opined that, without very specific training for “limited panel” flying, which he had only seen in the military, very few pilots would be able to get themselves out of the situation.⁵⁹
87. Captain Gray excluded the possibility of pilot incapacitation due to hypoxia as the aircraft had not exceeded 10,000 ft.

Conclusions regarding immediate causes

88. I am satisfied that the immediate cause of the crash was Mr Farrell losing control of the aircraft in the manner described by Captain Gray after he flew into cloud, lost outside visual references, and became spatially disoriented. I conclude that he fell victim to the notorious phenomenon known as “VFR into IMC”.
89. I am also satisfied that Mr Farrell’s aeroplane was at risk of icing once he was flying above 4,500 ft. In the last minutes of the flight, it is likely that ice accretion degraded the aerodynamic performance of the aircraft, although it is not possible to say to what extent. This constituted an additional layer of danger in an already dire situation once he had flown into cloud.
90. Meteorological conditions were not suitable for VFR flight and any reasonably prudent pilot would not have undertaken the flight in the circumstances.

⁵⁸ *Flight Safety Australia* Jan-Feb 2006; <https://www.flightsafetyaustralia.com/2016/01/178-seconds-to-live-vfr-into-imc/>

⁵⁹ T275

Ms Waller's concerns

91. Ms Waller provided a statement dated 21 October 2022⁶⁰ in which she detailed her concerns which included, in short:
- (a) the sufficiency of Mr Farrell's flight training in 3-axis aircraft⁶¹;
 - (b) the limited number of hours flown in training before being granted an RPC via a converting pilot pathway based on his paragliding experience;
 - (c) the appropriateness of the issue of passenger and cross-country endorsements on Mr Farrell's RPC;
 - (d) the sufficiency of examination of the crash site and the failure of investigators to recover relevant documents from the wreckage, which she later recovered herself;
 - (e) the reliability of the Jabiru engine; and
 - (f) the existence of a serious conflict of interest "when RAAus investigates their own pilots, instructors, aircraft and themselves as the issuing body of pilot certificates/endorsements and instructor suitability."
92. Ms Waller was the initial source for numerous critical documents examined in the inquest including Mr Farrell's paragliding logbook, and text and email correspondence.

BACKGROUND TO CASA, RAAus and ATSB

The regulatory framework

93. CASA was established under the *Civil Aviation Act 1988* (Cwlth) and its functions include the safety regulation of civil air operations and the promotion of high standards of aviation safety.⁶²
94. Under section 13(4) of the *Civil Aviation Act*, CASA can appoint another person to provide services on its behalf. The *Civil Aviation Safety Regulations 1988* (Cwlth) outline the process by which CASA delegates its power to authorised persons and entities. CASA

⁶⁰ Exhibit 5

⁶¹ Aircraft with the following primary flight controls: elevator for movement about the pitch axis; rudder for movement about the yaw axis; and ailerons for movement about the roll axis.

⁶² *Civil Aviation Act 1988* (Cwlth) – s.9

can approve an organisation to become an ASAO, and this approval is granted in the form of an ASAO certificate, which includes the authorised functions of the ASAO.⁶³

95. The *Civil Aviation Regulations* also enable CASA to issue directions, instructions, notifications, and give approvals, permissions and authority, in the form of Civil Aviation Orders (CAO).
96. Under the *Civil Aviation Safety Regulations*, CASA has issued a *Part 149 (Approved Self Administering Manual of Standards 2018) (Manual of Standards)* which sets out the aviation administration and regulatory functions of ASAOs and the requirements of an ASAO's safety management, audit and surveillance systems.
97. The Manual of Standards outlines the activities that ASAOs can be authorised to perform. These include: registering aircraft; setting design, manufacturing and airworthiness standards for relevant aircraft; and developing competency standards for the issue of pilot certificates, ratings or endorsements.
98. Through a series of CAOs, CASA has directed that the following recreational aircraft must be operated in accordance with the standards and procedures specified in the RAAus *Flight Operations Manual (FOM)*:
 - (a) microlight aeroplanes;⁶⁴
 - (b) powered parachutes and weight shift controlled aeroplanes;⁶⁵
 - (c) certain light sport aircraft, lightweight aeroplanes and ultralight aeroplanes⁶⁶
99. The Jabiru J230 is a “light sport aircraft” within the meaning of the FOM.

The investigatory framework

100. The ATSB was established by the *Transport Safety Investigation Act 2003* (Cwlth). It is an independent agency that reports to the Minister for Infrastructure, Transport, Regional Development and Local Government. The function of the ATSB is to improve transport safety, particularly in reference to aircraft, ship and rail transport. It independently investigates transport safety matters⁶⁷ and publicly reports the results of its investigations.

⁶³ *Civil Aviation Safety Regulations 1988* (Cwlth) – Part 149

⁶⁴ *Civil Aviation Order 95.10*

⁶⁵ *Civil Aviation Order 95.32*

⁶⁶ *Civil Aviation Order 95.55*

⁶⁷ “transport safety matters”: *Transport Safety Investigation Act 2003* – section 23

101. The ATSB does not investigate every reported transport safety matter. It follows a policy of selective investigation, focussing its resources on investigations “most likely to enhance transport safety”. This is in line with the Minister’s statement of expectations to the ATSB⁶⁸ which includes an expectation that it will give priority to investigations that have the highest potential to deliver the greatest public benefit through improvements to transport safety.
102. The ATSB has frequently decided not to investigate accidents involving aircraft administered by an ASAO under Part 149 of the *Civil Aviation Act*, even though the matter may involve a fatality. This includes light sports aircraft registered with RAAus and, historically in these cases, RAAus has provided investigative assistance to state police forces and coroners.
103. RAAus adopted this usual approach in the initial stages of the investigation in this case with Darren Barnfield and Jillian Bailey attending the crash site. RAAus withdrew from the investigation on or about 24 November 2022, citing a potential conflict of interest arising from the allegations of inadequate pilot training that had been raised by Ms Waller.⁶⁹ On 29 November 2022, RAAus issued a communique to its members advising that it would no longer send personnel to investigate at fatal accidents, irrespective of whether the ATSB would be investigating or not.⁷⁰
104. Mr Monck stated that RAAus was not funded to conduct accident investigations⁷¹ and he also pointed to the conflict arising from an entity performing the dual roles of regulator and investigator.⁷²

TRAINING & LICENCING

Documentary material from Geoffrey Wood and RAAus

105. Geoffrey Wood was a Chief Flying Instructor for RAAus and he was Mr Farrell’s instructor. Mr Wood provided a written statement dated 27 November 2022.⁷³ He also provided training notes he had prepared and Mr Farrell’s training records which included documents titled:

⁶⁸ Exhibit 20 – AM1.215
⁶⁹ Exhibit 21 – AM2.37
⁷⁰ Exhibit 7.2 – AM1.236
⁷¹ T161
⁷² T170-171
⁷³ Exhibit 19 – CB266

- (a) *Student Flying Training Record and Progress Sheet;*
- (b) *Individual Flight Sheet;*
- (c) *Flying Training Progress; and*
- (d) *Converting Pilot Certificate Initial Issue.*

106. In addition to his formal written statement, Mr Wood included a note to accompany the training records he produced. The note includes the following statement:

...Training theory supplied is some 60 pages supplied from memory to Mr Farrell in a usb stick covering all training for all students, Training notes for Navigation I have enclosed as this is relevant to the accident.

The conversion from paragliding is by explanation, notes, and shown with practical flying.

Mr Farrell because of his aptitude and previous exposure to “group a” aircraft quickly picked up the handling of the Eurofox aircraft used in the conversion.

All aspects of stalling and recovery and prevention were covered and assimilated well.

Mr Farrells flight planning for navigation was excellent. His ability to Navigate to a destination was excellent.⁷⁴

107. In the course of the investigation prior to the inquest, RAAus provided statements from Geoffrey Monck (Chair of RAAus) and Jillian Bailey (RAAus Head of Flight Operations) and various documents from its register concerning the issue of Mr Farrell’s membership with RAAus, his Converting Pilot Certificate, and endorsements. After the Court obtained an expert report from Captain Peter Grey, RAAus also provided an expert report from Captain Paul McKeown.

108. The material provided by RAAus prior to the inquest did not however include everything that was relevant to the issues identified in the scope. Highly significant documents were revealed only near the scheduled close of the inquest.

109. On the final day of evidence, Counsel for Mr Farrell’s partner, called for the production of notes which Ms Bailey appeared to be recollecting when she explained her calculation of flight hours counting towards Mr Farrell’s cross-country endorsement.⁷⁵ Ms Bailey

⁷⁴ Exhibit 19 – CB266

⁷⁵ T539

immediately produced eight pages of documents⁷⁶ which included correspondence from SAFA to RAAus expressing concern regarding Mr Farrell's approach to safety as a paraglider pilot. This material had not previously been produced to the court.

RPC pilot certificate pathways

110. The RAAus *Flight Operations Manual* defines various aircraft groups, with different requirements applicable to each. For present purposes the relevant groups are⁷⁷:

Group A – Three Axis Control aeroplanes⁷⁸ only

Group B – Weight Shift Control aeroplanes⁷⁹ only

Group C – Combined Control aeroplanes only

Group D – Powered Parachutes only

111. In addition to other requirements, a student pilot seeking a Group A or B pilot certificate via the standard pathway must have completed a minimum of 20 hours flying training, including a minimum of 5 hours as pilot in command, and then satisfactorily complete a flight test with an RAAus approved Certified Flight Instructor. The required flying training must be completed in an aeroplane of the same group in which the flight test is to be conducted.⁸⁰

112. A student pilot may have recognised flight time taken into account, provided they meet the requirements detailed at Section 2.13 of the *Flight Operations Manual*. For the purposes of this inquest, the relevant sub-type of recognised flight time is specified at paragraph 1(c):

verified logbook entries of training undertaken towards the attainment of a Licence or Certificate with a recognised organisation.

113. A significant issue in respect of Mr Farrell's flight training was the inclusion of his flight time as a paraglider pilot (that is, an unpowered paraglider) as recognised flight time towards his RPC. There was no other aeronautical experience which was regarded as recognised flight time.

⁷⁶ Exhibit 18

⁷⁷ *Flight Operations Manual* - Section 2.04

⁷⁸ That is, an aeroplane with flight control surfaces (typically ailerons, elevator and rudder) to control roll, pitch and yaw.

⁷⁹ For example, powered hang gliders.

