

# Shooting the messenger

Analysis – Paul Phelan<sup>1i</sup>

## Executive summary

A chain of events that any competent, responsive and honest management could clearly have prevented, ended in the grounding of about 65% of Australia's general aviation fleet in December 1999; most of them for almost four months. In-house Civil Aviation Safety Authority documents show that CASA ignored important industry input and supporting evidence, blanketed the whole event through denial, deferred positive action until it was too late, and sought to blame industry.

It was Stan van de Wiel's misfortune to be at the geographic epicentre of these events. With the exception of one other operator, the Royal Victorian Aero club, his aeroplanes were closest to the Mobil fuel facility, and were therefore among the first to be refuelled from the tanker every morning.

Mobil's misuse of a chemical cleaning substance in aviation gasoline (avgas) manufacture was eventually identified and admitted to be the contaminant that grounded about 7,000 general aviation aircraft on Christmas Eve, but that wasn't until long after two separate engine failure incidents in one day prompted two responsible operators to ground their respective fleets voluntarily.

Documents obtained by Mr van de Wiel under freedom of information and other sources show that CASA ignored or overlooked numerous indicators that the fuel crisis was developing, and that his persistent questioning of the way the regulator managed the situation led to a CASA campaign to damage his business beyond repair.

Also revealed is the way CASA officials subsequently engaged in extensive plotting of tactics that were clearly designed to disable Mr van de Wiel's business by avoiding due legal process in favour of administrative decisions and actions which are not transparent and are therefore not subject to the assurance of due process. CASA's actions were taken despite internal legal advice that cast doubt on the validity of the procedures that were proposed, and ignored the observations of the Commonwealth Department of Public Prosecutions and those of one of its own investigators.

Stan van de Wiel believes the FOI documents show that the regulator's attitudes and actions amounted to orchestrated targeting of him as a "whistleblower" for his persistent questioning of the way the regulator managed the fuel quality crisis.

Most of the events recounted here occurred during the tenure of Mr Mick Toller as CASA's CEO, and have not been resolved because there has been no observable and transparent examination of CASA's actions against Mr van de Wiel.

CASA's present Director John McCormick has declined to examine the matter further in the absence of "*specific, new, credible and factual evidence.*" However when presented with that evidence in the form of documents obtained under FOI, Mr McCormick referred the matter to Industry Complaints Commissioner Elizabeth Hampton, who has since indicated that CASA considers the matter closed and suggested the option of legal action. It therefore appears that CASA does not consider the documents obtained under FOI to contain "specific, new, credible and factual evidence."

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<sup>1</sup> For author details see endnote at the foot of this document

## **The “messenger”**

Stan had completed his initial pilot training with Schutts in 1968, and by 1971 held the position of chief pilot and chief flying instructor of PilotMakers flying school in Victoria. In those days the processing of his air operator certificate (AOC) took just one week including a site visit from the (then) Department of Civil Aviation (DCA.).

When his wife was diagnosed with a terminal illness in 1980 Stan took his young family back to The Netherlands to be near her family. He immediately had his licenses converted to the Dutch equivalent at the (then) Dutch Government flying school (R.L.S) for his practical tests. On completion he was duly offered a position.

The Dutch were impressed by Stan's practical approach, which he attributes to the (then) prevailing Australian system: “Looking back, I believe the whole approach by respective Australian regulatory authorities has been totally reversed, with CASA now legislating on absolutely everything regardless of safety relevance,” he says.

Returning to Australia In 1996, Stan purchased Schutt Aviation. Founded in 1946 by Arthur Schutt the company had been a major GA business, but events surrounding the JetCorp fiasco had caused it to be downgraded to a smaller charter, flying school and surveillance operator with its own maintenance facility. The operation was losing \$500,000 per year, and Stan set himself the goal of getting it back on its feet. In the first year of operation under his ownership Schutt was breaking even, and had it not been for the fuel contamination disaster, would have shown a healthy profit. Based on that prognosis Stan continued investing funds through the acquisition of several aviation businesses at Moorabbin.

