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Jones and Civil Aviation Safety Authority [2014] AATA 820 (31 October 2014)

Last Updated: 3 November 2014

[\[2014\] AATA 820](#)

Division	GENERAL ADMINISTRATIVE DIVISION
File Number	2013/4115
Re	Milton Jones APPLICANT
And	Civil Aviation Safety Authority RESPONDENT

DECISION

Tribunal	Senior Member Bernard J McCabe
Date	31 October 2014
Place	Brisbane

The decision under review is set aside. The Tribunal decides in substitution that the applicant's flight crew licences will be suspended until he obtains certification in relation to the matters referred to in paragraph 107 of these reasons. The suspension will not take effect until 28 days after the date of this decision.

.....
Senior Member Bernard J McCabe

CATCHWORDS

CIVIL AVIATION – Cancellation of flight crew licences – Incidents occurred during filming of television series – Duty with respect to the safe navigation and operation of an aircraft – Fit and proper person – Discretion to vary, suspend or cancel – Cancellation not appropriate – Decision under review set aside and substituted – Flight crew licences suspended until applicant obtains further certification to acquire necessary knowledge and decision-making skills for those licences.

LEGISLATION

[Administrative Appeals Tribunal Act 1975](#) (Cth) [ss 41\(2\)](#); [43\(5C\)](#)

[Civil Aviation Regulations 1988](#) (Cth) r 2; 5.88; 5.121; 42U; 138; 149; 151; 157; 206; 225; 230; 250; 269; 282

[Civil Aviation Act 1988](#) (Cth) [ss 3A](#); [9A](#); [20A](#); [20AB](#); [27\(2\)](#)

Civil Aviation Order 20.11 - Emergency & life saving equipment & passenger control in emergencies

Civil Aviation Order 20.16.3 - Air service operations - Carriage of persons

Civil Aviation Order 29.6 - Air service operations - Helicopter external sling load operations

Civil Aviation Order 29.10 - Air service operations - Aircraft engaged in aerial stock mustering operations - Low flying permission

Civil Aviation Order 95.7 - Exemption from the provisions of the [Civil Aviation Regulations 1988](#) - Helicopters

Civil Aviation Order 95.7.2 - Exemption of helicopters engaged in rappelling sling load or winching operations from compliance with certain flight manual limitations

CASES

Quadrio and Civil Aviation Safety Authority [\[2011\] AATA 709](#)

Rich v Australian Securities and Investments Commission [2004] HCA 42; (2004) 220 CLR 129

REASONS FOR DECISION

Senior Member Bernard J McCabe

31 October 2014

1. Milton Jones holds flight crew licences that include a private helicopter pilot licence.

At least he did, until the Civil Aviation Safety Authority (← CASA →) cancelled them after reviewing footage shot in the course of a reality television series based on the life of

Mr Jones, his family and employees on Coolibah Station in the Northern Territory.

The show – called *Keeping up with the Joneses* – featured a number of activities and incidents that ← CASA → says are in breach of the rules and regulations applicable to helicopter pilots. ← CASA → cancelled Mr Jones's licences on the grounds referred to in [regulation 269\(1\)\(c\)](#) and (d) of the [Civil Aviation Regulations 1988](#) (Cth) (CAR).

Mr Jones has asked the Tribunal to review the cancellation decision.

2. At the hearing, ← CASA → referred to a series of incidents or matters depicted in the television program that provided a basis for regulatory action against Mr Jones.

Mr Jones, for his part, conceded he made a number of errors. He disputes the seriousness of some of the breaches alleged against him, and there is disagreement over whether some of the matters alleged against him were actually breaches of the rules.

3. After hearing all the evidence and considering the extensive submissions, it is clear regulatory action is required. As it happens, I would reach the same view about what action was required regardless of whether I accepted the applicant's or respondent's view of the extent of the breach of the rules. In summary, I am satisfied the evidence establishes Mr Jones is an intelligent and skilful pilot, but the pattern of conduct recorded in *Keeping up with the Joneses* demonstrates:

- his knowledge of the relevant rules and procedures is deficient; and
- his unusual experience doing dangerous work in a remote location has seen him develop a skewed perception of, and tolerance for, risk.

4. I am satisfied Mr Jones is capable of correcting his shortcomings. He needs to undertake remedial training in relation to the rules and his role and responsibilities as a pilot. I will have more to say about that in due course. I am satisfied it is unnecessary to *cancel* his licences pursuant to CAR 269(1). I explain my reasons below.

THE POWER TO VARY, SUSPEND OR CANCEL

5. It is appropriate that I begin my discussion with reference to the question I am ultimately required to answer: should I vary, suspend or cancel Mr Jones's flight crew licences?

The power is found in CAR 269(1). The discretion to take action in respect of an *authorisation* – which includes a pilot's licence – is predicated on my being satisfied that one of the grounds in CAR 269(1)(a)-(e) is made out. As it happens, the grounds referred to in sub-regs (c) and (d) are relevant in

this case. Those provisions deal with a situation where:

(c) ... *the holder of the authorisation has failed in his or her duty with respect to any matter affecting the safe navigation or operation of an aircraft;*

(d) ... *the holder of the authorisation is not a fit and proper person to have the responsibilities and exercise and perform the functions and duties of a holder of such an authorisation[.]*

6.  CASA  has referred to a number of matters or incidents that it says amount to a breach of the law. It argues those contraventions represent failures on the part of Mr Jones in the duty referred to in sub-reg (c). Those same contraventions – individually and collectively – are also said to demonstrate Mr Jones is not a fit and proper person to hold flight crew licences pursuant to sub-reg (d).
7. I will deal with the individual incidents and matters that  CASA  says result in contraventions of the law. Conveniently, all of the incidents in question are captured on video. I will then turn to the question of whether those events suggest Mr Jones’s licences should be varied, suspended or cancelled pursuant to CAR 269(1).

THE INCIDENTS

Was Mr Jones engaged in aerial photography in breach of the regulations?

8.  CASA  alleges Mr Jones was acting in breach of the regulations when he allowed the helicopters he was flying to be used for the purpose of aerial photography. All the photography in question occurred during the shooting of *Keeping up with the Joneses*. Mr Jones was the pilot of helicopters used to shoot footage using fixed cameras. (Other helicopters carried the cameramen who shot much of the footage.) He was regularly featured in footage shot by a fixed camera in the cockpit of the aircraft he was flying.
9. The arrangements that led to the production of *Keeping up with the Joneses* were in evidence during the hearing, although that evidence was subject to confidentiality orders in light of the commercial sensitivity of the documents. I need to outline the relevant terms of the agreement for the purposes of my reasons.
10. The producer of the series was a company called WTFN Entertainment Pty Ltd (‘WTFN’). WTFN is not associated with Mr Jones. The company entered into an arrangement (the “Master Agreement”, which is exhibit 5) dated 5 March 2010 with Jones Cattle NT Pty Ltd as trustee for the Jones Family Trust (described as “the Jones Family”) to produce a ‘reality’ television series with the working title “Sky Cowboys”. WTFN owned the intellectual property and proposed selling the series to broadcasters and video distributors. (Two series were produced.) It was agreed (at clause 3(c)) that WTFN would share “[n]et profits from the exploitation of the ‘Back-end Rights’ from the Project” equally with the Jones Family. The agreement provided for the incorporation of a special purpose company controlled by WTFN and the Jones Family that would hold the “back-end rights”: at [5] and [21].
11. The Master Agreement provided for appearance releases to be executed between WTFN and Mr Jones, members of his family and employees and associates who would appear in the series as they went about their daily lives on Coolibah Station: exhibit 5 at [10]. Clause 16 provided the Jones Family was entitled to “Appearance fees”. The Jones Family entity was also entitled to claim “Location fees” in return for providing “Logistical Support” (which included providing accommodation for the production crew and – importantly – “access to helicopters for transport and filming...”): exhibit 5 at [24].
12. WTFN wrote to Mr Jones and his wife, Cristina, on 15 April 2010 pursuant to clause 10 of the Master Agreement: exhibit 7. That letter set out the

terms of the arrangement between WTFN and members of the Jones family who were to appear in the series.