⁸⁰ FOM 2.07 paragraphs 1 and 2

Mr Farrell's flight training for RPC

114. Mr Farrell's *Pilot's Logbook* was recovered from the aircraft wreckage. It is one of the sources of information to understand the flight training received by Mr Farrell. Accordingly, it is appropriate to extract the relevant entries in full (italicised portions representing directly copied text):

*Theory Examination Pass Record*⁸¹

6/11/21 *Pre-Solo*
8/11/21 *BAK*⁸²
8/11/21 *Air Legislation*
6/04/22 *Navigation & Meteorology*

Record of flights:⁸³

<p>27/10/2021 Eurofox 24-5051 PIC⁸⁴ – G.Wood <i>Conversion – taxiing – effects/controls / s & level cl & desc</i> <i>Power use – take off – ccts – landings / forced landings</i> <i>EFOT. Full glide landings // C.winds / stalls & [??]</i> 2.3 hrs – dual</p>
<p>08/11/2021 Eurofox 24-5051 PIC – G.Wood <i>First solo, short field t/off, forced landings,</i> <i>Crosswind t/off's & landings, short XC Tr Yarrow</i> <i>side slips</i> 2.8 hrs – dual 0.7 hrs – command</p> <p>PIC – M.Farrell <i>Solo circuits, [??] landings, taxi & [??]</i> 1.9 hrs – dual 0.5 hrs – command</p> <p>PIC – G.Wood <i>1st Nav. XWGT – YRS & Myrtleford</i> [hours not stated]</p>

⁸¹ Exhibit 19 – CB316

⁸² Basic Aeronautical Knowledge

⁸³ Exhibit 19 – CB315-317

⁸⁴ Pilot in Command

<p>16/11/2021 Eurofox 24-5051 PIC – G.Wood <i>Nav Ex: YWGT – [??] – YDLQ – YTOC – YWGT</i> 3.7 hrs – dual</p>
<p>26/04/2022 Eurofox PIC – G.Wood <i>Dual: circuits, st[??]off & landings, forced landings</i> 0.4 hrs – dual 2.4 hrs – command</p> <p>PIC – M.Farrell <i>Solo Nav Ex: YWGT – [??] – YWGT, landings</i> (6 landings) 0.6 hrs</p>

115. The *Pilot’s Logbook* is difficult to reconcile exactly with the *Individual Flight Sheet* for the Eurofox 24-5051⁸⁵ – the aircraft used for Mr Farrell’s flying training with Mr Wood. The flights involving Mr Farrell are recorded as follows:

27/10/2021	3.3 hrs	22 landings	
08/11/2021	2.5 hrs	10 landings	
08/11/2021	1.0 hr	2 landings	.7 Solo Total
10/11/2021	2.4 hrs	7 landings	
16/11/2021	2.7 hrs	4 landings	
26/04/2022	2.8 hrs	5 landings	2.4 Nav Echuca

116. According to the *Individual Flight Sheet*, the total flight time for Mr Farrell to 26 April 2022 was 14.7 hours. This accords with the total recorded on the *Student Flying Training Record and Progress Sheet*.⁸⁶ However, Mr Farrell’s *Pilot’s Logbook* records 15.3 hours flying training to that date and the flying for 10 November 2021 is not recorded.

117. I conclude that the records comprising the *Individual Flight Sheet* and *Student Flying Training Record and Progress Sheet* are more likely to be correct where they do not coincide with Mr Farrell’s *Pilot’s Logbook*. The engine hours data contained in the *Individual Flight Sheet* supports the entries for flight time and is important additional information.

118. I conclude that, as at 26 April 2022, Mr Farrell had received a total of 14.7 hours of flying training under Mr Wood, inclusive of 3.6 hours solo.

⁸⁵ Exhibit 5.2
⁸⁶ Exhibit 12

119. The date of Mr Farrell’s flight test is not recorded in the application for his RPC which appears to be signed and dated by Mr Farrell and Mr Wood on 25 April 2022.⁸⁷ The flight test is recorded as being of 2.7 hours duration, which would equate to the flight on 16 November 2021. I note that the absence of a date for the flight test is a serious deficiency in the design of the document.
120. If the flight test was conducted on 16 November 2021, the delay of six months between that event and the RPC application is curious. It may be that the flight test was conducted on 26 April 2022 (although the recorded flight time does not match exactly) and the RPC application was signed the day before in anticipation. Unfortunately, it is not possible to say with sufficient certainty when the flight test took place.

Converting pilot pathway – validity of inclusion of recognised flight time – was Mr Farrell’s RPC properly issued?

121. The training records reveal that Mr Farrell received approximately 75% of the required flying training time that would be required (as a minimum) if he was on the standard training pathway. He was on the converting pilot pathway because his previous paragliding experience was being treated as recognised flight time. Whether this was valid or appropriate was a critical issue to be examined.
122. Captain McKeown explained that he had trained students with previous paragliding or hang gliding experience, but he could not recall ever having used the converting pilot pathway for those students to obtain their RPC on 3-axis aircraft.⁸⁸ He sought however to “always reserve the right to be able to use the converting pilot pathway” in the context of students with flying experience of this type.⁸⁹ I conclude that it was Captain McKeown’s view that paragliding experience could be included as recognised flight time.
123. Jillian Bailey explained in her first written statement⁹⁰ that, as Head of Flight Operations, her role included “oversight for the safe and compliant conduct and delivery of all flight training activities at RAAus Flight Training Schools”. The role is defined in the RAAus *Approved Exposition* and is one of the four roles that must be fulfilled by approved key personnel.⁹¹ Ms Bailey explained the converting pilot pathway and the fact that Mr Farrell’s RPC had been issued on this basis, having had his paragliding experience

⁸⁷ Exhibit 20 – AM1.68-70 *Converting Pilot Certificate Initial Issue*

⁸⁸ T287

⁸⁹ T288

⁹⁰ Exhibit 10

⁹¹ Exhibit 19 – Statement of Dr Stanton dated 8 July 2024 at [7.1 to 7.8]. The other roles for key personnel are: Accountable Manager, Head of Safety, and Head of Airworthiness.

calculated as recognised flight time. There was no suggestion of any doubt or concern about Mr Farrell’s eligibility to be a converting pilot. More specifically, there was no suggestion of any concern that paragliding experience could not be used as recognised flight time.

124. In Ms Bailey’s second statement⁹² she explained (*inter alia*) her determination concerning her calculation of eligible flight time for the issue of Mr Farrell’s cross-country endorsement. Once again, there was no suggestion of any concern that paragliding experience could not be used as recognised flight time.

125. In evidence, Ms Bailey was adamant that there was no concern regarding the issue of Mr Farrell’s RPC. The following exchange was unambiguous:

Mr Over: *Because the significance of it is, that you issued in this case the RPC without having any of the training records for Mat?*

Ms Bailey: *So – so just to be clear, the RPC was never in dispute. The – the question I had was, “Was sufficient cross-country training delivered to be able to issue with a cross-country endorsement?” That’s what the request for training records was.*

Mr Over: *So you’re saying that you now know you have no doubt at all about the RPC at any stage?*

Ms Bailey: *I don’t believe so, no.*

Mr Over: *You want to be clear about that?*

Ms Bailey: *Yes.*⁹³

126. This is patently wrong. In an email sent to himself on 21 October 2022 as a “file note”, the CEO of RAAus, Matt Buttell recorded the following:

- *Received call from Jill Bailey at 8.43am 21Oct22*
- *Jill advised me that she may have inadvertently issued an RPC on the basis of a converting pilot from SAFA Paraglider to RAAus Group A, in contravention of the Ops Manual.*

⁹² Exhibit 11

⁹³ T463

- *The person this was issued to was Mathew Farrell who died in an accident at Lucyvale, noting Jill is currently the lead investigator on behalf of RAAus for this accident.*
- *Jill was in a calm but highly alert state and noted she hadn't slept much. ...*⁹⁴

127. This document is a lengthy file note and further reveals very significant activity within RAAus that day surrounding the issue. This activity included:

- consideration of the legal and insurance implications;
- the need to replace Ms Bailey as the lead investigator;
- placing Ms Bailey on a week of special leave and appointing an acting Head of Flight Operations;
- consideration of whether there was a requirement to notify CASA; and
- briefing of the Chair of the Board for a board meeting that evening.

128. The Bouttell file note is a critical document which was revealed only after RAAus was subject to notices compelling the production of documents, and these were issued after Ms Bailey had been stood down as a witness on the fifth day of hearing. (This was one of many significant documents that only came to light because of this process – a matter to which I will return when I later examine the conduct of RAAus.)

129. If there was any remaining doubt whether the validity of Mr Farrell's RPC was a serious concern for Ms Bailey and other key personnel at RAAus, it is made clear in the email from Neil Schaefer, Head of Training Development for RAAus, to Cody Calder and Matt Bouttell on 21 October 2022. After detailing the requirements of section 2.13 of the *Flight Operations Manual* and presenting the reasons for his interpretation Mr Schaefer concludes:

*On this basis I am of the opinion that the RPC's issued for Matt Farrell (9059174) and Christopher Noye (051842) have been issued in error and this also applies to the associated endorsements including Cross Country.*⁹⁵

130. Ms Bailey tried to convince this Court that the validity of Mr Farrell's RPC was never in doubt. Her evidence in this regard is false – it is directly contradicted by the internal communications of 21 October 2022. The fact that Ms Bailey was placed on Special Leave because of the issue is striking and stands in stark contrast to her evidence.

⁹⁴ Exhibit 21 – AM2.24 (the **Bouttell file note**)

⁹⁵ Exhibit 18 – AM2.27 (**first Schaefer email**)

131. RAAus has maintained in its final submissions that its interpretation of section 2.13 of the *Flight Operations Manual* is valid and permits paragliding experience to be included as recognised flight time for the converting pilot pathway. This stands in opposition to the interpretation applied by the ultimate regulator, CASA.

132. Relevantly, section 2.13 of the *Flight Operations Manual* states:

For the purpose of this manual recognised flight time is:

1. *For gaining a Group A Pilot Certificate and associated Endorsements, Ratings and Approvals:*
 - (a) *dual and pilot in command hours in obtaining and maintaining a CASA aeroplane, helicopter, gyroplane, airship licence or overseas equivalents or Australian Defence Forces wings standard, overseas equivalents and endorsements, a GFA⁹⁶ glider rating or overseas equivalents and endorsements, ratings and approvals associated with these qualifications; and*
 - (b) *dual and pilot in command hours in obtaining a CASA Recreational Pilot Licence and former equivalent or graduation from an Australian Defence Force basic pilot's course, whatever called; or*
 - (c) *verified logbook entries of training undertaken towards the attainment of a Licence or Certificate with a recognised organisation.*

...
4. *For the purpose of this manual recognised qualifications are validated Licences, Certificates, Endorsements, Ratings and Approvals and overseas equivalents from recognised NAAs⁹⁷ and RAAOs⁹⁸.*
5. *A person seeking a Pilot Certificate with recognised flight time must:*
 - (a) *be a financial member of RAAus; and*
 - (b) *hold an RAAus Student or Converting Pilot Certificate; and*

⁹⁶ Gliding Federation of Australia

⁹⁷ National Aviation Authority

⁹⁸ Recreational Aviation Administration Organisation

(c) *undertake such dual and solo training in a recreational aeroplane of the same appropriate group and type for which the pilot certificate is sought including:*

(1) *meeting the aeronautical experience requirements of Section 2.07 Subparagraph 2(a) prior to being recommended for a flight test; or*

(2) *meeting the experience requirements of Section 2.07 Subparagraph 2(a) in an aeroplane other than a recreational aeroplane and undertake a minimum of 5 hours flying training, including a minimum of 1 hour pilot in command, in accordance with competency requirements of the relevant Unit of the RAAus Syllabus of Flight Training, prior to being recommended for a flight test ...*

133. At paragraph 42 of the RAAus final submissions it is asserted:

Whilst there may be some ambiguity in some of the wording of the FOM which may leave parts of the document open to interpretation, it was clearly RAAus' belief, practice, interpretation and authority that non-powered paragliding experience could constitute recognised flight time pursuant to Section 2.13.