His first involvement in RPT operations began in Oct 1999, as handling and booking agent for Par Avion, of Hobart, which operated from his newly acquired Aus Air terminal. In early 2000, CASA grounded Par Avion for carrying a single passenger from Moorabbin to Flinders Island in a Class 2 maintained aircraft. The passenger had arrived late and had missed his flight but the baggage aircraft had a seat available so the pilot offered it. In fact the passenger was carried in the only non-contaminated Class 2 aircraft operated by Par Avion, whose fleet had also been grounded.

### **Dec 1999 - fuel contamination.**

Because there has never been an open and transparent enquiry, it cannot be established to what degree CASA contributed to the disaster by shutting its eyes to the indicators, or whether it was simply the lack of leadership and professionalism often evident within regulatory bureaucracies. CASA's refusal over the following decade to carry out any follow-up investigation, and the ATSB's March 2001 [Systemic Investigation into Fuel Contamination](#) report suggests there are highly significant facts the regulators and the investigators still did not want exposed.

The ATSB didn't go out of its way to interview industry, and appeared to accept Prof Trimm's findings at face value. The report does go on to recommend reinstallation of an oversight process as pre-1992 but CASA ignored this and took five years, finally to respond in the negative.

There had been ample warning. The first serious contaminated fuel incident on record occurred when a light aircraft made a successful forced landing after an engine failure on Dec 31 1997 at Shepparton, Vic. Because "sabotage" was suspected the police became involved. Three years later CASA used a Victoria Police photograph of this aircraft's carburettor taken at Shepparton at that time, to demonstrate to the public [on a television newscast] the nature of the contaminant; all the time denying knowledge of any previous incidents. The owner involved identified his photograph from TV footage. (Name withheld for obvious reasons.)

Then in mid 1998, there were six major fuel system component failures on AusAir Piper Chieftains. Each incident was duly reported to CASA, a logical requirement under then-existing legislation, especially for an RPT operator. The stranding of aircraft and passengers was a financial drain for the airline and a direct cause of its demise in mid 1999. Having purchased AusAir in that year, Stan had since sighted duplicate copies of the incident reports, but did not identify their relevance until 2000. When he requested copies under FOI in 2005-2007, the request was unsuccessful and no reason was given.

Throughout the rest of this narrative, dates will be highlighted to help the reader follow the sequence of events.

On 22 **April 1999**, Mobil quarantined Avgas outlets at a number of aerodromes in NSW, Vic., SA and Qld., and carried out tests on fuel from a wide variety of locations. The tests indicated that the fuel at the quarantined sites met the Mobil specification for Avgas, and the quarantine was lifted. Yet in Jan 2000, local operator Bob Hussey retrieved two sealed fuel containers from his hangar at Bairnsdale, VIC, with samples dating back to April. Independent laboratories tested both to determine the EDA content positively. CASA took control of one sample; Mobil took the other, which was never seen again. This event was apparently overlooked in the ATSB's lukewarm final report which focused on systemic failures without identifying specific incidents and accidents in its commentary.

In **October 1999** a Schutt Piper Chieftain Charter flight experienced engine surging on takeoff from Oakey Qld. The company submitted an incident report but again no record appeared on the ATSB report or (apparently) in CASA records.

The engines were bulk stripped by a Toowoomba workshop, but a vital clue was overlooked when the fuel injectors were removed and replaced. Months later as part of the "avgas contamination clean-up," The owner discovered that the fuel injectors were blocked with the very contaminant which ultimately caused all the problems. In this instance however a local CASA AWI had attributed the incident to "pilot error". Direct costs for this incident exceeded \$100,000. Again, the event is not referred to in the ATSB report.

Then in late **November 99** during the Schutt Christmas breakup, staff witnessed a helicopter crash at Moorabbin airport while the control tower was not operating. Emergency services attended and the pilot was taken to hospital by ambulance. These events, not detailed in any ATSB report, became classic examples of how proactive intervention by CASA might have averted further incidents.

In **Early December 99** the problem worsened, with frequent incidents of poorly starting engines and engines failing to idle. This culminated in the detection on Dec 12 1999, of large globules of a foreign substance during routine pre-flight fuel inspections.

The Moorabbin Mobil fuel agent took up the matter in response to Stan's direct complaint and a refinery chemist attended the next day taking samples.