(Mrs Jones signed the agreement on behalf of Milton Jnr and Beau, the couple's children, who were both minors.) The agreement described the services that would be provided by the family members. Clause 3 of the agreement provided for the payment of a fee for their services. Clause 5.1 confirmed the individual participants were "independent contractors" and added (at [5.2]) they were each:

- (a) *genuinely conducting an independent business providing the Services;*
- (b) *providing the Services to WTFN as independent contractors; and*
- (c) *competent and have the necessary skills to carry out the Services.*

13. WTFN wrote to the marketing manager of Coolibah Air, which is described as a division of North Australian Helicopters Pty Ltd (NAH), on 15 December 2010. NAH is controlled by Mr Jones, who is the sole shareholder and director. The company operates one of the largest helicopter fleets in Australia. It specialises in aerial cattle mustering, although it also undertakes some other activities including joy flights and tours under the Coolibah Air trading name. (Promotional material from Coolibah Air was tendered at the hearing: exhibit 8.) The helicopters used in the series (and the pilot responsible for much of the aerial photography) were supplied by NAH. The letter of 15 December 2010 confirmed NAH was entitled to use the intellectual property associated with *Keeping up with the Joneses* for its own commercial purposes. That is consistent with the oral evidence given during the proceedings to the effect that NAH and interests associated with Mr Jones expected a commercial benefit from their participation in the series.
14.  CASA 's argument proceeds as follows. [Section 27\(2\)](#) of the [Civil Aviation Act 1988](#) (Cth) ("the Act") says an aircraft must not be operated in Australia except under the authority of an Air Operator's Certificate (AOC) issued by  CASA . [Section 27\(9\)](#) contemplates the AOC expressly authorising a number of prescribed activities. The list of prescribed activities – which are described as *commercial purposes* – is set out in CAR 206(1). CAR 206(1)(a) refers to a range of *aerial work purposes* that are also *commercial purposes* within the meaning of CAR 206(1). CAR 206(1)(a)(iv) identifies *aerial photography* as an example of *aerial work purposes* that must be expressly authorised in the AOC before they are permitted.  CASA  says these activities are also restricted to a pilot who holds a commercial pilot's licence (as opposed to a private pilot's licence): see CAR 5.88 and 5.121. It is an offence for a pilot to engage in activities for which he or she does not hold a proper licence: CAR 282(1) and [s 20AB](#) of the Act.
15. Mr Jones does not hold a commercial pilot's licence, and he did not hold an AOC that authorised *aerial photography*.  CASA  says Mr Jones was clearly engaged in *aerial photography* throughout the series whenever he carried a camera or a cameraman.
16. Mr Jones, for his part, says he was not paid for undertaking the flights in which he was filmed, or in which he transported cameramen. While he does not deny he received commercial benefits in connection with his appearance in the series, he insists he was not paid specifically for flying or undertaking aerial photography. (I note the Master Agreement with WTFN expressly provides for payment to another pilot employed by NAH who was the pilot in command of the helicopter that carried the cameramen – although I also note that in at least one scene, there appeared to be a cameraman seated in the back of the helicopter piloted by Mr Jones as the aircraft was used to bait a bull shark.) Mr Jones's counsel, Mr Ribbands, says one must characterise the purpose of each flight when deciding whether it was for the purposes of aerial photography. On this approach, the fact filming may have occurred on or from the aircraft does not matter unless that was *the* purpose (or at least the defining or principal purpose) of the flight. The whole point of *Keeping up with the Joneses* was to describe the reality of life on the cattle station. That meant Mr Jones was to be filmed going about his business as he would in the absence of cameras. The presence of cameras was therefore incidental to the purposes of the flights he was undertaking. As Mr Ribbands explained in his written submissions (at [31]):

The principle object of Jones' flights was plainly the carrying out of his own private activities. The fact that he was filmed, or that external filming from

fixed cameras took place whilst doing them makes no difference to that characterisation.

17. That is not persuasive. The evidence given throughout the hearing confirmed the wisdom of what is known in science as the “Observer Effect”. That cautionary tale suggests the very act of observing something tends to affect the thing being observed. The Observer Effect is particularly pronounced when the thing being observed is human interaction. Almost inevitably, people behave differently when they are aware they are being watched. That is true of the behaviour of the Jones family. Mr Jones agreed in his oral evidence that he undertook a number of activities in the helicopter (*e.g.*, staging the raid on a crocodile nest for eggs that had been planted there) solely for the purposes of shooting footage for use in the series. While those activities might have been realistic or lifelike (Mr Jones often used a helicopter to collect eggs from crocodile nests), the *particular* flights would not have taken place but for the purpose of aerial photography. Even a number of the flights that might have occurred in the absence of cameras might be characterised as *aerial photography* once the cameras were deployed. I do not accept the presence of the cameras was incidental or unobtrusive. The individuals appearing in the series – Mr Jones in particular – became *Participants* (to use the language of the Master Agreement) in *Keeping up with the Joneses*, as did employees, managers and residents of Coolibah Station. When those individuals played their roles and were filmed doing so, they were acting in both capacities.
18. Mr Jones argued that any *aerial photography* he is found to have undertaken occurred as part of *private operations* within the meaning of CAR 2(7)(d)(iv) (as opposed to *commercial purposes* referred to in CAR 206(1)(a)). To that end, he pointed out he did not receive any remuneration for the flying activities he undertook as pilot in command. But that is not enough to bring Mr Jones’s conduct within CAR 2(7)(d)(iv). The provision refers to aerial photography “where no remuneration is received by the pilot or the owner of the aircraft or by any person or organisation on whose behalf the photography is conducted” [Emphasis added]. Mr Jones was entitled to receive appearance fees for his work in the series under the terms of the participation agreement with WTFN contained in its letter of 15 April 2010 (exhibit 7). That work included being filmed as he operated a helicopter: indeed, as the working title of the series (“Sky Cowboys”) implied, that was the whole point of the production. Even if Mr Jones was not paid money for the services he provided, the family trust was paid location fees in respect of logistic services – including the cost of providing helicopters in connection with filming, some of which were piloted by Mr Jones – pursuant to clause 24 of the Master Agreement (exhibit 5). It is also clear WTFN received remuneration when it sold the series to the television network that broadcast it. Mr Jones carried out those flights on behalf of WTFN, even if he was also conducting those flights for his own purposes.
19. The expression “no remuneration is received” is properly given a wide interpretation. It is used in the course of a provision that distinguishes *private operations* from *commercial operations* for obvious reasons. The distinction should not turn on niceties like precisely who received exactly what for doing something in particular. If the operations are in substance *commercial*, they should be held to the higher standard. The aerial photography in this case occurred pursuant to a commercial arrangement. The work is done for *commercial purposes* within the meaning of CAR 206(1)(a)(iv).
20. I am satisfied Mr Jones was engaged in *aerial photography* and that as a consequence he was obliged to hold a commercial pilot’s licence. He did not. It follows I am satisfied the first matter alleged against Mr Jones is made out. I also note Mr Jones did not appear to hold an AOC that authorised aerial photography. While ← CASA → made the allegation, it was not squarely addressed in the applicant’s closing submissions, although in the submissions in reply Mr Ribbands observed (at [6]):

Insofar as the presence of an AOC is concerned it is noted that AOC’s were held by both North Australia Helicopters and Albatross Helicopters which would have permitted the activities engaged in.

