

Findings

The primary duty of a Coroner is to establish identity, time date and place, manner and cause of death. In these matters there is no issue on those subjects.

I find that the deceased Michael James O'Keefe died as a result of multiple injuries sustained when a plane piloted by him crashed to the ground at about 2:45pm on 7th May 2010 at Tatham in the State of NSW

I find that the deceased Josef Pierre Hainaut died as a result of multiple injuries sustained by him when a passenger in a plane piloted by Michael James O'Keefe, which crashed at Tatham at about 2:45pm on 7th May 2010

Ancillary matters.

In these ancillary matters Recreational Aviation Australia Inc is referred to as "Ra Aus"

It is clear that the deceased O'Keefe was the pilot of an ultralite aircraft and Hainaut was a passenger in that aircraft on the relevant day. It is clear that Mr Hainaut had flown with O'Keefe before. There is also evidence that Hainaut was the filming passenger in a U Tube video that had been previously posted by O'Keefe. There is no doubt that the crash occurred as a result of the gross negligence of O'Keefe. Regrettably this manner of flying was not uncommon for O'Keefe. For example on 12th April 2008, only 7 days after receiving his passenger endorsement, O'Keefe took a flight with Erin McDonald as a passenger. During the course of the flight he asked her whether she wanted to do some "tricks". She declined. On 14th April he took Jodi McDonald for a flight. Prior to the flight, on the way to the airport O'Keefe spoke of aerobatic tricks he could do one of which he ironically called the Death Dive. Ms McDonald described the features of the manoeuvre that had been told to her by O'Keefe. She further gave evidence that O'Keefe told her of loops and spirals, which he had done previously on many occasions. During the course of the flight O'Keefe in fact undertook the "Death Dive" and while over Ms McDonalds house he did "a couple of loops" For all of these manoeuvres O'Keefe was not trained but more importantly his licence precluded such activities. Ms McDonald gave evidence of a conversation with Chief flying instructor Wayne Fisher prior to the flight whereupon the term "tricks" was discussed and she suggests that Mr Fisher merely said words to the effect that basically it was a matter for her. Mr Fisher did not recall that conversation.

A U Tube video was tendered in the proceedings showing an ultra lite plane belonging to O'Keefe doing what he consistently described as a "Death Dive". When questioned about this by a member of Recreational Air Australia he denied it was him notwithstanding that he had boasted to Mr Fisher, one of his flight instructors mentioned above that it was indeed him. Re Aus had and do not currently have any power to demand that the owner of an aircraft disclose the name and place of abode of the pilot. For reasons set out below Mr Fisher formed the view that it was likely O'Keefe was merely bragging and as a result he did not either view the video or disclose its apparent authenticity to Ra Aus. He states that he did lecture O'Keefe about the fact that aerobatics were prohibited on the status of his licence. For the purpose of this inquest as previously noted I am satisfied it was the deceased O'Keefe in control of the plane. I am satisfied that Mr Fisher was negligent in his duty to at least advise Ra Aus of the disclosure by O'Keefe.

The deceased O'Keefe was described by a variety of witnesses as a risk taker and someone who resented any adverse suggestions about his flying ability. I am satisfied that these observations were correct and as was suggested he was an accident waiting to happen. Only a short time prior to the crash O'Keefe had been at the Inglewood air show and was seen by at least 50 pilots to perform manoeuvres which caused safety concerns. These included inappropriate take offs, low flying and there were suggestions he was taking fare paying passengers including young children for joy flights. This inquiry has obtained no evidence that anyone made a complaint to Ra Aus about these manoeuvres.

Evidence was forthcoming that owners of ultra lite aircraft are responsible for the maintenance of those aircraft. Evidence was also received that the deceased O'Keefe lacked some skill in that area. While there are certified mechanics capable of maintaining/repairing those planes there is no requirement for those people to be used for major services. In respect of that issue I make a recommendation below

Given the evidence of improper flying over a lengthy period it is disturbing that no action was taken to suspend or cancel O'Keefe's licence to prohibit him from flying. There are a number of factors that contributed to this lack of action, namely

- (a) There is an unfortunate, albeit prevalent, culture within recreational pilot groups not to report poor flying and to a great degree there appears to be an attitude that these matters can be dealt with, if at all, in house.