Two days later, Stan's son experienced an engine failure while flying a company aircraft, but managed a successful landing back on the aerodrome. Minutes later a Royal Victorian Aero Club aircraft, piloted by a student pilot, experienced a similar failure within seconds of lift-off. Fortunately that pilot had enough runway remaining to land short of the surrounding factories.

**Dec 16, 1999.** At that point Mobil took immediate action through its local agent by advising all clients of the possible contamination of its product. Avgas sales were terminated.

In consultation with the RVAC, Schutts decided to ground all company aircraft until further investigation. In Stan's case that involved 16 aircraft, a decision not taken lightly considering the essential cash flow generated by these assets. The RVAC followed suit. As required by the Civil Aviation Act, the matters were duly reported to the local CASA, again with the now familiar and almost reflexive dismissal.

Stan and the President of RVAC visited CASA and told AWI Jim Hammond of their findings. Hammond had previously been told by the then Schutt Deputy CFI (Peter Baldwin) in early 1998 about the problem. They were shown the door with gratuitous comments of "old poorly cared for aircraft." Mr Baldwin described that meeting on TV in Dec 1999.<sup>2</sup>

This time, Stan took the matter directly to the (then) CASA Director of Aviation Safety, Mick Toller, on Friday, **December 17**. Mr Toller's reaction was he would "look into the matter." No evident further action occurred at that time.

However the grounding was enough to attract the media's attention, and because of the reputation of Schutts, Stan began to receive numerous calls, initially from pilots who had reported incidents of dirty fuel

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<sup>2</sup> Copy of video on file.

and poorly running engines since late 1997. When he later contacted the ATSB about reports missing from its data base, ATSB replied that these “were not regarded as significant,” explaining that “ATSB has insufficient funds to investigate more than a dozen incidents per year.”

On the same day Stan received a call (prompted by media coverage) from a former refinery employee who identified the actual contaminant as Ethyl Diamine, a neutralising agent used to protect refinery plumbing from corrosion, but obviously to be removed from the product line before dispatch. Apparently, the refinery’s dispensing and cleaning equipment broke down regularly as evidenced by the sporadic aviation incidents from 1997 on, as was witnessed by the end users.

### **“Mind your own business”**

On **Monday December 20** Stan reported the nature of the contaminant as EDA, again directly to Mr Toller, advising him of Schutt Aviation’s actions and their consequences. Stan’s diary notes record that Mr Toller: “rebuked me and told me I should mind my own business if I knew what was good for me.”<sup>3</sup>

“I make no apologies for my very direct way of speaking when I’m dealing with unresponsive bureaucrats who have secure jobs and guaranteed cash flows, and I’m very aware that CASA has a history of selecting its targets from among people who disagree with it, making a decision to act against an individual or company, and then sweeping aside all its obligations by invoking the magic word “safety” in an attempt to justify anything they do.”

Because our 24/7 safety watchdog CASA was winding down for the Christmas breakup it took some time to activate any appropriate safety-relevant reaction, but eventually in an airworthiness directive dated **December 23**, all light aircraft in S.E. Australia, were grounded on Christmas Eve.<sup>4</sup> Mobil advised all its agents in Victoria, NSW and southern Queensland of the problem, and suspended avgas sales.<sup>5</sup>

"However," says Stan, " Mobil couldn’t (or wouldn’t) identify the problem and in late January CASA appointed UNSW Professor David Trim, to analyse the product and provide a solution for clean-up of aircraft systems." Stan had identified the contaminant to Mr Toller three weeks earlier.

By Boxing Day industry licensed aircraft maintenance engineers had experimented with clean-up methods using an aviation approved additive, only to be threatened in no uncertain terms that CASA would prosecute anyone who carried out their own (non-CASA-approved) method of clean-up. The logic, as well as the legal liability aspects of forbidding qualified specialists to rectify identified problems using approved materials, was never explained.

During this period Mr Skip Fulton, an I.T. specialist in Stan’s employ, had identified a similar problem that had occurred in the USA during late 1998 (12 months before) where Exxon Mobil, had experienced similar problems. The article featured on the American FAA web site<sup>6</sup> and that of the oil industry, but back in Australia nobody seemed any the wiser.