21. I note the applicant expressly denied he was operating under the Albatross AOC when he was harvesting crocodile eggs: see applicant's closing submissions at [38]. If the NAH AOC was relied upon, it raises a question over whether that company's operations are being conducted in accordance with its AOC as it should not have allowed a private pilot to undertake aerial photography work. Confusion on this point is symptomatic of an approach to regulation that needs to be addressed. I am inclined to accept  CASA 's argument that there has been a failure on Mr Jones's part to demonstrate he held an AOC with appropriate approvals, but I am troubled by the uncertainty over the arrangements in any event.

Sling operations during crocodile egg harvesting

22. There was a good deal of evidence surrounding Mr Jones's use of the helicopter to harvest crocodile eggs. The crocodile egg harvest in question was shown in the first series of *Keeping up with the Joneses*. It provided moments of high drama. The helicopter with Mr Jones at the controls hovered over a crocodile nest. The shots of and from the helicopter were cut with footage of an agitated crocodile. One of Mr Jones's employees was lowered into the nest on an external sling – a length of rope that hung from a point on the belly of the helicopter. He was armed with a stick and a radio. Once on the ground, he worked quickly to uncover the nest and retrieve the eggs that were placed in a crate. The employee's anxious glances towards the undergrowth made clear – and the voice-over breathlessly confirmed – that the large, angry crocodile lurked close by, ready to attack. But then came relief: the employee was lifted from the scene with the crate of eggs and carried off by Mr Jones in the helicopter. The aircraft appeared to fly away over the tree tops with Mr Jones at the controls and the employee dangling on the end of the sling.
23. The incident was staged. There was no crocodile nearby. The eggs were placed there before the cameras rolled. Mr Jones explained in his evidence that it was the wrong time of year for crocodile egg harvesting, so it was necessary to pretend. He justified the role-play for the cameras by saying it accurately represented the way he harvested crocodile eggs.
24. There is an issue over the practice of carrying a person on a sling under a Robinson R22 helicopter. CAR 151 prohibits a pilot using the aircraft to pick up persons or objects without prior written authority, and in accordance with any conditions attached to that authority. CAR 151 does not distinguish between flights conducted for commercial or private activity. CAR 250(1A) prohibits the pilot in command from allowing a person to be carried on anything attached to the aircraft, although  CASA  may give permission for a person to be carried underneath (or anywhere else) on a particular flight or kind of flight (CAR 250(2)). Any permission may be subject to conditions: CAR 250(3).
25. Mr Jones has an approval to engage in commercial sling load operations pursuant to Civil Aviation Order 29.6.  CASA  says that approval does not extend to carrying a person in a sling: it points out the sling load provisions in CAO 29.6 refer to carriage of an *object*, not a *person*. It also says the approval under CAO 29.6 is limited to commercial operations conducted under an AOC, whereas the mock crocodile egg harvest was conducted as part of private operations. The discussion of sling load operations in CAO 95.7.2 also refers to *objects* without qualification. Mr Jones says a *person* is an *object*, and there is no contravention.
26. That raises an interesting question of statutory interpretation. CAR 151 expressly refers to both *persons* and *objects*, while CAR 250 refers to *persons* and not *objects*. The Civil Aviation Orders presumably use language consistently with the rest of the legislative scheme of which they are part. If that is so, permission to carry loads comprised of *objects* does not, without more, authorise the carriage of people.
27. But I do not understand  CASA 's submissions go that far.  CASA  has previously given its approval to others to undertake crocodile egg harvesting that involves persons dangling from a sling. One such approval was given to Albatross Helicopters, another company controlled by Mr Jones. The fact of that approval is consistent with the view that persons can, in fact, be carried on a sling beneath the helicopter – albeit that there are conditions attached to Albatross's AOC with respect to the activity. Those conditions are set out in the permission and authorisation dated 8 July 2010

- (exhibit one at pp 185-188) and in the permission and authorisation dated 18 July 2008 (exhibit one at pp 189-192). They also appear in the Albatross Helicopters Operations Manual: exhibit one at pp 164-184. ◀ CASA ▶ says those conditions represent best practice in the industry and argues Mr Jones should be held responsible for failing to adopt them.
28. The conditions in the Albatross AOC are very detailed. The authorisation dated 18 July 2008 (exhibit one at p 189-190) imposes restrictions on:
- what must be worn (all employees must wear life jackets for overwater flights, and the sling person should wear a high visibility vest and a helmet);
 - how high the sling person may be lifted above the ground (a maximum of 5 metres);
 - how far the helicopter can fly with a person slung underneath (no more than 500 metres); and
 - how fast the helicopter can travel (walking pace).
29. At first glance, some of these requirements seem almost surreal: there is something strange about insisting an individual wear a high visibility vest when being lowered into a crocodile nest armed only with a radio and a stick. But that is beside the point, at least as far as Albatross is concerned. If it wants to conduct these operations, it must conform to the conditions in its AOC. Mr Jones, however, says he was not operating under the Albatross AOC. Albatross engages in *commercial* harvesting of crocodile eggs on its own account. The flight Mr Jones undertook for the purposes of *Keeping up with the Joneses* was a purely private affair, so the same restrictions do not apply. He says his private operation was conducted safely, and ought to be evaluated accordingly.
30. Whatever the wisdom of the requirements in the Albatross AOC in relation to crocodile harvesting, I accept Mr Jones was not operating under that AOC. He cannot be held to the letter of standards that are not expressed to apply to him. The real question is whether he needed specific authority to carry a *person* in circumstances where he had general approval to carry an *object*. ◀ CASA ▶ obviously did not contemplate him carrying people: if it had, it would probably have insisted on similar conditions to those it imposed on Albatross. (◀ CASA ▶ also says it would never have approved of persons being carried in a sling under an R22 helicopter because it regards the cargo hook arrangements on that model helicopter as inadequate: respondent's closing submissions at p 6. Mr Ribbands said in his reply submissions at p 4 that there was a paucity of evidence on this point, but I am satisfied cogent reasons were given for ◀ CASA ▶'s submission.)
31. The answer to the question might be found in the operations manual or other documentation accompanying the endorsement for sling load operations. CAO 29.6 provides "[s]ling load operations shall be carried out in accordance with the limitations and procedures contained in the approved helicopter flight manual" (at cl 2.2).
32. The helicopter flight manual was not in evidence before me. I think the absence of evidence on the point entitles me to infer the manual was silent in this respect. I also note the applicant referred to CAO 95.7.2, which provides for exemptions from certain requirements of the aircraft flight manual to be given to pilots engaged in sling load operations. The exemption referred to in CAO 95.7.2 does not appear to address the specific question I am considering here, namely whether a *person* may be carried below an aircraft in a sling when the pilot has approval to carry an *object*.
33. I am not satisfied the contravention has been made out in those circumstances, although the fact the applicant has been operating in a grey area arising out of the absence of precision in the expression *objects* in CAO 29.6 is troubling. I note ◀ CASA ▶ had, at the time of the hearing, commenced a review of the activity; I assume it will turn its attention to the question of whether CAO 29.6 requires clarification.

Low-flying

34. ◀ CASA ▶ referred to a number of scenes in which Mr Jones engaged in low flying that was said to contravene CAR 157(1). That regulation prohibits flights below 500 feet except as provided in CAR 157(4). One of the exceptions is CAR 157(4)(b) which refers to a situation where:

...the aircraft is engaged in private operations or aerial work operations, being operations that require low flying, and the owner or operator of the aircraft has received from  CASA  either a general permit for all flights or a specific permit for the particular flight to be made at a lower height while engaged in such operations....