- (b) As a result of (a) above I am satisfied that Mr Fisher as a Chief Flying Instructor was in fact under an obligation to inform Re Aus of the apparent existence of the video and of the admission made to him by O'Keefe. This should have been done on an urgent basis and should have been accompanied by recommendations about the urgent need to suspend O'Keefe's licence. This obligation is contained in the RA Aus Operations Manual, which sets out the duties and responsibilities of Chief Flying Instructors, including the obligation to report incidents that contravene the manual and relevant legislation as well as being responsible for promoting positive safety culture.
- (c) Many witnesses said that their knowledge of the actions of the deceased O'Keefe was from rumour/second hand sources.
- (d) Many witnesses believed that someone else had taken action and on that basis thought that matters were already in hand.
- (e) A lack of statutory power to require owners of aircraft to disclose the name and place of abode of a person flying their aircraft on a particular day.

As a consequence of all of the material above mentioned I recommend the following:

PROPOSED RECOMMENDATIONS

1. a) RA-Aus reinforce to its members that there should always be positive obligations on all member's to report any illegal or dangerous flying that might be in contravention of the Operations Manual and/or Regulations.

b) RA-Aus reinforce to its members that any evidence suggesting illegal, dangerous or unsafe flying on a passenger-carrying flight requires a member pilot, Instructor, Senior Instructor, or Chief Flying Instructor, to make an immediate mandatory notification to the Operations Manager.
2. RA-Aus review its system for receiving and handling complaints about member pilots that relate to flight safety issues, including:
 - a. developing a procedure for documenting these complaints;
 - b. developing a procedure for investigating these complaints;

- c. developing procedures to protect a person who lodges a complaint, including an anonymous complaints system if appropriate.

These procedures are to be written procedures and are to be implemented by RA-Aus as soon as practicable.

- 3. That the findings in this Inquest be referred to the Minister of Transport for adoption, so as the Minister gives consideration to enacting legislation that grants RA-Australia its own laws and or regulations, which governs the following issues.

- i) Disciplinary system that protects the rights of both RA – Australia members and the protection of the Community.

- ii) Legislation enforcement that gives the Operations Manager or Assistant Operations Manager the power to immediately suspend and ground a pilot on the written recommendation of either:

- a. A combination of two members, one of which must be an Instructor (at a minimum); or
- b. A Chief Flying Instructor, Pilot Examiner or Regional Operations Co-Coordinator.
- c. That such suspension be for a period of 28 days or until the matter is determined by a court or tribunal whichever is the later.

- iii) Legislative guidance regarding publishing information about member pilots who have had their licences suspended or cancelled. In particular if names are to be published whether that should be via a secure or limited site.

- iv) Legislation requiring all aircraft to undergo regular maintenance checks by an accredited level 2, maintenance engineer at such times as may be determined by CASA and/or Ra Aus. In addition consideration be given to annual renewal of aircraft registration with the requirement of an up to date certificate from an accredited level 2 maintenance engineers as to the airworthiness of aircraft.
- v) Legislation requiring owners of aircraft to identify upon demand the pilot of any aircraft owned by them if required by a member of the police force, CASA or Ra Aus

In conclusion I wish to thank both Sgt Rowe who assisted in this enquiry and Mr Evenden who appeared for the deceased Hainaut's mother for their invaluable assistance.

I make a special thank you to Det Light who compiled the Coroners brief in an impeccable manner and Detective Inspector Hurley for his insight culminating in a very helpful Executive summary that was presented to me

I express my sincere condolences to the families of both deceased.



Coroner
Jeff Linden
17th May 2012

Copies to be forwarded to

State Coroners Office
Hon Anthony Albanese Federal Minister for Transport