Despite the losses due the grounding of the fleet, all Stan’s financial commitments were fully met and progress continued. At its peak in 2001 the group employed some 23 full and part time staff including engineering, ground, administrative and flying. Annual group turnover was approaching \$4m.

By this time Stan had committed the company to a \$2.5m investment program, so his interest in a solution was compelling. Later in Jan 2000, during regular fuel contamination “get-togethers” at Moorabbin, a small group visited the Professional Helicopters hangar and saw the contaminant, but at that time there was still no evidence of any positive CASA or ATSB action on the fuel contamination issue.

In the third quarter of 1999 Australian Air Charter Pty Ltd (Aus-Air) went into receivership, a direct result of extensive avgas contamination earlier that year. This had presented an opportunity for the purchase of the business and its substantial property/buildings at Moorabbin Airport. Turbo Aero Maintenance was also purchased.

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<sup>3</sup> Stan’s diary notes

<sup>4</sup> Airworthiness directive AD/GENERAL/77 (CASA)

<sup>5</sup> Mobil e-mail to agents, December 23

<sup>6</sup> FAA special airworthiness information bulletin, December 9, 1998

Despite the warning to "mind his own business," Stan continued actively seeking a meaningful response from the regulator in communications with CASA, ACCC, AOPA and fellow-operators. On January 7 he faxed Mr Toller, reminding the director that he (Stan) had his own responsibilities as an AOC holder adding:

*As there are still several thousand aircraft out there flying with possible contaminated fuel systems, it is assumed that it is your responsibility as the CEO of the supposed 'safety' authority to take immediate action to safeguard the flying public. Should such action not be taken immediately, I and the Australian public will hold yourself personally responsible for any accident or fatalities."*

At the same time he sent a fax to Transport Minister Anderson, outlining the situation and concluding:

*As you should be aware this is not the only matter of contention with a dysfunctional government institution, and I feel it is high time a parliamentary enquiry into this authority be called. Or do we again have to wait for the body bags to be filled?*

The following day (January 8) Stan sent another email to Mr Toller thanking him for his response in issuing the revised airworthiness directive (AD 78), but also pointing out that;

*Contamination is taking place beyond the filter system. Your field officers are fully aware that in most reported cases the system has appeared clean, only to find after engine failure(s) that it is the carburettor, fuel pump or injection system which has been contaminated.*

He also pointed out that the inspection recommended by the AD was therefore "not adequate:"

*The reported engine failures in the Piper Chieftain in New South Wales confirm this matter. My concern is that those pilots/owners who have had their aircraft systems correctly cleaned out as per AD/GEN/77 some days ago, as we have, will have met the letter of the law but will be especially vulnerable to failure.*

All aircraft that could have been exposed to the contaminated fuel were then grounded on 10 January 2000 by airworthiness directive AD/GEN/79.

### **CASA kept ACCC out of the Mobil case**

An approach by several operators to the Australian Competition and Consumer Commission (ACCC) met with a negative response as the ACCC could only act when [the] lead agency CASA requested such assistance. CASA inaction thus obstructed vital legal assistance under the *Trade Practices Act 1974*

**By April 2000**, most aircraft were now back in the air, although the total clean-up took a further year to complete.

At this point, although Mobil had appointed an intermediary to handle claims, few were being met and at the behest of AOPA (Aircraft Owners and Pilots Association) Stan reluctantly agreed that Schutt was ideal, representing every facet of GA, to become the lead party in a class action. After months of deliberation as to the legality of such action in the Victorian Court, Stan was approached by the Mobil Insurer and settled to opt out of the action for \$920,000. (an amount established by the insurer's forensic accountant as Schutt's actual losses). Months later he was presented with a \$550,000 legal bill in respect of the class action.

**In June 2000** the administrator of Island Airlines of Tasmania approached Schutt to manage its RPT flights, and duly obtained the necessary approval from CASA. In October 2000, the Island Airlines management agreement was terminated and the AOC was surrendered. Interestingly the former manager of Island Airlines was issued with a new RPT AOC only two months after applying. At this time Small World Travel agency (SWT), a tenant at the new Schutt building, approached Stan (Schutts) about conducting charter flights for the now stranded passengers to Flinders Island and Launceston.