134. I am not at all satisfied that it was the “practice” of RAAus to treat unpowered paragliding experience in this way. Apart from Mr Farrell, there was one other pilot who had gained his RPC via the converting pilot pathway with unpowered paragliding experience counting as recognised flight time – Christopher Noye. Ms Bailey asserted that there had been approximately 20 other pilots in the same circumstances over her 11 years of experience, but no other evidence of these cases was identified. I reject Ms Bailey’s evidence in this regard.

135. Over his 30 years of instructing experience, Captain McKeown had instructed approximately six or eight students who had paragliding experience. However, he had never put any of them through the converting pilot pathway on the basis of this experience.⁹⁹

136. Mr Noye was subject to a 7-day administrative suspension of his RPC while RAAus sought to examine the validity of its issue. Mr Schaefer notified him of this action in a telephone

⁹⁹ T287-288, 337-338

call on 21 October 2022.¹⁰⁰ On 25 October 2022, Mr Bouttell emailed Mr Schaefer with the following directive:

As discussed yesterday, having reviewed your interpretation of the manual on Friday and undertaken my own extensive review of the Ops Manual, I'm satisfied that Mr Christopher Noys does meet the requirements of the Ops Manual for a converting pilot.

*On that basis, please remove his SRS immediately.*¹⁰¹

137. The administrative action taken in respect of Mr Noye's RPC was no small matter and it is wholly at odds with the asserted practice of RAAus. Moreover, when one considers the urgency, extent and level of response to the issue revealed in the Bouttell file note, it is inconceivable that RAAus would continue to maintain that the treatment of unpowered paragliding experience as recognised flight time had been its "practice".
138. The RAAus final submissions also contend that it was the "belief" of RAAus that non-powered paragliding experience could constitute recognised flight time. This may be true of some key personnel within RAAus, but it was certainly not the belief of its Head of Training Development, Neil Schaefer. I have already referred to his email to the CEO on 21 October 2022 which includes his analysis and conclusion. It was also not the belief of Ms Bailey – at least not initially.
139. While it appears that RAAus may have reached a conclusion regarding the issue after 21 October 2022, and this conclusion may form the basis for a present belief, there is no evidence that the organisation held this belief at the time Mr Farrell's RPC was issued, or in the aftermath of the fatal events, until Mr Bouttell's directive on 25 October 2022. The sense in which a "belief" has been asserted, is closely associated with the assertion that there had been a "practice". I reject the contention that RAAus held such a belief at the relevant time.
140. In its submissions in reply, CASA makes the point that, "Critically, at no point in RAAus' submissions is there any reference to the importance of having regard to the central touchstone of aviation safety when applying the FOM".¹⁰² The point is well made and it is troubling that RAAus completely eschews a safety-based purposive approach to the questions of interpretation.

¹⁰⁰ Exhibit 18 – AM2.43

¹⁰¹ Exhibit 18 – AM2.32

¹⁰² CASA submissions in reply dated 4 October 2024

141. On 2 April 2024, Tanya Canny provided a statement on behalf of CASA which answered three questions asked by the Court. The first was, *Does CASA consider that non-powered paragliding experience may constitute “recognised flight time” for the purposes of Section 2.13?* Ms Canny explained that CASA’s view was that, as paragliding certificates were not included in Section 2.13(1)(a), paragliding flight time was not recognised for the issuance of a Group A RPC.¹⁰³
142. Ms Bailey sought to rely on the wording of 2.13 5. (c)(2) of the *Flight Operations Manual* to justify her decision to treat Mr Farrell’s paragliding experience as recognised flight time¹⁰⁴. I restate the relevant part of that provision:

meeting the experience requirements of Section 2.07 Subparagraph 2(a) in an aeroplane other than a recreational aeroplane and undertake a minimum of 5 hours flying training, including a minimum of 1 hour pilot in command, in accordance with competency requirements of the relevant Unit of the RAAus Syllabus of Flight Training, prior to being recommended for a flight test ...

143. This approach raised a controversy concerning the proper definition of an “aeroplane”. According to Ms Bailey an “an aeroplane other than a recreational aeroplane” meant anything capable of flight other than a recreational aeroplane that fell within the ambit of RAAus. In her own words, “... if it gets you off the ground, it’s an [aeroplane]”.¹⁰⁵
144. From the outset, I consider that it would be very strange indeed for the specific provisions found at section 2.13 1. (a) and (b) to be rendered mere surplusage to such a general proposition as the one asserted by Ms Bailey and RAAus in their interpretation of section 2.13 5. (c)(2). Specific aircraft and aeronautical experience are detailed in section 2.13 1. (a) and (b) but, according to this proposition, with no need to do so because flight time in any aeroplane (other than a recreational aeroplane) means flight time in anything that gets you off the ground.
145. Leaving aside the inherent strangeness and unlikelihood that, against the background of the specificity of section 2.13 1. (a) and (b), it was intended that section 2.13 5. (c)(2) would operate in such a “catch all” manner, this interpretation requires a very broad definition of “aeroplane”.

¹⁰³ Exhibit 18 – AM2.76

¹⁰⁴ T374-377

¹⁰⁵ T376. The transcript records the last word as indistinct, but I am satisfied this was the evidence of Ms Bailey, and it is made clear when the proposition was restated in the following question.

146. Dr Anthony Stanton provided a statement on behalf of CASA dated 8 July 2024 in which he addresses the definition of “aeroplane” and states (in part):

(a) First the term “aeroplane” has an accepted industry usage which is consistent with the CASR¹⁰⁶ Dictionary definition and “means a power-driven heavier-than-air aircraft deriving its lift in flight chiefly from aerodynamic reactions on surfaces remaining fixed under given conditions of flight, but does not include a power-assisted sailplane”.

(b) Second, in accordance with the definitions section of the FOM at p.13 “recreational aeroplane” means “for the purpose of this manual, an aeroplane registered with RAAus as defined in CAO 95.10, 95.32, 95.55 and operated in accordance with this manual”. Adopting this definition, section 2.135(c)(2) is to be read as referring to “an aeroplane other than an aeroplane specified in CAO 95.10, 95.32, 95.55.” As I have identified above at paragraph 8.32, each of the aircraft referred to in those CAOs are described as being aeroplanes. Paragliders on the other hand, are referred to in CAO 95.8, which at no time uses the term “aeroplane”. That is because that CAO does not relate to “aeroplanes”.

(c) Third, in my 34 years of experience in the aviation industry, I have never heard anyone refer to a paraglider as an “aeroplane”.¹⁰⁷

147. Dr Stanton then proceeds with further contentions as to why an appropriate definition of “aeroplane” does not include a paraglider.

148. The Macquarie Dictionary defines “aeroplane” as “an aircraft, heavier than air, kept aloft by the upward thrust exerted by the passing air on its fixed wings, and driven by propellers, jet propulsion, etc.”

149. Whereas an “aircraft” is defined as “any machine supported for flight in the air by buoyancy (such as ballons and other lighter-than-air craft) or by dynamic action of air on its surfaces (such as aeroplanes, helicopters, gliders, and other heavier-than-air craft)”.

150. The definition of “aeroplane” in the *Civil Aviation Safety Regulations* is to the same effect as the dictionary definition, save for the exclusion of power assisted sailplanes. It may also be concluded that an aeroplane is but one type of aircraft, and not anything that may fly.

¹⁰⁶ *Civil Aviation Safety Regulations* 1998 – r.202.900. This definition is provided in respect of the *Manual of Standards* for Part 172 – Air Traffic Service Providers

¹⁰⁷ Exhibit 19 – Statement of Dr Stanton dated 08/07/2024 at [8.36]

151. A powered paraglider would not fall within either of these definitions of an aeroplane as its wing is not “fixed” according to the dictionary definition; and it does not have lifting “surfaces remaining fixed under given conditions of flight” according to the definition in the regulations.
152. I accept Dr Stanton’s evidence and conclude that his reasoning is sound. I am satisfied that no sensible definition of “aeroplane”, as the word is employed in section 2.13 5. (c)(2), includes a paraglider.
153. The contrary argument raised by Ms Bailey, and continued by RAAus in its submissions, is wholly unsound and has the character of an *ex post facto* rationalisation for the issuance of Mr Farrell’s RPC. The urgent and serious nature of the activity and communications within RAAus on 21 October 2022 indicates that the interpretation now urged upon the Court was not in the mind of any of the key RAAus personnel at that time.
154. Consequently, I conclude that Mr Farrell’s paragliding experience should not have been regarded as recognised flight time and he should not have been issued an RPC via the converting pilot pathway.

Sufficiency of flight training delivered to Mr Farrell

155. I have concluded that Mr Farrell’s total flight time during training was 14.7 hours, inclusive of 3.6 hours solo flying.
156. Ms Bailey stated that, depending on the candidate, and without considering any endorsements, five hours could be sufficient flight training to convert a paraglider pilot to a Group A (3-axis) RPC.¹⁰⁸
157. Captain McKeown went substantially further. He was asked to consider Mr Farrell’s flight training records – which included analysis of three documents, in particular: the *Flying Training Progress* form¹⁰⁹; the *Individual Flight Sheet*¹¹⁰; and the *Student Flying Training Record and Progress Sheet*.¹¹¹ Correlating the information from all three documents for 27 October 2021 reveals that Mr Farrell was purportedly trained to a sufficient level in all aspects of flying required for certification for RPC in 3.3 hours on a single day.