35. Mr Jones asserted in his statement dated 11 October 2013 (exhibit 3 at [23]) that he holds a logbook endorsement for low flying that was obtained in February 1992. His logbook was stolen, and there does not appear to be any independent record of the endorsement. I have no reason to doubt his claim. I accept he was a witness of truth, so I accept his evidence (which was not seriously contested) on this point.  CASA  effectively conceded the existence of the endorsement in its reviewable decision (see exhibit one, p 12 at [22]) however it said the endorsement only extended to low flying in connection with private aerial stock mustering operations in compliance with CAO 29.10. The endorsement also presumably extended to authorised sling load operations on the same basis. Mr Ribbands pointed out in submissions that CAR 2(7)(d) also effectively permits low flying in the course of heli-mustering and agricultural operations (see applicant's closing submissions, pp 20-21 at [71]-[72]).
36. There were certainly a number of scenes in which Mr Jones is depicted engaged in low flying activities. The heli-mustering scenes were especially dramatic, but they were covered by the authorisations held by Mr Jones. The scene in which Mr Jones was engaged in crocodile egg harvesting (albeit that it was staged) was not an agricultural operation, although it was – at least on Mr Jones's argument – a necessary and therefore permissible incident of the sling load operations that he was authorised to undertake. There were also scenes of Mr Jones flying low as he inspected fences and examined other aspects of his property. Those activities were also within the scope of his approvals to conduct agricultural operations.
37. There were a number of instances shown in *Keeping up with the Joneses* where Mr Jones was shown flying low in circumstances that were plainly unrelated to his agricultural and sling load operations. The scene in which he hovered above a watercourse while baiting a bull-shark is one example; so, too, the scene in which he hovered above a waterhole attempting to snare and tow an enraged crocodile. Even more dramatically, there was a scene in which Mr Jones flew low over a stretch of water as he raced his brother-in-law on a jet ski, and another scene in which he towed his son Beau on a wave board.
38. The last two scenes in particular contravene the general prohibition against low flying in CAR 157. In neither case was the applicant “engaged in private operations or aerial work operations...that require low flying”. In those circumstances, his various approvals and endorsements do not authorise a departure from the general rule in CAR 157(1). I am satisfied he failed in his duty within the meaning of CAR 269(1)(c).

Leaving the helicopter unattended with the engine running

39.  CASA  noted there were a number of occasions shown in *Keeping up with the Joneses* (and in raw footage shot but not included in the final edit) where Mr Jones is seen alighting from the helicopter while the engine is still running when he is pilot in command. A number of the incidents are set out in the reviewable decision at exhibit one, pp 14-15 at [40]. In episode two of series two, for example, Mr Jones is shown alighting from the helicopter to inspect a crocodile caught in a trap. His two children remain in the aircraft as the engine continues to run. Mr Jones is then shown removing the crocodile from the trap (it was still alive) with the assistance of his children as the helicopter engine continues to turn over in the background. Upon his return to Coolibah Station shortly after, Mr Jones is shown to leave the controls while the rotors turn so he can unload the crocodile he retrieved from the trap. There are also a number of incidents referred to where the applicant is outside the helicopter talking to other people while the engine turns with no one at the controls – and in one memorable shot, Mr Jones is seen outside the helicopter as his young son sits at the controls with the engine running. There are also a number of shots of the applicant landing his helicopter and alighting from the aircraft to open gates while the rotors turned, and one in which he does a spot of fishing.

40. Mr Jones was asked about these incidents during his oral evidence. He pointed out there were good reasons not to shut down the engine when the helicopter landed at a remote point: if the engine did not restart, the pilot might be stranded. On that basis, he defended his decision to keep the engine running when alighting from the helicopter to undertake essential tasks like opening and closing gates and collecting crocodiles from traps.
41. There is something to be said for this argument. The environment is rugged and isolated. If a pilot were stranded in a helicopter that refused to start, he or she might be in real danger. But while that *might* have justified the practice when Mr Jones was operating alone, that did not excuse him leaving the controls while being filmed during *Keeping up with the Joneses* as he was not alone on most of those occasions: he was being trailed by a film crew who could have come to his rescue if the helicopter had not restarted.
42. I formed the strong impression that Mr Jones routinely alighted from the helicopter while the engine was running and there was no one at the controls (or leaving his young son at or in reach of the controls, which is worse).
43.  CASA  says that practice is a problem. CAR 225(1) provides:

The pilot in command must ensure that 1 pilot is at the controls of an aircraft from the time at which the engine or engines is or are started prior to a flight until the engine or engines is or are stopped at the termination of a flight.

44.  CASA  also notes the flight manuals for the Robinson helicopter say the aircraft should never be left unattended when the engine is running. Indeed,  CASA  pointed out Robinson, the manufacturer, issued a safety notice (SN-17) that has been current since at least 1994 (exhibit one at p 306) which reads:

NEVER EXIT HELICOPTER WITH ENGINE RUNNING

Several accidents have occurred when pilots momentarily left their helicopters unattended with the engine running and the rotors turning. The collective can creep up, increasing both pitch and throttle, allowing the helicopter to lift off or roll out of control.

45. Failing to comply with the requirements and instructions in the flight manuals is a breach of CAR 138 and CAR 225(1),  CASA  submits (see respondent's closing submissions, p 11 at [24]). But there are circumstances in which exemptions from the rules apply. CAO 95.7 creates an exception to the requirement in CAR 225(1) that the pilot remain at the controls when the engine is running. The exception applies provided the following conditions (in paragraph 7.2) are met:
 - (a) the helicopter is fitted with skid type landing gear; and
 - (b) the helicopter is fitted with a serviceable means of locking the cyclic and collective controls; and
 - (c) if a passenger occupies a control seat fitted with fully or partially functioning controls or is seated in a position where he or she is able to interfere with such controls, the controls are locked and the pilot is satisfied that the passenger will not interfere with the controls; and
 - (d) the pilot considers that his or her absence from the cockpit is essential to the safety of the helicopter or of the persons on, or in the vicinity of, the helicopter; and
 - (e) the pilot remains in the immediate vicinity of the helicopter.

46. Mr Jones said in oral evidence that he placed a strap over the collective, tightened a friction nut and turned the governor off. He said that satisfied the requirement in paragraph 7.2(b). ← CASA → disagreed. It relied on the evidence of its expert witness, Mr Lamb, who pointed out in his oral evidence that a friction lock was different to a friction nut because a nut could become loose. ← CASA → said the strap, on the other hand, was not an approved modification to the aircraft (see respondent's closing submissions, p 11 at [23]). I am inclined to agree, but I think Mr Jones would have trouble satisfying me he met the criteria in paragraph 7.2(d) of CAO 95.7 because it is unclear how many of the absences from the controls I described were necessary for safety reasons.
47. I am satisfied this contention has been made out. Mr Jones has failed in his duty within the meaning of CAR 269(1)(c) on a number of occasions during the production of *Keeping up with the Joneses* because he breached CAR 138 and CAR 225(1).