Again approval was sought from CASA as the nature of the flights could be seen (depending on interpretation) as contravening the Civil Aviation Act 1988 (Regulation 206.) CASA advised that as long as flights were conducted as "charter" and through an agent, there were no objections. (In 2009 CASA

changed the "policy" to disallow such a "charter substitution arrangement" officially, unless it has given written approval for the arrangement.

This issue is central to events surrounding Schutts. At least two CASA directors, Mick Toller and John McCormick, have publicly acknowledged that R 206 is a "bad regulation", but notwithstanding that it has been variously misused over many years as a regulatory blunt instrument, having been inconsistently and unpredictably applied by various CASA regimes in various regions. The basis of all controversies relating to the question of what does, and what does not, comprise a regular public transport operations.

At one point Mr Clinton McKenzie, CASA's (then) General Manager of General Aviation Operations published and circulated a mini-thesis in the form of a policy document which introduced the concept of an "interposed third party." The policy put forward was that if an entity that was "unrelated" to the operator chartered the entire aircraft and then sold seats to separate travellers or groups, this would in some unexplained way be legal (safe), provided there were no personal or corporate connections between the carrier and the chartering entity. This has been described as an "arms length" relationship; however the expression is not defined anywhere in the Act or regulations, and has given rise to considerable dispute because to this day it is still being randomly and inconsistently applied, apparently at the whim of individual officials. The CDPP later raised this as an objection in one of its letters to CASA relating to CASA investigator Geoff McLaws' report (see later.)

This concept has provided lush grazing for amateur lawyers and professionals alike, and in several instances an operator has been shut down for alleged non-compliance, only to be replaced by another who appeared to be doing exactly the same thing.

Simply put, Regulation 206 seeks to define the differences between a charter flight and an RPT flight by specifying that it is an RPT flight if it is conducted "between fixed terminals", "to a fixed schedule," and is "available to persons generally."<sup>7</sup>

On **Sep 20 2000** Stan met with CASA team leader Matthew Anderson and area manager John Botham to outline the arrangements Schutt had agreed with Small World Travel Pty.Ltd. On the same date he received a letter re-stating CASA's position that a flight was considered to be not a charter but an RPT operation, if it carries "persons generally", and operates at fixed times from fixed terminals, where the operator determines the times and the terminal. The letter ended by stating:

*If what you are doing satisfies all these triggers, you would need to stop your operation until you have an authority on AOC authorising RPT operations.*

The arrangement as outlined at the meeting met with the charter requirements as the client was an independent travel agency, an element which then validated the legitimacy, (read safety) of the flights. Such flights had been conducted since September 2000 and CASA had no problem in renewing the Schutt AOC in March 2001.

In **November 2000**, Stan negotiated purchase rights to acquire RPT AOC holder Uzu Air (in liquidation). Stan and his co-directors of RegionAir Express (the entity for the proposed airline) met with CASA representatives Botham & Anderson, requesting acceptance for its use on Bass Strait/Tasmanian Routes. The CASA officials categorically stated that they wouldn't consider that, even with proposed changes, but Mr Botham declined to affirm that decision in writing. CASA however offered to process a new RPT AOC application within six to eight weeks. It was later established that CASA have no head of power to refuse the Uzu Air application and that these were again purely personal interpretations by CASA, which frequently quotes "policy" in addition to what is substitution for references to regulations. The word "policy" is not to be found anywhere in the Civil Aviation Act 1988. Such "commercial" determination also deprived Uzu Air creditors of a substantial amount.

It is against that background that issues raised by CASA in relation to Stan's activities need to be considered. In 1998 in the second reading speech of his amendment Bill, Minister John Anderson

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<sup>7</sup> These definitions are derived from the now defunct "Two Airline Policy" and provided freedom from competition to the duopoly. The issue has no discernable safety implications.

expressed the need to remove any reference to "Commercial" from the legislation as CASA was only charged with a "Safety" role as regulator. Under the *Acts Interpretation Act 1901* this then also became law. In 2013, CASA has still not recognised or acknowledged this.

At this time, another point of contention between Stan and Moorabbin-based CASA officials began to emerge. From 1998 onwards, Stan had reported various safety matters to CASA as he observed them as chief pilot and CFI of Schutts, as mandated by safety considerations and plain airmanship. He records that such reports, some of them mandatory and confidential, were either dismissed or not acted upon, and he had a strong impression that these interventions were unwelcome.