¹⁰⁸ T364

¹⁰⁹ Exhibit 13

¹¹⁰ Exhibit 19 – CB253-258

¹¹¹ Exhibit 12

158. Although the *Flying Training Progress* form is not without ambiguity, Captain McKeown interpreted the document as recording that Mr Farrell had achieved “certificate standard”¹¹² in all aspects where indicated.¹¹³ I accept this is a reasonable interpretation of the document. Although the columns are headed, “Date 1”, “Date 2”, “Date 3”, “Date 4”, “Date 5” and “signed”, it appears Mr Wood has used these columns to denote the level achieved for numerous flying skills during the training delivered over 3.3 hours on 27 October 2022. According to the document, in this manner, Mr Farrell achieved “certificate standard” in the following¹¹⁴:

- Aircraft status – Daily inspection
- Effects of controls
- Take off
- Straight and level [flight] / Attitude
- Turning / Banking Secondary effects of controls
- Climbing and descending Effects of power Attitude
- Climbing and descending turns Attitude
- Gliding attitude and speeds at attitudes
- Circuits
- Radio calls
- Forced landings / Emergencies
- Stalls / Wing drop recovery
- Short field take off and landing / Missed approaches
- More forced landings
- Cross wind handling / Land[ing] / Take off
- Side slips
- Steep turns all attitudes
- Entering the circuit including other airfields

159. Captain McKeown acknowledged in evidence that these topics extended to more advanced aspects of flight training and he stated it was “not impossible” to have a student capable of achieving all this in 3.3 hours on a single day. Although he conceded he had never had such a student.¹¹⁵ He considered that Mr Farrell’s successful completion of his 0.7 hour solo flight (on 8 November 2021) demonstrated that the “competency was achieved and it

¹¹² The standards or levels detailed in the “notes” to the *Flying Training Progress* form are:
1 – Covered; 2 – Good. Not solo standard; 3 – Solo standard; 4 – Certificate standard; 5 - Excellent

¹¹³ T309-311

¹¹⁴ Where necessary for ease of reference, abbreviations in the document have been expanded.

¹¹⁵ T310-312

was consolidated with a significant solo sortie”, having earlier stated, “you just can’t do a lucky circuit”.¹¹⁶

160. There are difficulties with this logic. The successful solo on 8 November 2021 does not exclude the potential that Mr Farrell may have had serious deficits remaining which would not be apparent unless a CFI was there to observe them. For example, a student may mishandle engine management or may fail to scan outside the aeroplane properly before manoeuvring, and these issues would not be obvious from the ground. Moreover, the consolidation Captain McKeown speaks of is not of the degree that Captain Grey indicated was necessary in basic pilot training. I do not accept the notion that a successful solo flight is necessarily a hallmark of appropriate training having been delivered.
161. Captain Gray thought it was “theoretically possible” to have completed all the exercises listed in the *Flying Training Progress* form in the time indicated, but he considered that it would be completely ineffective training. He stated:

It’s possible, but how it – you could rush through everything. You could rush the entire syllabus and go “I’m going to show you a quick stall” “Yep, have a look at that quickly” and you get that done and you rush through it. Theoretically, it is possible, it’s possible to do that, but it’s completely ineffective training in my view ...

*The trainee will absorb nothing. They will not have the time to assimilate that new knowledge in a way that they can replicate it later on ...*¹¹⁷

162. Captain Gray concluded that Mr Farrell’s training was “rushed and ineffective”.¹¹⁸ I accept Captain Gray’s opinion. Analysis of the three specified documents in the flight training records reveals that Mr Farrell received training over 3.3 hours in one day and the flying involved 22 landings. It simply beggars belief that a student pilot new to 3-axis powered aeroplanes, however talented they may be, could be trained effectively to certificate standard in all the above aspects of flying in one day. Captain Gray spoke of the importance of consolidation of basic skills during training.¹¹⁹ This is true of so many fields of human endeavour and I would have thought the notion would be uncontroversial.
163. I accept that Mr Farrell’s paragliding experience would have given him a strong background in some areas of aeronautical knowledge, but this is not the same as the suite

¹¹⁶ T309

¹¹⁷ T239

¹¹⁸ T240

¹¹⁹ T198

of skills required for flying a 3-axis powered aeroplane which cruises five or more times faster than a paraglider. Captain McKeown stated that "... there are many transferrable skills, both technical and non-technical, which are common to paragliders and 3-axis aircraft".¹²⁰ This notion was strongly rejected by Captain Gray, particularly in respect of the suggestion of the transferability of technical skills. He also highlighted that, if the notion was correct, there was a lack of an identified training path which accounted for the similarities and dissimilarities between the two aircraft types.¹²¹ I accept Captain Gray's opinion in this regard.

164. Ms Waller was herself a paraglider pilot and training for her PPL. She was concerned that Mr Farrell had not received adequate flight training and gave examples of apparent gaps in his knowledge. For example, she described his lack of awareness of the need for scanning and selection of a visual reference for the intended new heading when initiating a turn.¹²² She compared her own flying training experience, and that of another very experienced paraglider pilot, with an instructor from Tocumwal – both their training involved "far in excess of the converting pilot requirements".¹²³
165. I found Ms Waller to be a very thoughtful and insightful witness. In my view, her opinion rightfully carries significant weight. She was the person closest to Mr Farrell and she had the benefit of her own aeronautical experience. Tellingly, Ms Waller revealed that she was too scared to get in the plane with him.¹²⁴
166. Mr Farrell's RPC application was dated 25 April 2022 and stated that he had conducted 11.1 hours of dual flight and 3.6 hours of solo flight in a Group A aircraft.¹²⁵ The training records from Mr Wood revealed however that, as of 25 April 2022, Mr Farrell had 10.7 hours dual and 1.2 hours solo.¹²⁶
167. The *Student Flying Training Record and Progress Sheet*¹²⁷ also noted 1 hour (unverified) of dual flight time in a Cessna 172 in 1996. Captain McKeown contended that this experience some 26 years earlier (when Mr Farrell was approximately 16 years old) would have been a material benefit because he would have retained a mental model of the controls.¹²⁸ Captain Gray said the experience was too long ago and it was "completely

¹²⁰ Exhibit 14 – AM1.26 at [20]

¹²¹ T271-272

¹²² Exhibit 5 – CB040

¹²³ Exhibit 5 – CB040

¹²⁴ T082; Exhibit 5 – CB041

¹²⁵ Exhibit 14 - AM1.68

¹²⁶ Exhibit 12; T507-508

¹²⁷ Exhibit 12

¹²⁸ T290

insufficient to have any relevance to aeronautical experience”.¹²⁹ I accept Captain Gray’s opinion. An unverified 1 hour flight 26 years earlier cannot sensibly be added to the equation of aeronautical experience.

168. If the flight training records are to be read on their face (and as Captain Gray interprets them), the flight training delivered to Mr Farrell was so compressed that its efficacy must have been significantly compromised. Moreover, the total flight time in training was not sufficient to deliver the necessary training, with the necessary opportunity for consolidation of basic skills.

Eligibility and sufficiency of training for cross-country endorsement

169. The accident flight on 18 September 2022 was Mr Farrell’s first cross-country flight at that level of difficulty (leaving aside the factor of poor weather) – it would be, by far, his longest flight and involve extended stages over remote and mountainous terrain. Furthermore, he would not have the assistance of a co-pilot (or a competent passenger).

170. Mr Farrell’s cross-country experience up to the issue of his RPC and derived from his *Pilot’s Logbook* is as follows:

08/11/2021	
Wangaratta to Yarrawonga	2.8 hrs
Wangaratta to Mt Beauty and Myrtleford	1.9 hrs
16/11/2021	
Wangaratta – Jerilderie – Deniliquin – Tocumwal – Wangaratta	2.7 hrs
26/04/2022	
Wangaratta – Echuca – Wangaratta (solo)	2.4 hrs
TOTAL	9.8 hrs

171. The cross-country endorsement allows an RPC pilot to fly anywhere within Australia, subject to the limitations of controlled airspace.¹³⁰ The flight time requirements for the endorsement are a minimum of 10 hours dual cross-country navigation training plus a minimum of 2 hours solo cross-country navigation.¹³¹ The student must also pass a

¹²⁹ T250

¹³⁰ T049

¹³¹ Exhibit 20 – AM1.281 – *Flight Operations Manual* at 2.07 [11]

navigation flight test. On the face of his *Pilot's Logbook* entries, Mr Farrell did not qualify for the endorsement when Mr Wood applied for it on his behalf on 25 April 2022.

172. The Head of Flight Operations, Jillian Bailey, initially rejected Mr Wood's recommendation that a cross-country endorsement be issued to Mr Farrell.¹³² After email correspondence with Mr Wood on 27 May and 1 June 2022, Ms Bailey received an *Endorsements – Issue* declaration from Mr Wood dated 3 June 2022¹³³ and received on 15 June 2022. Attached to this was a copy of Mr Farrell's *Student Flying Training Record and Progress Sheet*. This indicates four navigational flights with times matching those derived from the *Pilot's Logbook*. On the face of the documents, the question regarding the sufficiency of Mr Farrell's flight time for the cross-country endorsement is not advanced at all.
173. In evidence, Ms Bailey conceded that the endorsement was entered onto Mr Farrell's record on 9 June 2022, that is six days before receipt of the documents from Mr Wood that supposedly supported the application. Moreover, Ms Bailey conceded that she was in no better position at that time to assess the application than she had been on 20 May 2022, when she initially refused to grant it.¹³⁴ Accordingly, the communications between these dates require close examination if the change of position is to be understood.
174. At noon on 20 May 2022, Ms Bailey entered the following note on Mr Farrell's record:

*Relevant evidence was not supplied for a Cross Country recognition as Matthew doesn't hold a Powered Sailplane Touring endorsement, Matthew is going to contact Geoff Wood again to complete an endorsement issue form for the issue of a Cross Country endorsement.*¹³⁵

175. A little over an hour later, Ms Bailey recorded a further note:

I called Matthew to discuss the conversion process with CFI Geoff Wood, as the paperwork provided only indicated 11.1 hours of dual. I explained to Matthew this should include approx. 1 hour flight test for RPC, 1.5 hour flight test for nav and .5 hour flight test for Passenger, leaving only 8.1 conversion for RPC, assessment of nav and passenger. i explained the expectation would be for more time required that this as a PPG¹³⁶ pilot would not be familiar with rudder use, nav principles of constant height, constant heading, time over distance, fuel and ETA calculations

¹³² Exhibit 11 – AM1.53; AM1-119

¹³³ Exhibit 11 – AM1.78

¹³⁴ T523-525

¹³⁵ Exhibit 20 – AM1.87

¹³⁶ Powered paraglider

*etc. Matthew understood the concerns but advised that he had other flight time and experience which was taken into account by Geoff. We agreed if Geoff was about to provide further paperwork recommending the issue of Cross Country and Passenger, RAAus would process it.*¹³⁷

176. Ms Bailey said in evidence that the reference to “PPG” (an abbreviation for powered paraglider) was a typographical error and not a record of a mistaken belief on her part that Mr Farrell was on the RPC converting pilot pathway because of powered paragliding experience. She denied that she ever held such a belief at the time.¹³⁸

177. At 5.19pm the same day, Mr Wood emailed Ms Bailey concerning the endorsement application, stating:

*... Matt has 7 hrs X country flying in the Eurofox, including 2.0 hrs solo nav. His nav preparations are excellent. I would have total confidence in his ability to do faultless navs anywhere in Australia. If his “non power” long distance cross country flying doesn’t count there is something seriously missing in the requirements. ...*¹³⁹

178. On 1 June 2022, Ms Bailey sent an email to Mr Wood in which she appears to respond:

Hi Geoff

I am not sure I understand the context of your question? My question to you was to ask you to confirm if all required minimum flight times had been completed with Matt for RPC conversion, navigation training and the two relevant flight tests, as required in the Flight Operations Manual, relevant to the training records you supplied.