Chasing Hamish on the jet ski

48. Mr Jones, his family and employees were shown relaxing by a river in a scene of *Keeping up with Joneses*. Mr Jones's brother-in-law, Hamish, was using a jet ski while others played in the shallow water or sat along the riverbank. Someone decided it would be a good idea to stage a race: Hamish on the jet ski against a helicopter piloted by Mr Jones. The race took place over several laps of a stretch of the river. The jet ski and the helicopter would accelerate down the river before the jet ski would turn sharply; the helicopter would pull up and turn more widely at the end of each leg before racing back down towards the river to catch up with the jet ski.
49. I was able to view the episode containing the edited version of the contest, but I was also shown the raw footage. The helicopter appeared to be flying very low over the river as it raced the jet ski. The helicopter appeared to be so low that the wash from the rotors roiled the surface of the river.
50. The applicant led evidence from Mr Talbot, of WTFN, who has extensive experience in film and video production. Mr Talbot explained that skilful camera work could make objects appear closer than they really were. He used a videotaped experiment using parked cars filmed from different camera angles to make his point. There was also a technical debate during cross-examination over the effect of various camera lenses on perspectives.
51. While I accept the magic of television can affect perception of distance and proximity, it is clear enough from the edited and raw footage I saw that the helicopter was flying substantially under 500 feet during the scene, and at some points as close as tens of feet from the surface. If something untoward had happened, the aircraft might have impacted the surface. That would have had disastrous consequences for Hamish and perhaps the spectators on the riverbank – and for Mr Jones himself. The engine might have failed, or there might have been an equipment malfunction; Mr Jones might have misjudged the distance given his speed and problems identifying the surface of the water. Any number of things might have occurred: there was no margin for error. Moreover, it was completely unnecessary to run the risk.
52. There is no doubt Mr Jones contravened CAR 157(1). To his credit, he acknowledged during the course of his evidence that he was foolish. He was right to do so.
53. ← CASA → also argued Mr Jones's operation of the aircraft was "reckless as to whether the manner of operation could endanger the life of another person" within the meaning of s 20A(1) of the Act. *Recklessness* is a very high standard (or a low one, depending on one's perspective). Mr Jones does have considerable experience in operating a helicopter at low altitude and amongst obstacles when mustering cattle. He routinely and necessarily undertakes flying operations in hazardous circumstances, and he has demonstrated a high level of skill in doing so. The flying he undertook on this occasion was not inherently more risky than other flights. The problem on this occasion was that he did not *need* to take the risk he took (although there was also an increased risk to Hamish and the spectators who would not ordinarily be present when Mr Jones was mustering). I do not think that necessarily adds up to a contravention of s 20A(1).

Towing Beau on the wave board

54. Mr Jones was also shown flying the helicopter just above the surface of the river on another occasion. In that scene, his son Beau was on a wave board. Mr Jones extended a line from the helicopter and proceeded to drag Beau along on the board. It all looked very exciting, and it made for excellent television. It also demonstrated alarmingly poor judgment.
55. The applicant was clearly flying below 500 feet in circumstances where he had no call or authority to do so. In doing so, he exposed his son (and perhaps the film crew and spectators who were nearby) to danger in the event that something untoward happened. Once again, Mr Jones agreed during the course of his evidence that he acted foolishly.
- I am satisfied he contravened CAR 157(1). I am not convinced Mr Jones contravened s 20A(1) of the Act, for the same reasons I gave in relation to the incident with the jet ski.
56. It is possible Mr Jones may also have breached CAR 149, CAR 151(1) and CAR 250 in this incident. CAR 149 prohibits a pilot in command from towing an object. CAR 151(1) prohibits a pilot in command from picking up a person or object whilst in flight in the absence of authority. CAR 250(1A) prohibits a pilot in command from allowing a person to be carried on anything attached to an aircraft. But the parties did not address this question at the hearing or in their submissions, so I do not make any finding on this point. (I would add that my decision in these proceedings would not change even if I did make findings adverse to the applicant in relation to these matters.)

Towing the crocodile

57. Mr Jones was also shown attempting to snare and tow a crocodile that had taken up residence in a waterhole close to the house. I am not sure of the approved and regular ways of catching a crocodile, but this is unlikely to be one of them. The conduct contravenes CAR 149, which prohibits towing objects.

Failing to wear life jackets

58. There were several scenes depicted in *Keeping up with the Joneses* where Mr Jones or a passenger was seen flying over a watercourse without wearing an approved life jacket.
- I was provided with a still photograph from the series showing a person being flown above the surface of the Adelaide River without a vest (exhibit one at p 396).
- The Adelaide River is wide at that point: if the aircraft got into trouble while passing overhead, it might not be able to make it to the other side. There were a number of other scenes where the helicopter travelled over or hovered above a watercourse, but none of those watercourses was especially wide.
59. Mr Jones said it was impractical to wear life jackets in the heat. He said a life jacket might be a source of risk if it caused the pilot to overheat or be restricted in his movement. It was not clear from the photograph whether Mr Jones was in fact wearing a life jacket, but the hapless passenger on the sling was not.
60. One might wonder about the utility of a life jacket in the case of the individual carried on a sling as the aircraft flew over the Adelaide River. I was told that stretch of the Adelaide River is infested with crocodiles. An individual who fell into that body of water would have limited prospects of survival whether he had a life jacket or not.
61. The life jacket might seem superfluous, and it might have been uncomfortable to wear in the heat – but it is beside the point. CAO 20.11 requires that life jackets be carried on any flight over a waterway that is so wide the aircraft would be unable to reach land with the engine inoperative: at [5.1.1(a)].

If the jackets have to be carried, clause 5.1.7 requires that the jackets actually be worn during flights over water. Mr Watson, the applicant's expert witness, agreed the scene depicted in the photograph was one in which lifejackets should have been worn – presumably because the distance involved was such that the aircraft might be unable to reach the land if the engine failed. (Mr Ribbands in his submissions criticised the paucity of evidence on this point: he said it was not established the river was so wide that it would be impossible to auto-rotate to safety if the engine failed. I think there is sufficient evidence in the form of the photograph and Mr Watson's remarks to satisfy me that life jackets should have been carried and worn.) Mr Jones should have insisted his passenger wear a life jacket, or else take a route that does not require passage over such a wide body of water. I am satisfied there has been a breach of CAO 20.11.

Failing to wear seatbelts correctly

62. Robinson helicopters like those flown by Mr Jones in *Keeping up with the Joneses* are fitted with seatbelts that incorporate a shoulder sash rather than simple lap sash belts.
Mr Jones was shown repeatedly wearing the seat belt without the shoulder sash in place. In his oral evidence, he explained he found the shoulder sash uncomfortable, so he used the belt without placing the sash over his shoulder. (It was behind him.)
63. Seat belts are obviously important safety features in an aircraft. CAO 20.16.3[4.1] requires that they be worn at all times and “be adjusted to fit the wearer without slack”. Mr Jones argued his preferred way of wearing a seat belt was acceptable: the belt fit him without slack. Mr Watson did not agree that was the best way to wear the seatbelt but he did not think it was wrong.
64.  CASA  points to the flight manual supplied by the manufacturer: exhibit 15. Section 7 of the manual describes the inertia reel seatbelts incorporating shoulder straps that are fitted to Robinson helicopters. The belts are similar to those used in a motorcar. They are designed to lock and restrain around the waist *and* across the trunk in the event of sudden movement.  CASA  says CAR 138 effectively requires that the seat belt be worn as it was plainly intended to be worn – that is, with the sash over the shoulder rather than behind the back – because CAR 138(1) says the pilot in command “must comply with a requirement, instruction, procedure or limitation concerning the operation of the aircraft that is set out in the manual.” Since the operating manual refers to a seat belt with a shoulder strap and does not indicate the apparatus can be worn without a shoulder strap,  CASA  submits Mr Jones was not permitted to use the device in a ‘non-standard’ way.
65. I agree with  CASA . The aircraft is fitted with a particular kind of seat belt that operates in a particular way. The manufacturer, in its wisdom, has decided to use inertia reel belts that include a shoulder sash rather than the lap sash belts used in some other aircraft. It has described the operation of the belts in its operating manual. Pilots are obliged to use the equipment on the aircraft as the manufacturer specifies in the operations manual: CAR 138(1). A pilot is not permitted to second-guess or pick and choose between the requirements in the manual. I am satisfied Mr Jones has contravened CAR 138(1).
66. I am not satisfied from the evidence that Mr Jones breached CAO 20.16.3[4.1]. It was impossible to tell from the footage whether there was any slack in the seat belt.