An early example was the case of a foreign student who had gained an Australian CPL at another school and had registered with Schutts to train for an instructor rating. A fellow-student reported an incident involving the trainee on a night flight where he was completely "unaware of his location" (lost over Bass Strait):

"When this was reported I decided to test the trainee with a simple navigation exercise, which he failed in virtually all respects. I wrote to the Moorabbin CASA manager Bob Greenwood about this and about six months later on the eve of that manager's retirement he visited me in regard to that report. I wanted to know how 'safety' could be guaranteed for such a licence holder other than my refusing to rent him an aircraft. This individual's (Indian) parents had scraped together the monies to support him, yet his document was a licence to kill himself and possibly others.

"As far as I know my report was never acted upon."

Not discouraged, Stan continued to act appropriately and within his area of responsibility, in terms of moral and legal obligations, a "safety culture," or simply "duty of care." Those commitments have since been enshrined in regulation 5.4 of the Transport Safety Investigation Regulations 2003. Although getting lost over Bass Strait at night isn't specifically listed in the regulations as a reportable matter, they do define at least two reportable matters that could result from getting into that situation, for example if "flight into terrain is narrowly avoided" or "the supply of useable fuel becomes so low that the safety of the aircraft is compromised." Clearly, if the pilot had been alone as was permitted by his licence, the flight would certainly have resulted in a fatality, and Stan makes absolutely no apologies for reporting the incident as was his duty. In this case the safety experts offered no solution and took no apparent action.

### **"A slippery operator"**

**February 12, 2001** Correspondence finally obtained under freedom of information provisions shows that from the time the (RPT AOC) application were raised, various involved officials energetically opposed the application to a degree that was inconsistent with their undertaking to process it within six to eight weeks. A flurry of e-mails between nine CASA officials was triggered when FOI Tim Baker warned his colleagues on February 9:

*Gents, be careful. Stan van de Wiel is a very slippery operator and he will do anything to get his hands on a LCRPT [low capacity regular public transport] AOC, which will include playing both the airline office off against the GA office (sic.)*

*From the dealings I have had the Stan I would not be surprised if he applies for a LCRPT AOC for the P-31s so he deals with the GA office and as soon as the AOC is issued he applies to have the LET 420 add (sic) to the AOC.*

**DON'T LET THIS OPERATOR PLAY OFFICE POLITICS WITH US"**  
*(emphasis added with 29 exclamation marks.)*



The reference to a "LET 420" relates to discussions Stan had already had with CASA officials regarding the introduction of a 19-passenger LET 420, a "commuter" type Czech Republic aircraft certified by the FAA. Stan accompanied the Czech company pilot to fly the newly acquired LET down to Moorabbin and it was parked there for almost six months whilst the LET Engineer In Chief visited CASA Canberra – a useless exercise! The LET engineer with all his experience dealing with third world countries said he had never experienced such lack of interest!

It is unclear exactly where in his life experience Mr Baker acquired a talent for identifying "slippery operators" and forecasting their business strategies, unless of course it was during his CASA legal training induction course. These remarks were circulated at the time of considering the renewal of the AOC, which despite the various comments ultimately went ahead.

Mr Botham proposed a somewhat less direct approach:

*I am perfectly happy with the situation. Tim's dramatic comments are quite unnecessary as we will take each application by Schutts as it comes and take any action as required. If they gain an RPT AOC with small aircraft and then ask to have the LET 420 added, we will simply hand over to you or your inspectors to assess the application as appropriate.*

**In March 2001** RegionAir Express Pty Ltd filed an application with CASA for an RPT AOC, which was finally issued as a "charter only" AOC in January 2003 – considerably more than the "6 to 8 weeks" that had been the undertaking and only after Stan was forced to resign as Director, and not have anything to do with the company.<sup>8</sup> The applicant who took over the company under contract was later threatened with criminal charges, for allegedly having made a false statement as to Stan's ongoing role as then sole shareholder. (The company had been sold subject to approval and only a deposit paid, hence Stan held the shares as collateral.)