You are the CFI who has flown with Matt, and are therefore best placed to arrive at the answer to this question? If you do not believe Matt holds the flight time requirements for issue of a navigation endorsement,¹⁴⁰ then you are the one that must correct this issue. ...

*Once you confirm Matt meets the minimum flight time requirement, his RPC and Navigation endorsement will be issued based on your recommendation. ...*¹⁴¹

¹³⁷ Exhibit 20 – AM1.87

¹³⁸ T481-482

¹³⁹ Exhibit 20 – AM1.110

¹⁴⁰ An alternate name for the cross-country endorsement.

¹⁴¹ Exhibit 20 – AM1.119

179. In her email of 1 June 2022, Ms Bailey’s reference to “the two relevant flight tests” appears to relate to a requirement for separate flight tests for both the RPC and cross-country endorsement. This is consistent with her note made on 20 May 2022 that she made it clear to Mr Farrell that separate flight tests were required. However, Ms Bailey’s *viva voce* evidence stands in stark contrast, having stated that she considered the 2.7 hour recorded flight to be “a combined flight test for RPC and cross-country”.¹⁴²
180. Ultimately, Ms Bailey sought to explain that her change in position regarding the issue of the cross-country endorsement on the basis that she had examined Mr Farrell’s Paragliding Logbook and satisfied herself that it contained flight time that could be taken into account.¹⁴³ The difficulty with this explanation is that the cross-country endorsement was issued on 9 June 2022 and the Paragliding Logbook (and other material) was not received by Ms Bailey until 15 June 2022. The explanation Ms Bailey gave was highly convoluted¹⁴⁴ and unconvincing, having the character of an attempted *ex post facto* rationalisation for the issue of the endorsement. I am satisfied that Ms Bailey’s notes of 20 May 2022 and her email of 1 June 2022 provide a truer reflection of her state of mind, at least at the time, concerning Mr Farrell’s eligibility for the endorsement – namely, that cross-country paragliding flights did not constitute recognised flight time.
181. Any notion that Mr Farrell’s cross-country paragliding experience should count as recognised flight time for his RPC cross-country endorsement fails for the same reasons that paragliding flight time cannot properly count towards recognised flight time for the RPC itself. Moreover, the challenges of cross-country flight in a powered aeroplane cruising at 100 kts or 120 kts, five to six times the trim speed of a paraglider,¹⁴⁵ are not comparable. The RPC pilot must, at the same time, manually fly the aeroplane and monitor and manage its essential systems whilst attending to the demands of navigation. Indeed, Ms Bailey properly identified the various challenges in her note of the conversation with Mr Farrell on 20 May 2022.
182. The significance of the cross-country endorsement should not be overlooked – without it, Mr Farrell would not have been permitted to attempt the flight on 18 September 2022. I find there was no proper basis to grant Mr Farrell’s cross-country endorsement.

¹⁴² T393

¹⁴³ T397-400

¹⁴⁴ T392-395

¹⁴⁵ T441

Human factors training and endorsement

183. Included in Captain Gray’s qualifications is a Master of Aviation, specialising in human factors. He explained the human factors that were likely involved before and during the accident flight – not the least of which was “plan continuation bias”. Understanding the detrimental effect of these biases on good decision making underscores the need for effective training of RPC pilots so they may be best placed to recognise when they may be at risk of poor decision making.
184. The requirements for the human factors endorsement are that the candidate must either satisfactorily complete an RAAus approved human factors course, complete theory training¹⁴⁶ and pass a multiple choice examination, or provide written proof of a recognised qualification to the Head of Flight Operations.¹⁴⁷
185. Examination of the RAAus syllabus for human factors training reveals an extensive range of topics including: aviation medicine; stress and fatigue; risk management and hazard analysis; information processing; attitudes and behaviour; situational awareness; and judgement and decision making.
186. When Ms Bailey was asked to identify the material supporting the issue of the human factors endorsement, she appeared to rely on two things. Firstly, that Mr Wood had ticked the box for the endorsement.¹⁴⁸ The implication being that she could rely on this as a declaration that Mr Farrell was eligible for the endorsement. Secondly, Ms Bailey appeared to rely on her belief that Mr Farrell would have received applicable human factors training associated with his SAFA membership for paragliding. There was however no evidence to support this, and Ms Bailey also could not identify any material in support.
187. The human factors endorsement appears to have been issued solely on the basis that Mr Wood sought the endorsement for Mr Farrell when he ticked the box on the *Endorsement Recognition* form¹⁴⁹ which accompanied the RPC application. After all the efforts to gather material from Mr Wood and RAAus, there was nothing to support the application for this endorsement. Moreover, there was no evidence of any RAAus process to verify the applicant’s eligibility for the endorsement. This is despite the *Endorsement Recognition* form including the instruction, “Proof of equivalent endorsement must be attached or the application will not be processed”.

¹⁴⁶ As outlined in Unit 2.05 of the RAAus *Syllabus of Flight Training*. Exhibit 20 – AM1.675-677

¹⁴⁷ Exhibit 20 – AM1.281 – *Flight Operations Manual* at 2.07 [8]

¹⁴⁸ T367

¹⁴⁹ Exhibit 5.9

188. The tragedy of this is that poor decision making by Mr Farrell lies at the centre of events on 18 September 2022 – and sound human factors training (and reinforcement) is an important tool to guard against this risk.

Passenger endorsement

189. Mr Farrell was granted a passenger endorsement on 9 June 2022¹⁵⁰ and this was reflected in his reissued membership certificate dated 16 June 2022.¹⁵¹ Curiously, there was never any application for this endorsement on the *Endorsement Recognition* form and this fact was accepted by Ms Bailey.¹⁵²
190. To qualify for the endorsement Mr Farrell required a minimum of 10 hours flight time as pilot in command of an aeroplane; and a minimum of 2 hours flight time in a Group A aeroplane of the same aeroplane type and design features.¹⁵³ I am satisfied that Mr Farrell had sufficient solo hours in the Eurofox to meet the second limb of these requirements. However, it is clear he did not have the necessary minimum 10 hours flight time as pilot in command of an aeroplane. For the reasons already fully explored I do not accept that Mr Farrell's paragliding experience constitutes recognised flight time in this regard. Restated briefly, a paraglider is not an aeroplane.
191. The issue of this endorsement is unexplained and reveals the absence of any adequate RAAus process to validate its issue.

Conclusions regarding endorsements

192. Mr Farrell's cross-country and passenger endorsements were improperly issued – he did not qualify for either. His human factors endorsement was granted without any supporting material and should not have been issued.
193. I am satisfied that the improper issue of these three endorsements is indicative of RAAus failing to apply any process approaching sufficient robustness to confirm Mr Farrell's eligibility for the endorsements.

¹⁵⁰ Exhibit 20 – AM1.84

¹⁵¹ Exhibit 5.10

¹⁵² T476

¹⁵³ Exhibit 20 – AM1.281 – *Flight Operations Manual* at 2.07 [8]

CONDUCT OF RAAus

Introduction

194. This investigation commenced with RAAus performing a direct investigative role to assist Victoria Police members and the Coroner. It has been accepted historically that RAAus has particular expertise concerning the aircraft types it governs, and this insight is a very important resource for the police and the Coroner. Ms Bailey and Mr Barnfield attended the crash site and provided advice based on their observations.
195. Having an entity that is both regulator and investigator is not ideal and can of course lead to a conflict of interest. Where the arrangement is unavoidable, additional vigilance is required to ensure that an actual conflict does not arise in a particular case and, if it does, it is identified at the earliest opportunity so that whatever necessary steps may be taken.
196. Regrettably, in this case, there was an actual conflict of interest because of the need to examine the role of RAAus and the training received by Mr Farrell.¹⁵⁴ However, the true impact of this conflict of interest was not revealed until late in the inquest.
197. Ms Bailey and Mr Barnfield attended the crash site on the afternoon of 20 September 2022 and provided their preliminary opinions to police investigators concerning matters that may be determined from the state of the wreckage. Subsequently, RAAus sent the Garmin GPSMap 296 device which was found in the wreckage to the ATSB for data extraction and analysis.¹⁵⁵
198. On 24 November 2022, the CEO of RAAus, Matt Bouttell, emailed Sgt McFarlane of the Police Coronial Support Unit. In this email Mr Bouttell advised that RAAus was removing itself from the investigation because of an identified conflict of interest, stating:

... RAAus was made aware by police that the family of the deceased were making enquiries regarding the Pilot Logbook of the deceased. This is in addition to our understanding that they have also made unfounded comments alleging inadequacies with the deceased's pilot certificate and training.

On this basis it is necessary to remove ourselves from being placed in a potential conflict situation ...

¹⁵⁴ Inquest scope items 2, 3 and 4.

¹⁵⁵ Exhibit 19 – CB 161

*... RAAus will continue to cooperate with Police and the Coroner by provision of information wherever possible ...*¹⁵⁶

199. The Court had an understanding that RAAus would remain fully cooperative and did not seek the production of documents from it by compulsory means until late in the inquest.

The picture of Mathew Farrell

200. At the centre of this inquest lay the question why Mr Farrell decided to attempt the flight on 18 September 2022. His decision making had to have been deeply flawed – but what had led to these poor decisions? Captain McKeown touched on this in his evidence:

*... I mean in terms of the accident flight, it was – I don't think there was any ambiguity about it ... blind Freddy could see that it's not – it wasn't the day for a VFR pilot to go flying and I don't think you know, any amount of training can, can really predict or control a decision like that. It, it was – it was reckless, cavalier, it's totally out of character from everything else I've read about Mr Farrell.*¹⁵⁷

201. Captain McKeown had earlier spoken about his understanding of Mr Farrell's character when responding to a suggestion that his compressed training for RPC may have imbued him with a false sense of confidence as a pilot. Captain McKeown stated:

*... Mr Farrell looks, to my mind, to be a diligent, thoughtful and careful person and that's why again I find the decision to fly on the 18th in those conditions and over that terrain quite inexplicable.*¹⁵⁸

202. Indeed, this was the picture of Mr Farrell presented by RAAus throughout the inquest, principally via Captain McKeown as the expert witness it had engaged. It was most telling when Captain McKeown responded to my question:

Q. ... I can indicate that what is of significant interest to me is trying to understand why someone as, who's of a personality type as Mathew has been described as being skilled, experienced in other areas of complex endeavour and diligent, how he makes a bad decision, what underlies the bad decision making ? ...