Failing to restrain cargo

67. Mr Jones was filmed carrying crates containing crocodile eggs. It was suggested against him that he failed to restrain the cargo appropriately. Mr Jones, for his part, denied the cargo was unrestrained. After reviewing the video footage, I am not satisfied the evidence establishes the crates were unrestrained. There is no basis for finding any breach of the regulations in this respect.

Teaching Little Milton to start the helicopter

68. Mr Jones was shown teaching his son, Little Milton, how to start the helicopter. Mr Jones sought to justify the conduct at one point in his evidence by explaining that children who grow up on farms need to know how machinery operates for their own safety. They also needed to know the danger associated with snakes and crocodiles: Little Milton is shown at one point in the series warning of the risks of being on the side of a waterhole or riverbank where crocodiles might lurk.
69. Anyone who grew up in a rural environment is familiar with this robust approach to parenting. Many country kids learn to drive, interact with dangerous animals, operate heavy machinery and use weapons long before they reach the age of majority. Little Milton is no exception: he was shown driving a car when he was a small boy. But he should not have been shown how to start a helicopter.
70. In the course of his evidence, Mr Jones conceded it was dangerous to show Little Milton how to start the engine of a helicopter. He is right. Small boys are inquisitive and helicopters are dangerous machines. Mr Jones's behaviour clearly contravenes CAR 230(1) because Little Milton is not an 'approved person' for the purposes of the regulations. CAR 230(1) creates an offence of strict liability (see CAR 230(1A)). I am not persuaded the behaviour is *reckless* in all the circumstances: unwise, certainly, but I do not think Mr Jones could be said to be *reckless* for the purposes of s 20A of the Act in the sense that he was indifferent to risk. On the contrary, his behaviour was consistent with what appears to be an approach to parenting that was intended to educate his son how to survive in a dangerous environment by becoming familiar with the equipment he might encounter. His behaviour might have been unwise, but I am not persuaded it was reckless in all the circumstances.

Dropping articles from the helicopter into the water

71. Mr Jones was at the controls when ashes and beer from a can were dropped into the water from a hovering helicopter in one scene of *Keeping up with the Joneses*. The scene depicted a memorial service for a local identity who had died. In another scene, a drum bait was dropped from the aircraft into the water while Mr Jones was pilot in command. The manoeuvre was part of an attempt to catch a bull shark that was disrupting the fishing in the watercourse.
72. CAR 150(1) says a pilot in command must not allow anything to be dropped from an aircraft in flight. The applicant conceded in submissions that he was in breach of the regulations on both occasions referred to above. I am satisfied the contention has been made out.

Unauthorised modifications to the aircraft

73. A pilot (or anyone else, for that matter) is not permitted to make modifications to an aircraft without following a particular process. That process is described in CAR 42U.  CASA  says Mr Jones allowed or caused cameras to be attached to the aircraft without proper engineering approvals. 
 CASA  says the installation of the cameras on the inside and outside of the aircraft in those circumstances amounts to a modification in contravention of CAR 42U.
74. Small cameras were fixed inside the cockpits of the various helicopters Mr Jones flew in *Keeping up with the Joneses*. It is less clear whether cameras were fixed to the exterior of aircraft in which Mr Jones was the pilot in command. Mr Threlfo noted in his statement (exhibit 13) that there was at least one shot in which a helicopter appeared to have a camera taped to the tail boom. That shot appeared in a sequence of shots of a helicopter at rest and then taking off on its way to harvest crocodile eggs. The sequence of shots of the helicopter is cut with shots of Mr Jones talking to the camera. The applicant's closing submissions point out most of the shots of the helicopter and all of the shots of Mr Jones do not show a camera affixed to the

exterior of the aircraft (see p 16 at [53]). While it is possible to identify a camera in at least one shot, it is unclear whether Mr Jones is pilot in command on that occasion. Given the vagaries of the editing process, I do not think I can be satisfied Mr Jones was operating an aircraft with a camera attached to the exterior.

75. Mr Jones disputes that fixing a camera within the cockpit amounts to a modification of the aircraft in the sense intended by CAR 42U. Mr Ribbands, in his submissions, argued that “modification” is plainly a reference to anything that might affect the structural integrity of the aircraft (see p 15 at [50]).  CASA  disagrees. It says CAR 42U imposes a “complete prohibition” on modifications that are not approved (see respondent’s closing submissions, p 17 at [50]). It says the prohibition ensures judgments over modifications will be left to those qualified to form a view as to what is acceptable and what is not. It is not the role of pilots to make those calls.
76. It is not clear precisely how the cameras were fixed to the interior of the aircraft – but they must have been fixed in place. I accept doing so constitutes a modification for the purposes of CAR 42U. In those circumstances, an approval should have been obtained. The applicant did not produce any approvals, so I infer the modification was not approved and therefore in breach of CAR 42U.

SUMMARY OF FINDINGS

77. Mr Jones contravened the law on several occasions during the production of two series of *Keeping up with the Joneses*. I am not satisfied he was involved in as many contraventions as  CASA  identified in its original decision, but I am satisfied Mr Jones was involved in more contraventions than he conceded. Several of the contraventions were serious. (The incident involving the jet ski and towing his son on the wave board were probably the *most* serious matters because they were obviously foolish actions that put other people in jeopardy.) I am satisfied Mr Jones engaged in a pattern of conduct that demonstrated:
- a poor knowledge of both the law and applicable flight manuals and safety notices; and
 - an unhealthy attitude towards risk and flawed judgment and decision-making skills.
78. I would reach the same view even if I accepted *all* of the arguments made by  CASA  or Mr Jones. Whether all of the contraventions contented for by  CASA  are made out or only some, I am satisfied there is a clear pattern of behaviour that raises real concerns.

THE GROUNDS FOR EXERCISING THE JURISDICTION TO VARY, SUSPEND OR CANCEL THE LICENCES

79. I have already explained  CASA  (or the Tribunal, on review) *may* vary, suspend or cancel Mr Jones’s licences pursuant to CAR 269(1) if it is satisfied the grounds referred to in the regulation are made out.  CASA  is not obliged to exercise the discretion, of course: even where contraventions occur, it might decide against doing anything under CAR 269. A single contravention might justify the most stringent response whereas a series of minor technical contraventions might prompt a different approach. It depends on the circumstances, and – most importantly – upon the extent to which the shortcomings pose a risk to safety.
80. At all times,  CASA ’s approach to the discretion in CAR 269(1) – and the approach of the Tribunal on review – must be informed by the instruction in s 9A(1) of the Act to “regard the safety of air navigation as the most important consideration.” That obligation is further articulated in sub-section (2) which says:

(2) Subject to subsection (1),  CASA  must exercise its powers and perform its functions in a manner that ensures that, as far as is practicable, the environment is protected from:

(a) the effects of the operation and use of aircraft; and

(b) *the effects associated with the operation and use of aircraft.*

81. The importance of the objective of promoting safe air navigation is apparent throughout the whole legislative scheme. It is explicitly recognised in s 3A of the Act, which explains:

The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

82. I turn to consider each of the two grounds which ← CASA → says provide a basis for the exercise of the discretion in CAR 269(1).