In the meantime the 'Charter' operations had been ongoing since September of the previous year, this with CASA approval, but FOI Baker didn't agree and decided to impose certain conditions of his own. These included changes such as designated "escape routes" and nominating a radio operator at base. All were adopted as part of the Company's procedures, albeit Schutt being the only charter operator in Australia to be required to do so. Also further notices were placed in the terminals identifying charter flights with Schutts, these arrangements were all negotiated with the CASA field officers, who were reluctantly persuaded by those actions to recognise the interim arrangement as a charter operation. However the operations continued to be referred to by them as 'RPC.' (Regular public charter), a designation raised by the FOIs on one of their visits.

#### **April 1, 2001**

In April 2001 a "routine" CASA operational audit was carried out for the stated purpose of renewing the company's AOC. FOI T. Baker, carrying out the audit, was negative in his report to his supervisors, who censured his comments<sup>9</sup> and renewed the company's AOC without reservation. Stan had been alleged to be using "loopholes". CASA's internal response was: "if there are loopholes, we should close them." This "loophole" has more recently (May 2010) been closed by amendment of Civil Aviation Order 82.0 – 3C *Conditions relating to charter substitutions*. Up to this time several N.T. based ATSIC communities operated flights on the same basis, albeit *without* the additional safety precautions, nor CASA action.

#### **May 01, 2001**

From this time onward, CASA employees Baker and Rushbrook began almost daily surveillance of the company's operations in the form of "ramp checks" – the pilots and regular passengers began to complain as they saw this as an intrusion if not downright harassment and intimidation.

#### **May 02, 2001**

The company purchased an additional Piper Chieftain, a Class 1 (Airline standard) maintained unit. CASA however "required" it now be maintained in Class 2 maintenance, an allegedly inferior standard applicable

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<sup>8</sup> Letter from M. Anderson to Stan and also in interoffice comments between Anderson and Office of Legal Counsel

<sup>9</sup> relevant emails provided under FOI



to charter category. Stan protested but was forced to downgrade the aircraft to comply – being thus compelled to operate at a theoretically reduced level of safety, for unexplained reasons.

**Around mid 2001**, detailed personal information only known to certain CASA personnel began to appear on the “Professional Pilots Rumour Network” (PPRuNe) blog site. The sources of this information were identified as two CASA Flight Operations Inspectors who were deeply involved in matters related to Schutt. CASA was duly advised of this, but no perceptible action was taken.

### **A nocturnal near miss - August 2001**

Schutts regularly carried out scenic flights at night for local businesses, over the city of Melbourne. On one such occasion returning to land, the Chieftain with 10 occupants was on short final to 17L when Stan (as check pilot) remarked that he was losing sight of the runway lights. The Pilot flying had no problems but before he could answer Stan took control and veered the aircraft off to avoid an unlit Piper Warrior only meters ahead of them:

"The passengers who caught sight of the Warrior now lit up by our lights were impressed. Little did they know how close to a mid air we had come? The incident was reported with the purpose that it should be a lesson to all. I made the recommendation that when the tower was closed as on this occasion, pilots allocate themselves a sequence number turning “base” according to their perceived position. Such number is generally allocated by ATC during tower operating hours. The next day I spoke with my by now regular CASA contacts, Anderson and Botham who appeared incredulous at such a suggestion. 11 months later a young pilot died when she landed her Cessna on top of another Cessna on short final, Inclusion of my recommendation could have saved that life; at least her flying school has now adopted my recommendation CASA nor Air Services Australia appears to have bothered, likely they haven’t quite identified the safety implications”

"It was never my aim to have penalties handed out as a result of my reports, but rather I sought for everyone to learn from another’s experience. The “unlit” Piper Warrior was possibly being flown by a student simulating an electrical failure! Yes, some solo students appear to practice this as taught by their instructor during a dual training flight. In the Warrior it is easy to extinguish the navigation lights by rotating the dimmer switch too far! Did anyone learn? Surely not, judging by the reaction from the two senior CASA officials. Did the ATSB feel this was worthy of a report if not a study? Apparently not. In 2004 Stan submitted a related article to the CASA Flight Safety magazine but it was rejected. The implications for CASA due its inaction were again too great.