A. ... It's the perennial argument you know, what causes people to make these decisions? By all accounts Mr Farrell was an adventurous person, he was an

¹⁵⁶ Exhibit 21 – AM2.37

¹⁵⁷ T342

¹⁵⁸ T341-342

intelligent person, he was an educated man. It's inconceivable that he hadn't made safety related risk assessments before. He was an Antarctic explorer,¹⁵⁹ a climbing guide ...

... We can never really get, get to the final answer I don't think.¹⁶⁰

203. Elsewhere in his evidence, Captain McKeown sought to play down the suggestion that Mr Farrell had been overconfident.¹⁶¹ Instead he drew the conclusion that Mr Farrell was an exceptional and gifted pilot because he obtained his RPC in a short time.¹⁶² Ms Bailey supported this impression when she described her understanding that “Mr Farrell was an exceptional candidate”.¹⁶³
204. This was the picture of Mr Farrell that RAAus promoted to the Court, and seemingly nothing could explain why he had made such a terrible decision.

Evidence of Jillian Bailey concerning validity of the RPC and endorsements and other matters

205. Ms Bailey was the Head of Flight Operations for RAAus. She was the last witness to be called and gave evidence over one and a half days. She gave her evidence in an adamant fashion and was, at times, combative. Ms Bailey maintained the following matters:
- (a) Mr Farrell's RPC had been validly issued using the converting pilot pathway.¹⁶⁴
 - (b) The cross-country and human factors endorsements had been validly issued.¹⁶⁵
 - (c) She had never had any doubt or concern regarding the validity of issue of the RPC¹⁶⁶ or endorsements.¹⁶⁷ The issue of the RPC was never in dispute.¹⁶⁸

¹⁵⁹ This is a reference to Mr Farrell working as a guide on Antarctic tours.

¹⁶⁰ T325-327

¹⁶¹ T320

¹⁶² T316-316

¹⁶³ T515.24-516.01

¹⁶⁴ T372.12-.22; 376.10-.16; T443.07-.24

¹⁶⁵ T389.13-.22; 394.10-.29; 398.12-.15;

¹⁶⁶ T499.21-.22; T544.19-.22

¹⁶⁷ T443.07-.24; 444.09-.13; 463.03-.12; T498.26-.30; T498.26-499.26; T502.21-.28; T532.20-.23

¹⁶⁸ T463.03-.12

- (d) The issue of Mr Farrell’s RPC was not made on a mistaken basis that he was converting from a powered paragliding licence rather than a paraglider (unpowered).¹⁶⁹
- (e) She had no concerns regarding the extent of training or experience underlying Mr Farrell’s cross-country endorsement.¹⁷⁰
- (f) She did not consider auditing Mr Wood as a consequence of Mr Farrell’s crash.¹⁷¹

206. Finally, in a comprehensive exchange between Ms Bailey and Counsel for RAAus, Ms Bailey assured the Court that she was not aware of any other emails or documents (aside from those already produced) that would be relevant to the hearing. This evidence was given in unambiguous terms. Ms Bailey described having personally conducted an extensive search without identifying any further documents.¹⁷²

Discovery of further relevant documents

207. In the course of examination by Counsel for RAAus, and in the context of explaining her calculations of Mr Farrell’s eligible flight time concerning both the RPC and cross-country endorsement,¹⁷³ Ms Bailey accepted a reference to her “own calculations”.¹⁷⁴ This followed an earlier mention Ms Bailey had made regarding her own notes and a “summary document” used to prepare her statement.¹⁷⁵ This prompted Counsel for Ms Waller to call for the documents referenced by Ms Bailey.¹⁷⁶ Ms Bailey then retrieved from material she had in the court room a typed document comprising eight pages: Exhibit 18.

208. Much of the first four pages of Exhibit 18 is taken up with the reproduction of emails that were already on the coronial brief or in the additional materials. However, near the foot of the fourth page is the text of an email from the SAFA Safety Manager, Iain Clarke, sent to Ms Bailey on 29 September 2022. This communication is so wholly at odds with the picture of Mr Farrell that had been presented to the Court, and its significance is such, that it bears inclusion largely in full –

¹⁶⁹ T481.19-482.04
¹⁷⁰ T439.22-440.03; T544.11-.13
¹⁷¹ T437.03-.08
¹⁷² T530.26-531.21
¹⁷³ T537.25-539.09
¹⁷⁴ T537.29
¹⁷⁵ T506.07-.18
¹⁷⁶ T539.20

Hi Jill,

Thanks for the call yesterday. This email concerns the fatal aircraft accident involving Mathew Farrell, and the concerns I raised in our phone call.

Mat joined our community in Tasmania in late 2019. I first spent time with him whilst driving to Bright in March 2020, to attend a cross country clinic I had organised for THPA (Tas. Hang gliding and Paragliding Association) members. Mat told me his background coming from adventure sports, more specifically rock-climbing. He described his appetite for risk and his belief that he was able to manage the involved risks to a high degree and aviation was no different.

This raised my eyebrows, and I mentioned that gravity does not take prisoners, which he dismissed.

He replied that he was aware of the risks but he felt he knew enough to handle them. The impression that I was left with was that this was someone who had yet to honestly face the consequences of their actions and were denying their vulnerability (or mortality).

Over the course of the next few days, I was able to observe Mat's flying. Whilst competent in all phases of flight in terms of controlling his aircraft, I was concerned about his decision-making processes. He appeared to only think one step ahead, and not look further ahead to possible consequences. This manifested itself particularly in his approach to landings. ...

Over the next year, Mat progressed through the pilot qualifications, but not without incident. I have attached three reports raised within SAFA's Accident and Incident Reporting System (AIRS) concerning Mat, and email correspondence from our AIRS Manager (in effect, accident investigator), Luke Denniss, regarding one of these. Luke complained to me personally about Mat's approach to reporting events (why should I?), and the events themselves (I knew what I was doing). Luke expressed his concern that Mat was '... a disaster waiting to happen' or words to that effect. He was not alone in that view, I'm sorry to say.

Whilst in Tasmania, Mat approached local Flight Instructor Ramon Brasnja to be issued a PG5 pilot certificate, SAFA's highest flight qualification. Ramon refused to sign him off as he believed that his attitude was not consistent with that of a PG5 pilot. I have attached the correspondence from Mat to Ramon in response to this.

Overall, for me, Mat was particularly arrogant when it came to being honest about his decisions, denying there was a problem and refusing to recognise that he had made errors in judgement. His belief in his invincibility was a great worry.

Sadly Jill, those of us down here with an awareness of these factors are unsurprised by what has transpired. ...¹⁷⁷ (the Iain Clarke email).

209. Shortly after Exhibit 18 was produced by Ms Bailey, the Court took a luncheon adjournment. Upon resumption, Ms Bailey was not recalled to the witness box and the inquest was adjourned *sine die* to consider compulsory avenues for the further production of documents by RAAus and other entities.

Further investigations

210. On 2 February and 6 February 2024, the Court issued notices to RAAus pursuant to section 42 of the Act to produce documents (**Form 4**). Notices were also issued to SAFA and CASA. The documents produced as a result of these further inquiries formed a new volume to the coronial brief (**Additional Materials 2 – AM2**) comprising 237 pages.

211. The documents produced by RAAus in response to the Form 4s revealed –

- (a) On 29 September 2022, Ms Bailey sent Neil Schaefer (Head of Training Development) the Iain Clarke email together with its attachments. Cody Calder (Innovation and Improvement Executive / Part 149 Safety Manager) and Darren Barnfield were also copied in.¹⁷⁸
- (b) On 13 October 2022, a person identified only as “Godfrey” sent a Teams message to Neil Schaefer which was then emailed to Ms Bailey – the message read:

*Hi Neil. Just a quick confidential heads up on the Mathew Farrel acc.. he only had 3.6hrs solo, 11 hrs dual logged. The friends and relatives are beginning to find out that fact and are agitating for some legal action against his CFI and RAAUS. Of course they are looking for answers and ppl to blame as one does in this situation. He was the PIC and made his own D to fly. But seriously.. 3.6hrs solo and attempting a big solo XC across the main range in ultra marginal conds.. hmmm.*¹⁷⁹

- (c) At a meeting on 17 October 2022 which included Matthew Bouttell (CEO) and others, Ms Bailey proposed to remove Mr Wood’s flight testing privileges until additional candidates were independently tested.¹⁸⁰
- (d) The following events on 21 October 2022:

¹⁷⁸ Exhibit 21 – AM2.15

¹⁷⁹ Exhibit 21 – AM2.20

¹⁸⁰ Exhibit 21 – AM2.22

- (i) At 8.53am, Ms Bailey called Mr Bouttell and advised that “she may have inadvertently issued an RPC on the basis of a converting pilot from SAFA Paraglider to RAAus Group A, in contravention of the Ops Manual” and hadn’t slept much.¹⁸¹
- (ii) Mr Bouttell concluded that RAAus would need to seek legal advice.¹⁸²
- (iii) Prior to 2.40pm, Mr Bouttell, after discussion with Mr Calder and Maxine Milera (Corporate Services Executive), determined to place Ms Bailey on a week of Special Leave.¹⁸³ All RAAus systems and phone access for Ms Bailey was withdrawn during this period and Mr Schaefer was appointed as Acting Head of Flight Operations.
- (iv) At 3.19pm, Mr Schaefer emailed Mr Calder and Mr Bouttell detailing his analysis of Section 2.13 of the *Flight Operations Manual* and his conclusion that “recognised flight time” did not include paragliding or hang gliding aeronautical experience – this led to his ultimate conclusion:

On this basis I am of the opinion that the RPC’s issued for Matt Farrell (059174) and Christopher Noye (051842) have been issued in error and this also applies to the associated endorsements including Cross Country.