DID MR JONES FAIL IN HIS DUTY WITH RESPECT TO THE SAFE NAVIGATION AND OPERATION OF AN AIRCRAFT?

83. I have identified several instances where Mr Jones clearly failed in his duty with respect to the safe navigation or operation of aircraft. The ground referred to in CAR 269(1)(c) has been made out. It follows the discretion to take action under CAR 269(1) is enlivened on that ground alone. (I note ← CASA →'s submissions that the ground in CAR 269(1)(c) is not confined to conduct that amounts to a contravention of the law. That is correct. Cancellation on the ground of contraventions is dealt with under CAR 269(1)(a) – and is subject to the limitation that cancellation may not occur unless the person is brought before a court in respect of those contraventions and the court has found the contraventions occurred: CAR 269(1A). That has not occurred in this case, so ← CASA → and the Tribunal cannot rely on CAR 269(1)(a). However the Act, regulations and orders do articulate – even if not exhaustively – the licence holder's duties. The fact I am satisfied contraventions have occurred is a basis for making a finding in relation to a failure in duty for the purposes of CAR 269(1)(c), even if it is not enough on its own to enliven the discretion pursuant to CAR 269(1)(a).) I will return to the question of whether the failures of duty I have identified suggest in all the circumstances (and having regard to the consideration in s 9A) that variation, suspension or cancellation is appropriate.

IS MR JONES A FIT AND PROPER PERSON?

84. Most of the parties' submissions were directed towards the ground referred to in CAR 269(1)(d) – namely, whether Mr Jones was “a fit and proper person to have the responsibilities and exercise and perform the functions and duties of a holder of [flight crew licences]”.
85. I initially understood Mr Ribbands to argue on behalf of Mr Jones that a person might be regarded as fit and proper following the imposition of appropriate limitations or conditions on his licence. ← CASA → denies it is possible to make someone who is otherwise unfit into a fit and proper person by imposing variations or suspensions or conditions or limitations. On ← CASA →'s approach, one is either fit or one is not – and if one is not a fit and proper person, the inevitable response is cancellation or at least suspension or variation: respondent's closing submissions at [81].
86. The structure of CAR 269(1) makes it clear the grounds – which include a determination as to fitness – must be established before the discretion to take action is enlivened.
The determination of fitness logically precedes the question of regulatory action (and if the person is found to be fit and proper, no question of regulatory action arises). I do not accept one's fitness can depend on what action is taken. As it happens, that was not the argument of Mr Ribbands and the applicant in any case. Mr Ribbands cleared up that misconception in his submissions in reply at [51].
87. Mr Jones says he is a fit and proper person, notwithstanding what he did in the course of the filming of *Keeping up with the Joneses*. His argument was

summarised in

Mr Ribband's written submissions (at [9]) as follows:

Whilst some of the allegations demonstrate an element of foolishness...Jones is unarguably a skilled and safe pilot who, by reason of his isolation from the mainstream aviation industry, has developed some habits over the years which require corrective action.

88.  CASA  does not accept this benign assessment. While it does not dispute Mr Jones has good manual skills, it determinedly disputes that he is *safe*. Ms Ford, for  CASA , cited Mr Lamb's evidence to the effect that a good and skilled pilot possesses three attributes which are of equal importance. Mr Lamb says such a pilot must exhibit:
- the psychomotor skills required to fly the aircraft;
 - adequate knowledge of the safety rules applicable to the sort of flying he or she undertakes (which includes knowledge of relevant legislation, instructions in the aircraft's flight manual, and other safety rules, notices and briefings that are provided to pilots); and
 - sound decision-making skills.
89. I accept Mr Lamb's evidence on the attributes of a good and skilled pilot. Indeed, I am satisfied his summary describes the necessary attributes of a "fit and proper person" within the meaning of the regulations. Mr Lamb is an immensely experienced test pilot who demonstrated an easy familiarity with the literature and research on air safety. I was also impressed by the even-handed way in which he gave his evidence at the hearing. While he was certainly critical of Mr Jones, he candidly acknowledged the applicant's strengths – namely the psychomotor skills. But Mr Lamb pointed out that is only one of three attributes required before a person can be said to be a good and skilled pilot – or (I interpolate) "a fit and proper person to have the responsibilities and exercise and perform the functions and duties of a holder of [a flight crew licence]" within the meaning of CAR 269(1)(d).
90. Mr Jones has good psychomotor skills, but he clearly did not have adequate knowledge of the applicable safety rules at the time he was involved in the production of *Keeping up with the Joneses*. Even at the hearing, he was forced to concede he was not aware of some requirements under the rules – such as the rule that he wear a seatbelt in the way it was designed to be worn. It follows he was (and may still be) deficient in this respect.
91. The more difficult question relates to the third attribute of a good pilot that was identified by Mr Lamb. Mr Jones clearly demonstrated poor judgment in connection with a number of incidents that occurred during the production of *Keeping up with the Joneses*. The scenes in which Mr Jones:
- allowed his son to sit at the controls and start the helicopter engine;
 - raced Hamish on the jet ski;
 - towed Beau on the wave board; and
 - attempted to tow the crocodile,

all raise serious questions about his decision-making skills.

92.  CASA  is in no doubt that the questions over Mr Jones's judgment ought to be resolved against him.  CASA  says Mr Jones was prepared to disregard the rules in the interests of making good and exciting television. It drew an analogy with the case of *Quadrio and Civil Aviation Safety Authority* [2011] AATA 709 where the pilot was found not to be a fit and proper person because he was prepared to ignore the rules in the interest of entertaining the passengers. But I think there is a difference between this case and *Quadrio*: I am not satisfied Mr Jones actively *ignored* the rules. He

was not adequately aware of the rules in the first place.

93. CASA also pointed to the fact Mr Jones did not cooperate with CASA: indeed, he actively resisted aspects of CASA's investigation. The applicant says his litigation strategy should not count against him as he was merely resisting the potential legal consequences of CASA's actions. CASA also questions the genuineness of Mr Jones's concessions that he behaved foolishly in relation to some incidents. CASA is suspicious of qualifications suggesting the risk associated with some of the incidents was small, or that breaches were merely technical.
94. I had the opportunity of observing Mr Jones over the course of two days in the witness box as he gave evidence. He is obviously an intelligent man. He was also obviously concerned about safety and insisted on what he took to be high standards in the conduct of his operations – albeit that his perception of risk appears to have been limited by his unfamiliarity with the rules and other relevant safety information, and skewed by the fact he is used to undertaking inherently dangerous work in a remote environment populated with all manner of deadly risks. His attitude towards safety and standards was best demonstrated by the evidence he gave about a young employee who featured in *Keeping up with the Joneses*. The employee had trained as a pilot and come to Coolibah station to fly – only to be required to work for a significant period on the ground in a series of gruelling tasks. Mr Jones explained the work experience was intended to familiarise the employee with the treacherous environment in which he would operate as a pilot. Mr Jones also wanted to test the mettle of the young pilot before he was let loose in an expensive helicopter doing dangerous work. Mr Jones's discussion of that individual left me with the strong impression that he was serious about safety and expected high standards. He also spoke briefly of a recent accident that claimed the life of a relative. He mentioned on a number of occasions during his evidence the importance of taking seriously one's responsibilities as a pilot because he understood helicopters are dangerous machines that you need, but which can kill you.
95. There is also the fact Mr Jones controls NAH, which operates one of the largest fleets of helicopters in the country. It has, by all accounts, an excellent safety record. Mr Jones is not involved in the day-to-day operations of the company but as its chief executive he can share in the credit for the healthy state of that organisation.
96. Mr Jones's judgment is flawed, but I am satisfied after hearing his evidence in person he realised that fact – and also that he has the intelligence to realise he needs to change. He has clearly been humiliated by the whole regulatory process. While many things have been said by him or on his behalf – some of them unfortunate, or combative – during the course of his interaction with CASA, I am satisfied after hearing him give evidence he is not recalcitrant.
97. In the end analysis, though, I am satisfied the evidence presented at the hearing confirms Mr Jones comes up short on two of the three attributes expected of a good and skilled pilot. On the basis of the evidence presented at the hearing, I am not satisfied he is a fit and proper person to hold a pilot's licence.

