

Senate Standing Committee on Rural and Regional Affairs and Transport
ANSWERS TO QUESTIONS ON NOTICE
Additional Estimates February 2008
Infrastructure, Transport, Regional Development and Local Government

Question: CASA 01

Division/Agency: Civil Aviation Safety Authority

Topic: Letter from Federal Attorney-General to Queensland Attorney-General
Lockhart River Accident – Prosecutions

Hansard Pages: 59-60 (19/02/08)

Senator O'Brien asked:

Senator O'BRIEN—I am told that CASA provided advice for a letter signed on 9 May last year by the former Attorney-General, through his Queensland counterpart, in relation to the Transair 15 fatality accident that: '[The Civil Aviation Act 1988 which CASA operates provides a regulatory framework for the maintenance and improvement of safety in civil aviation and relates to the prevention of aviation accidents and incidents, not their prosecution.](#)' Does that accord with your understanding of the sort of advice that you would provide?

Mr Carmody—I am afraid I am not familiar with that letter or that advice.

Senator O'BRIEN—Indeed, it would be wrong, would it not, because you are responsible for the initiation of prosecutions under the Act in some cases.

Senator O'BRIEN—And CASA, if it discovered—for example, with an organisation like Transair—transgressions of the law, it would be responsible for referring those matters to the DPP.

Mr Carmody—Senator, if we are going to a bit of detail on the legalities of the Act, I would prefer to have Mr Aleck, our General Counsel, come to the table because he is better equipped to answer these questions than I am.

Senator O'BRIEN—It is up to you.

Dr Aleck—I do not want to speak in detail about that letter at this point; I want to take it on notice. I do recall some questions were raised by the Queensland Attorney-General's office, if I am not mistaken, about the basis on which CASA might initiate action, and as I recall it was against Mr Wright himself. I think the view that we put at the time, and I would want to confirm this, is that there was no basis under our legislation, and I would maintain that that is so, on which we could recommend prosecutorial action against Mr Wright at that point.

Senator O'BRIEN—So, what you are suggesting is that you would not have given advice to suggest that in a general sense under the Act which CASA operates your regulatory framework was to do with prevention of accidents and incidents, not prosecution?

Dr Aleck—No, I would not agree with that, and I would be surprised if what we said was precisely that in the letter. Virtually every provision of the civil aviation regulations and most of the requirements specified in the Act contain offences and penalties which are designed to be amenable for prosecution should the occasion arise. CASA's responsibility is to investigate these matters and, when the evidence supports it, to make recommendations to the Director of Public Prosecutions to commence prosecution.

Again, I am a little uncomfortable speaking without that letter in front of me, but I remember the discussion at that time and it had to do with the propriety of pursuing

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action against Mr Wright, which we said (a) was really a matter for State authorities and (b) in the circumstances, and it is so, there was nothing in our legislation that would permit us to initiate prosecutorial action successfully or recommend such action against Mr Wright. I have seen nothing since then that would suggest that that is so.

Senator O'BRIEN—So, I guess if the passage that I refer to exists in a letter from the Commonwealth Attorney-General to his State counterpart, it would not be on the basis of advice from CASA?

Dr Aleck—If the Commonwealth Attorney-General wrote a letter to the Queensland Attorney-General stating that CASA's legislation is not oriented towards or permissive of prosecutorial action, then that would be incorrect. I would be very, very surprised if that statement would have been made on the basis of any advice coming from CASA. But, as I said before, I will take that on notice and review that letter.

Senator O'BRIEN—Sure. The passage that I am referring to states the following: that '[the Civil Aviation Act of 1988 under which CASA operates provides a regulatory framework for the maintenance and improvement of safety in civil aviation and relates primarily to the prevention of aviation accidents and incidents, not their prosecution](#)'.

Answer:

One of the primary aims of compliance with aviation safety regulation is the avoidance of aviation accidents and incidents. Where an accident or incident can be attributed to a failure to comply with aviation safety regulation, offences and penalties are set out in the civil aviation safety legislation to support prosecution wherever it is appropriate.