Mr Schaeffer also recommended a 7 day administrative suspension of Mr Noye’s RPC and “a full audit of all non group A converting applicants” as soon as possible.¹⁸⁴

- (v) At 3.30pm, Mr Bouttell briefed Geoffrey Monck (RAAus Board Chair) and a Board meeting was held at 6.00pm.¹⁸⁵
- (e) On 24 October 2022, Mr Bouttell, Mr Monck and the Company Secretary met with the lawyers for RAAus, GSG Legal.
- (f) A 24 October 2022 diary note by Mr Schaefer relating to an MS Teams call with Mr Calder which included the following:

¹⁸¹ Exhibit 21 – AM2.24
¹⁸² Exhibit 21 – AM2.24
¹⁸³ Exhibit 21 – AM2.25
¹⁸⁴ Exhibit 21 – AM2.27
¹⁸⁵ Exhibit 21 – AM2.25

*No researching or talking or any information until advised following Lawyer meeting + further CEO direction.*¹⁸⁶

- (g) A 24 October 2022 diary note by Mr Schaeffer relating to a telephone call with Mr Monck, Mr Bouttell and Mark Gray Spence (GSG Legal) which included the following:

1. *Cease investigation Lucyvale*
2. *Org process (MM) Sound, position is sound, thought not disclosure – no CASA*
3. *Nothing to be written or discussed (Mick) Any discussion only through Matt.*¹⁸⁷

- (h) On 25 October 2022, Mr Bouttell emailed Mr Schaefer stating:

*As discussed yesterday, having reviewed your interpretation of the manual on Friday and undertaken my own extensive review of the Ops Manual, I'm satisfied that Mr Noys does meet the requirements of the Ops Manual for a converting pilot.*¹⁸⁸

- (i) A 24 August 2023 diary note by Mr Schaefer as follows:

IMPORTANT NOTE: Matt advised staff Item 3 for coronial inquest action. See my email while A/HFO 21/10/2022

*MS Teams: Chairman (MM) (stress) Coronial Inquest MB/JB/MM – CAN'T disclose to anybody of what/fatal issues*¹⁸⁹

- (j) A 25 January 2024 diary note by Mr Schaefer as follows:

MS Teams: Maxine. I asked whether I was to be called to the MF coronial inquest. MM said no only 3 depositions – (Jill, Mick and Darren).

*Asked if my review and recommendations was disclosed in discovery – answer was no, not asked for.*¹⁹⁰

¹⁸⁶ Exhibit 21 – AM2.43

¹⁸⁷ Exhibit 21 – AM2.43

¹⁸⁸ Exhibit 21 – AM2.32

¹⁸⁹ Exhibit 21 – AM2.44

¹⁹⁰ Exhibit 21 – AM2.44

(k) A 30 January 2024 diary note by Mr Schaefer as follows:

MS Teams: (11-11.30) long conversation with Cody re coronial (Farrell) my recommendations and current discovery. Cody answered discussion was above me (him) by Accountable Manager¹⁹¹ (Matt) as well as Jill on her return.¹⁹²

Further mention and directions hearing – 30 April 2024

212. After Exhibit 21 was compiled and distributed to the interested parties, a further mention hearing was conducted on 30 April 2024 (**further mention**). At the conclusion of this hearing, I determined not to hear further evidence from Ms Bailey or call any further witnesses. A timetable for submissions was set.
213. Counsel for Mr Bouttell submits that “it appears self-evident” from this approach that the “integrity question” was not to be pursued.¹⁹³ It is also said that the submissions made by Counsel Assisting concerning the knowledge and conduct of Mr Bouttell (and RAAus more generally) amounts to a continuation of the issue and a “fundamental breach of procedural fairness to Mr Bouttell”. I reject this submission. Repeatedly, during the further mention, I made it abundantly clear that I held deep concerns about the conduct of RAAus and its key personnel, based on the face of the documents in Exhibit 21. On three separate occasions I offered Counsel for RAAus to seek to call a witness (or witnesses) who may be able to offer a different understanding of the critical documents. The hearing was stood down to allow Counsel for RAAus to seek instructions and Counsel ultimately informed the Court, “There’ll be no further witnesses called by RAAus to speak to the production of the additional materials”.¹⁹⁴
214. Counsel for Ms Bailey makes a similar complaint about denial of procedural fairness in that Ms Bailey was not given an opportunity to answer allegations that may arise from the critical documents in Exhibit 21.¹⁹⁵ I reject this submission for the same reasons.
215. With respect to absence of further *viva voce* evidence, Counsel for Mr Monck points out that the documents have not been the subject of further evidence and the Court “does not for instance have full information concerning the circumstances in which Mr Schaefer’s

¹⁹¹ “Accountable Manager” is title given to first of four key personnel in the RAAus Exposition Manual. Mr Bouttell is the Accountable Manager: Exhibit 19 – statement of Dr Stanton dated 8 July 2024 at [7.2]

¹⁹² Exhibit 21 – AM2.45

¹⁹³ Submissions on behalf of Matthew Bouttell dated 23 September 2024 at [12]

¹⁹⁴ T29.28-32.11; T35.29-36.04; T37.01-.25

¹⁹⁵ Submissions on behalf of Jillian Bailey dated 23 September 2024 at [41-44]

diary notes were taken, nor the completeness or accuracy of those notes.”¹⁹⁶ This is to apparently suggest that I can place little reliance on the documents when considering the knowledge and actions of key RAAus personnel. I reject any such notion. In my view the documents, including Mr Schaefer’s diary notes, are sufficiently clear on their face to reveal the true nature and timing of the turmoil within RAAus concerning the validity of Mr Farrell’s RPC and cross-country endorsement. Moreover, the submission does not sit comfortably with the fact that Counsel for RAAus declined the opportunity, on instructions, to call any witnesses whose evidence might cast a different light on the documents.

216. No sensible complaint can be made that Ms Bailey, Mr Bouttell and Mr Monck did not have the benefit of separate legal representation at the further mention. At that time they fell under the umbrella of the legal representation for RAAus and the gravity of the matters arising from Exhibit 21 was in plain view.

Matters evident from Exhibit 21

217. The documents discovered in the further investigation clearly reveal that key aspects of Ms Bailey’s evidence were false. In fact, she had held serious concerns about the validity of the issue of Mr Farrell’s RPC as a converting pilot and the validity of his cross-country endorsement – to the extent that the issue was the reason she was placed on a period of Special Leave. The issue of the RPC had, in fact, been in dispute. Ms Bailey did indeed harbour concerns regarding the extent of training and experience underlying Mr Farrell’s cross-country endorsement. Furthermore, Ms Bailey did indeed recommend auditing Mr Wood as a consequence of Mr Farrell’s crash.
218. The basis for Captain McKeown’s understanding of Mr Farrell’s character and approach to risk was completely inverted.
219. The Head of Training and Development, Mr Schaefer, had analysed Section 2.13 of the *Flight Operations Manual* and concluded that Mr Farrell’s RPC and endorsements had not been validly issued. Moreover, a decision was made not to reveal his written opinion.
220. Counsel for RAAus submits that, “... it was clearly RAAus’ belief, practice, interpretation and authority that non-powered paragliding experience could constitute *recognised flight time* pursuant to Section 2.13.”¹⁹⁷ I have already touched on this submission in the context of what aeronautical experience may constitute recognised flight time but, to be clear, I reject the entirety of this submission. It flies in the face of

¹⁹⁶ Submissions on behalf of Geoffrey Monck dated 16 September 2024 at [28]

¹⁹⁷ Submissions on behalf of RAAus dated 23 September 2024 at [42]

the communications and events within RAAus, most notably during October 2022. It is astonishing that this submission is maintained in light of the evidence of these events, not the least of which is the fact that Ms Bailey was stood down from her role and Mr Schaefer had provided contrary written advice.

221. The interpretation of Section 2.13 of the *Flight Operation Manual* that was argued for by RAAus throughout the inquest, principally through the evidence of Ms Bailey, has the appearance of an *ex post facto* rationalisation of the decision to grant Mr Farrell’s RPC and endorsements. The proffered interpretation relied on tortuous arguments made after the event, which did not include the input of Mr Schaefer or any consultation with CASA.
222. Counsel for Mr Monck submits that the relevance to the inquest of the SAFA documents and the “post-accident material” in Exhibit 21 is “not so obvious and apparent that a fair minded observer would consider such materials to be plainly disclosable to the inquest...”¹⁹⁸ I reject this submission. Items 2, 3 and 4 of the scope of inquest render these documents obviously relevant, and a fair minded observer would think so too. It must also be remembered that RAAus had the benefit of legal advice from a very early stage.
223. I am compelled to conclude that RAAus engaged in a deliberate strategy to hide these key issues from the Court. Ms Bailey gave evidence which was false in material respects, which also served to hide these key issues. The diary notes made by Mr Schaefer serve to clearly emphasise this conclusion.
224. The conduct of RAAus is wholly at odds with an organisation that has traditionally been actively involved in investigations of this type, assisting the Court and Victoria Police. It is also at odds with Mr Bouttell’s statement to Sgt McFarlane in his email of 24 November 2022 explaining that RAAus would be removing itself from the investigation because of a potential conflict of interest:

*... RAAus will continue to cooperate with the Police and the Coroner by provision of information wherever possible.*¹⁹⁹

REFERRAL

225. In respect of the conduct of RAAus during this investigation and inquest, I refer the matter to the Victorian Director of Public Prosecutions.

¹⁹⁸ Submissions on behalf of Geoffrey Monck dated 16 September 2024 at [67]

¹⁹⁹ Exhibit 21 – AM2.37

ROLE OF THE ATSB

226. The conduct of RAAus in the inquest provides a striking demonstration of the reasons why a regulator should not also be an investigator of its own matters, or the principal entity providing investigative assistance to a coronial investigation.
227. On 21 November 2022, in an email to Sgt McFarlane of the Police Coronial Support Unit, the ATSB Director Transport Safety, Stuart Maclead stated:

The remit of the ATSB, directed by the Australian Government, is that we will investigate all fatal accidents involving 'VH' registered powered aircraft,²⁰⁰ including sport, amateur built and experimental category aircraft. Regarding investigation of accidents involving recreational aircraft, the government further directed that while the current self-administration arrangements involving recreational exist (RAAus), the ATSB should continue to investigate accidents involving this sector of the industry on an exception basis as its resources permit. In practice, this means we provide ad hoc assistance to such investigations if we have spare capacity, usually via specialist metallurgical component examination.²⁰¹

228. On 13 June 2023, The Minister for Infrastructure, Transport, Regional Development and Local Government re-issued a Statement of Expectations for the ATSB from 1 July 2023 to 30 June 2025. Under the heading “Strategic Direction” the Minister stated (*inter alia*):

I expect the ATSB, in conducting its functions as Australia’s national transport safety investigator, will continue to:

- (b) give priority to transport safety investigations that have the highest potential to deliver the greatest public benefit through improvements to transport safety.²⁰²*

229. This appears to be the aspect of the Minister’s *Statement of Expectations* that underlies the ATSB’s decision to investigate accidents involving Part 149 aircraft only “on an exception basis”, even if the accident involves a fatality. Whilst, in the past, this may have led to a gap in investigative capacity in a particular case, the declaration by RAAus that it will not investigate fatal accidents in the future gives rise to a real likelihood of a persistent systemic gap in investigative capacity.

²⁰⁰ That is, aircraft under Part 47 of the *Civil Aviation Safety Regulations 1998*.