SHOULD THE DISCRETION TO VARY, SUSPEND OR CANCEL BE EXERCISED?

98. I have concluded two of the grounds referred to in CAR 269(1) have been made out. That means the discretion to take regulatory action is enlivened. CASA says the correct or preferable decision in all the circumstances is to affirm the decision to cancel Mr Jones's licences. Mr Jones says the problems which have been identified do not warrant such an extreme response. He says all that is required is appropriate counselling and re-training. Indeed, I am told he has undergone retraining at the hands of an approved test pilot since the hearing was concluded.
99. The parties made written and oral submissions about the sort of factors that should be taken into account when considering whether and how to exercise the discretion in CAR 269(1). A number of the matters that present themselves for consideration are obvious:

- I must have regard to what happened, the circumstances in which it occurred and any evidence which suggests what occurred was part of a pattern of conduct that impacted on air safety. But other considerations might be relevant too.
100. The applicant argues the powers in CAR 269 should not be used to punish him. That is the role of the criminal law. On that approach, one does not speak in terms of the applicant *deserving* to have his licences cancelled. There is an element of artificiality to that distinction, as the High Court made plain in *Rich v Australian Securities and Investments Commission* [2004] HCA 42; (2004) 220 CLR 129. In that case, the majority said licensing regimes that permit cancellation on protective grounds inevitably have a punishing effect, even if that is not their purpose: at 144-147 per Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ. But I take the applicant's point: my principal object in this case is to protect public safety. This process is not concerned with retribution (although I should add ◀ CASA ▶ does not put its submissions on this basis in any event).
101. There is an interesting question over whether it is appropriate to consider specific and general deterrence. Mr Jones says specific deterrence (*i.e.*, regulatory action designed to bring home to the applicant the seriousness of his conduct, or to cause him to reflect on what he did) is not an appropriate objective to be considered in this context. ◀ CASA ▶ also says I should keep the need for general deterrence in mind. Mr Jones's mistakes were shown on national television. ◀ CASA ▶ explained in its closing submissions (at [78]):

Unless Mr Jones is made publicly accountable for his actions the wrong safety message will continue to flow to the public and other pilots in Northern Australia (and elsewhere) who engage in similar conduct, and who will continue to believe that such conduct is within acceptable safety standards, and ◀ CASA ▶ will be perceived...as a "toothless tiger".

102. The applicant doubts that considering the need for specific and general deterrence would be consistent with the objectives of the legislative scheme: applicant's oral submissions and written submissions at [3]-[7].
103. I am satisfied the decision-maker *is* entitled to have regard to the need for specific and general deterrence when formulating a response to unacceptable behaviour. I reach that view in light of the importance attached to the objective of promoting safety which is spelled out in s 3A and – in particular – s 9A of the Act. The discretion in CAR 269 is meant to be exercised with that end in mind. The need for specific and general deterrence is relevant to the objective of promoting safety which informs the exercise of the discretion.
104. As it happens, I am not convinced the need for specific deterrence weighs heavily against the applicant. I was left with the clear impression from the evidence that Mr Jones rues the days on which he engaged in some of the conduct which led to his current predicament. He is an intelligent and thoughtful man; he does not need further opportunities to reflect on the seriousness of what he has done. But I am satisfied it may be relevant to fashion any regulatory action so as to deter bad behaviour by others.
105. I previously noted the errors were demonstrated on national television. Mr Jones already enjoyed a level of prominence as a result of his success as a pastoralist, pilot and businessman before the production; the fact he made such public mistakes in a television series that celebrated his life and focused on the use (and, as it happens, the misuse) of helicopters cannot be ignored. Aviators throughout northern Australia in particular must not be left with the impression that it is permissible to ignore the rules which Mr Jones flouted so casually. The rules are meant to be taken seriously, and aviators everywhere must be clear that transgressions will be detected and pursued.
106. Having regard to all those matters, I am satisfied the discretion in CAR 269(1) should be exercised. Regulatory action is required. I am not satisfied it is necessary or appropriate to cancel Mr Jones's licences, as his identified shortcomings – while serious – do not suggest to me that he is beyond redemption. Those shortcomings can be addressed (and may, to some extent, already have been addressed) through appropriate training and testing. I stress it is principally because of the particular qualities that Mr Jones demonstrated in the witness box that I have arrived at this view, and in light of the evidence of ◀ CASA ▶'s immensely experienced witness, Mr Lamb, who did not resile from the suggestion Mr Jones was capable of being brought up to an acceptable standard through a process of standardisation.

107. While cancellation is not appropriate, I am satisfied Mr Jones's licences should be suspended until:

- (a) he is able to demonstrate he has attended to the gaps in his knowledge. He can do that by seeking and receiving the certification from a person holding relevant approvals from  CASA  that he possesses the knowledge required by an applicant for the flight crew licences (with the same authorities, permissions and authorities) that he currently holds; and
- (b) he has demonstrated the decision-making skills required of the holder of those flight crew licences. He can do that by seeking and receiving the certification from a person holding relevant approvals from  CASA  that he is able to satisfy any reasonable requirements in this regard that are applicable to the holder of the flight crew licences (with the same authorities, permissions and authorities) that he currently holds.

108. It is not for me to tell the testing authority how he or she goes about the task of certification. I am not requiring that the testing authority conduct two separate testing processes to deal with the matters referred to in (a) and (b) (above). The conduct of the process is a matter for the testing authorities who are familiar with the task of certifying the fitness of candidates for flight crew licences.
109. I note Mr Jones has already undergone testing and training at the hands of Mr Watson. Mr Watson gave evidence at the hearing. Without reflecting for a moment on Mr Watson's integrity, I think someone independent *other than* Mr Watson – who has played a role in NAH – should be asked to provide the certification I have found is required before the cloud over Mr Jones's licences can be lifted.
110. Mr Jones has been allowed to fly on the basis of his cancelled licences by virtue of a stay given under [s 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#) (Cth) (“the AAT Act”). I was satisfied there were no significant safety issues in the short term, while Mr Jones indicated he and his family would be significantly inconvenienced if they were unable to use a helicopter. I accept suspension will potentially cause him considerable inconvenience. Section 43(5C) of the AAT Act provides that the stay remains in place until 28 days after the date of this decision. That will allow Mr Jones the time to obtain the certification I have required. If he is able to provide the certification before the date on which the suspension is scheduled to come into effect, his licences will not be suspended. If he cannot provide the certification, he will have the opportunity to make appropriate arrangements.

CONCLUSION

111. The decision under review is set aside. I decide in substitution that Mr Jones's flight crew licences will be suspended until he obtains certification in relation to the matters referred to in these reasons. The suspension does not take effect until 28 days after the date of this decision.

I certify that the preceding 111 (one hundred and eleven) paragraphs are a true copy of the reasons for the decision herein of Senior Member Bernard J McCabe.

.....
Associate

Dated 31 October 2014

Dates of hearing	16-20 December 2013
Date final submissions received	30 April 2014
Counsel for the Applicant	Mr J Ribbands
Solicitors for the Applicant	Maitland Lawyers
Counsel for the Respondent	Ms E Ford

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