²⁰¹ Exhibit 21 – AM2.36

²⁰² Exhibit 20 – AM1.216

230. If the ATSB continues its current approach, it seems that it will often fall to members of Victoria Police to conduct crash scene examination and investigations without immediate technical assistance, at least in cases involving RAAus registered aircraft. I do not consider it is reasonable or feasible to expect Victoria Police to maintain a corps of investigators sufficiently trained to meet the special challenges of aircraft crash investigations. The obstacle for doing so would be even greater for smaller state police forces.
231. Previous coronial inquests have considered the capacity of ASAOs to investigate fatal aircraft accidents in the context of the ATSB having the primary investigative responsibility in civil aviation accidents. This has included consideration of adequate funding for either the ASAO's investigative activities or for the ATSB to increase its capacity.²⁰³
232. The inquest into the death of Ian Cook concerned a crash of a weight shift microlight trike (powered hang glider) where Mr Cook and his passenger, Quoc Huong Vu, were killed. Coroner Jamieson noted:
- ...a recurring theme was Coroners' concerns with how investigations into light and microlight aircraft collisions are undertaken, and particularly the issues inherent in ATSB delegating such investigations to self-administering organisations that do not always have the expertise and funding and equipment to conduct proper investigations.*²⁰⁴
233. In correspondence to the Coroner's Prevention Unit during the investigation, the ATSB stated:
- ...the ATSB gives the greatest priority to investigating occurrences that will deliver the best safety outcomes to the travelling public. Where there is a self-administering organisation such as a recreational aviation body that is oversighting the operation, the ATSB does not generally investigate.*²⁰⁵
234. Coroner Jamieson's fourth recommendation in this matter was that the Secretary of the Department of Infrastructure, Regional Development and Cities consider implementing measures to ensure the ATSB directly investigates all civil aviation incidents resulting in

²⁰³ *Inquest into the death of Jordan Pang* (COR 2013 5898) [2107] VicCorC 12; *Inquest into the death of Ian Cook* (COR 2016 1157) VicCorC 23392; *Inquest in the death of Samuel Beresford* (2011/943) [2013] QldCorC 22

²⁰⁴ *Inquest into the death of Ian Cook* (COR 2016 1157) VicCorC 23392 at [100]

²⁰⁵ *Ibid* at Attachment A – Letter from ATSB dated 10 May 2018

fatality. The Secretary of the Department responded on 25 January 2019 rejecting the recommendation and stating:

Decisions regarding whether the ATSB investigates a particular accident are a matter for the ATSB, given its status as an independent entity under the Transport Safety Investigation Act 2003. The current approach of the ATSB whereby it gives priority to investigations where additional safety value is likely to be obtained is aligned with the Australian Government's expectations of the ATSB.

235. It is no longer tenable for the ATSB to simply maintain this approach and leave the investigation of the bulk of fatal recreational aircraft crashes to the relevant ASAO. Firstly, this case has demonstrated in vivid detail, the potential consequences of a delegated regulator also acting as an investigator, particularly when the issues at stake include matters such as licensing and training. Secondly, RAAus as the largest administrator of pilots in Australia and the administrator of some 3,000 aircraft, has declared that it will no longer investigate fatal accidents involving its aircraft. It is not acceptable that this situation be permitted to continue. It is also not acceptable to leave matters with state police forces in the expectation that they will somehow find the specialist investigative resources necessary for aircraft crash investigations.
236. The Minister's *Statement of Expectations* also requires the ATSB to "continually review investigation policies and practices to ensure it remains a global best practice safety investigation agency, and advances the national and international safety agenda."²⁰⁶ The conduct of RAAus in this case, and its withdrawal from the investigation of fatal accidents should compel a change in the ATSB's policy. Without it, a large sector of Australian civil aviation will not have any expert investigative capability for serious and fatal accidents. A non-expert, *ad hoc* approach to accident investigation in this sector is hardly the means to drive systemic safety improvements.

COMMENTS

I make the following comments under section 67(3) of the Act –

237. Mathew Farrell had a confident personality and was not shy when it came to pursuing his goals according to his own timeframes. So much is evident in his email correspondence with his SAFA Flight Instructor where he forcefully challenged a decision in 2021 not to grant his PG5 licence.²⁰⁷ The sad reality is, however, that he was over-confident.

²⁰⁶ Exhibit 20 – AM1.215 at paragraph 3(e)

²⁰⁷ Exhibit 21 – AM2.69

238. In pursuing his RPC, Mr Farrell was entering into a realm of aviation vastly different to that of the paraglider pilot. It required a new suite of knowledge and technical skills such that Mr Farrell's paragliding experience offered only a very limited advantage. It was certainly no place for an over-confident novice pilot.
239. Mr Wood should have recognised this and sought to imbue in his student a healthy degree of humility – to be aware of his limitations and his very limited experience flying a powered aircraft. Sound human factors training could only have assisted. Instead, Mr Wood offered hubris on Mr Farrell's behalf when he claimed, "I would have total confidence in his ability to do faultless navs anywhere in Australia." How could this be said of anyone, no matter how gifted, when they had less than 15 hours total time in a powered aircraft? If this was indicative of Mr Wood's signals to Mr Farrell, as I expect it was, it can only have added to Mr Farrell's over-confidence.
240. The flight instructor's influence is critical to combating over-confidence in a student. Sadly, in this case it seems the relationship between instructor and student did not produce the caution and humility required in a novice pilot (or any pilot).
241. The minimum flight time requirements for an RPC and endorsements also act to counter over-confidence. Of themselves, they send a message not to get ahead of yourself. Strict adherence is not only necessary under the *Flight Operations Manual*, but it sends the appropriate message to the student.
242. The minimum requirements also allow for the better consolidation of newly acquired skills and their application in varied situations. Mr Farrell's compressed training offered scant opportunity for this.

RECOMMENDATIONS

I make the following recommendations under section 72(2) of the Act –

1. That CASA review the conduct of RAAus during this investigation and inquest, including the conduct of its officers and key personnel.
2. That CASA facilitates amendments to Section 2.13 of the RAAus *Flight Operations Manual*:
 - (a) to clarify the aeronautical experience that may constitute “recognised flight time” according to each aircraft type or group for which the experience is required;
 - (b) to clarify the aeronautical experience required for endorsements;
 - (c) where flight testing is required for a particular endorsement, to clarify whether such flight testing may be conducted concurrently with flight testing required for pilot certification or other endorsements.
3. That CASA facilitates amendments to the RAAus *Flight Operations Manual* to include a definition of “aeroplane” consistent with the definition found in the *Civil Aviation Safety Regulations 1998*, and a definition of “aircraft” consistent with the definition found in the *Civil Aviation Act 1988*.
4. That RAAus develops standardised training records for use by RAAus flight instructors which:
 - (a) permit detailed auditing of the training delivered by RAAus flight instructors to student pilots or pilots seeking endorsements;
 - (b) are in a form approved by CASA; and
 - (c) must be used by all RAAus flight instructors in all instances.
5. In light of the declaration by RAAus that it will no longer investigate fatal accidents involving RAAus registered aircraft, that the ATSB should investigate all fatal accidents involving such aircraft.

COSTS

243. Ms Waller makes a claim for costs. In summary, Counsel for Ms Waller submits that the conduct of RAAus is such as to justify an award of costs because it has prolonged the inquest and led to the need for the further mention on 30 April 2024.²⁰⁸
244. Counsel for RAAus rejects the contention that there was unreasonable conduct which would justify an award of costs and, in any event, the inquest was not prolonged.²⁰⁹
245. In the coronial jurisdiction, the default position is that every person appearing before the Court who is legally represented is to bear their own costs.²¹⁰ However, section 74(2) of the Act provides:
- (2) *If, in a particular case, a coroner is of the opinion that a person (the **first person**) has acted unreasonably during an investigation or inquest, the coroner may order the first person to pay all, or a specified part, of the expenses (other than economic loss) reasonably incurred by another person (the **second person**) –*
- (a) *as a result of the unreasonable actions of the first person; and*
- (b) *that relate to the participation of the second person in the investigation or inquest.*
246. I am satisfied that RAAus has acted unreasonably in the lead up to the inquest and during the inquest itself. There is no doubt that it should have disclosed the critical documents in Exhibits 18 and 21 and this led directly to the need for the further mention on 30 April 2024. Moreover, the insistence by RAAus that its interpretation of the *Flight Operations Manual* was in accordance with a practice and belief that existed when Mr Farrell’s RPC was issued was clearly unsustainable in light of the newly discovered documents – yet it persisted.
247. I am satisfied that Ms Bailey’s examination was substantially longer than it otherwise would have been had RAAus acted with candour from the outset. I am also satisfied that Captain McKeown’s examination was made longer and that the time spent by Counsel in preparation was increased as a result.

²⁰⁸ Submissions on behalf of Ms Waller dated 23 September 2023 at [32-35]

²⁰⁹ Submissions on behalf of RAAus dated 8 October 2024 at [14-18]

²¹⁰ *Coroners Act 2008* – s.74(1)

248. In all the circumstances an award of costs against RAAus in favour of Ms Waller is appropriate and should be attributable to one third of her legal expenses reasonably incurred, and I so order. I will hear Counsel as to quantum.

OTHER DIRECTIONS

Pursuant to section 73(1A) of the Act, I direct that this finding be published on the Coroners Court website in accordance with the rules.

I direct that a copy of this finding be provided to the following:

Australian Transport Safety Bureau
Civil Aviation Safety Authority
Recreational Aviation Australia Inc
Sports Aviation Federation of Australia
Karen Waller
Angela Driscoll
Martin Farrell
Senior Constable Lachlan Bayliss – Coroner’s Investigator
Director of Public Prosecutions (Victoria)

Signature:



14 February 2025

NOTE: Under section 83 of the *Coroners Act 2008* ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an inquest. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.

ABBREVIATIONS & ACRONYMS

AGL	Above Ground Level
AMSL	Above Mean Sea Level
ASAO	Approved Self-Administering Aviation Organisation
ATSB	Australian Transport Safety Bureau
CAO	Civil Aviation Order
CASA	Civil Aviation Safety Authority
CFI	Chief Flight Instructor
CTAF	Common Traffic Advisory Frequency
FOM	Flight Operations Manual
GFA	Gliding Federation of Australia
GPS	Global Positioning System
IFR	Instrument Flight Rules
IMC	Instrument Meteorological Conditions
LAME	Licensed Aircraft Maintenance Engineer
MTOW	Maximum Take-off Weight
PIC	Pilot in Command
PG5	Paragliding licence – Level 5
PPG	Powered Paraglider
PPL	Private Pilot's Licence (Part 91 <i>Civil Aviation Safety Regulations</i>)
RAAO	Recreational Aviation Administration Organisation
RAAus	Recreational Aviation Australia
RPC	Recreational Pilot's Certificate (Part 149 <i>Civil Aviation Safety Regulations</i>)
SAFA	Sports Aviation Federation of Australia
VFR	Visual Flight Rules
VMC	Visual Meteorological Conditions