### **Aug/Sep, 2001**

There was a considerable internal exchange of letters between Moorabbin and Canberra relating to halting the processing of the RPT application, based on the position that Stan was not considered suitable as a director whilst the cancellation action (September 2001) was in progress. Stan was developing the impression that CASA was becoming less and less committed to processing his RPT AOC application inside the eight weeks as had been promised; and more committed to trashing it.

### **2001 Sep 15**

In view of the events of 9/11 and the demise of Ansett Airlines five days later, RegionAir Travel decided to cease taking bookings for the Bass Strait flights. Existing bookings were honoured up to November 2001. Fear of flying had set in, especially with foreign tourists.

On Sept 1 AviaTour Pty Ltd (t/a RegionAir Travel) took over as travel agent from Small World Travel. Despite previous consent, it was now claimed (by Botham) that this arrangement was no longer at “arms length” as Stan was also a director, and that therefore it did not align with the CASA consent provided earlier. At CASA’s (Botham’s) suggestion Stan resigned his directorship although CASA (according to its own directives) has no authority to dictate company structures or affairs.<sup>10</sup> The term “at arms length” is not defined in a legal context, nor does it appear in any CASA publication available to the public – the CDPP pointed this anomaly out to CASA but the advice was disregarded entirely. Stan again consulted his

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<sup>10</sup> See CASA Air Operator Certification Manual

company's legal advisors, who dismissed the CASA claim, stating that this was *another* of CASA's own interpretations of the Act.

### Comparing & plotting strategies

As shown later in emails (finally) obtained through FOI it was clearly becoming the corporate view that "an example has to be made of this operator." Here now was the chance under the guise of "no longer at arms length." John Botham drafted a letter to Stan which said in relevant part:

*We have received legal advice that your operation is in fact an RPT operation. As Schutt Flying Academy (Australia) Proprietary Limited does not have RPT listed as a permitted operation of its AOC, I would ask you to cease the operations immediately, otherwise we will be forced to take further action.*

*INSERT FOI BOTHAM PRECEDENT (2)*<sup>11</sup>

Stan never received that letter, presumably because it was a draft sent to another CASA office as a suggested letter.

In its place, he received a letter dated September 26 2001 signed by John Botham, the letter having been "vetted" by CASA's (then) Office of Legal Council, containing a statement from the OLC which was obviously not intended to be included in the final document. The letter said in part:

*We have received legal advice based on the information presently available to us that your operation is in fact an RPT operation.*

Following that statement, the person who had drafted the letter had inserted the obviously in-house comment:

*[Not sure that we can be so definite but if we're not the rest of the letter is weakened.]*

The inadvertent bracketed comment confirmed that CASA's legal office was questioning whether it had any legal basis at all for demanding the cessation of flights, and that its contents were therefore purely threatening. (A copy of CASA Board minutes quoting this letter and advising staff not to repeat any such oversight was obtained under FOI in 2005-07<sup>12</sup>.) The letter then reverted to the earlier draft, stating that legal advice to CASA was that it was an RPT operation, and asking that it be ceased immediately to avoid "further action."

Interestingly, the Board letter could be construed in either of two ways; either criticising the incompetence of leaving such a remark in the document, or indicating that the Board concurred with the action being implemented, irrespective of its accuracy or legality.

"Clearly there were those in CASA who wanted an example made of me," says Stan. The information released under FOI where CDPP had recommended against action is reason to call the subsequent action vexatious. Also the ultimate sign-off by Mr Ian Ogilvy contrary to the provisions of CASA's *Compliance & Enforcement Manual* seems to have provided Mr Toller an escape route. In an earlier letter to MP Warren Entsch, Toller explains that a cancellation is taken seriously and as such is "a decision taken at the top."

### 2001 Nov 01

CASA investigator Geoff McLaws requested all flight operations records, same to be returned once copied. As part of the FOI application, a document was reluctantly disclosed four years later relating to the CDPP's refusal to allow a "search warrant" for any of the company's documents. There was nothing to hide; all documents having been reasonably available for the asking. There was absolutely no challenge as to the flights having taken place! Reports released under FOI confirm that at all times during 1999 - 2002; the company complied with all CASA requests and directions in regard to flight operations.<sup>13</sup>

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<sup>11</sup> Presumably a drafting instruction

<sup>12</sup> CASA Board minutes

<sup>13</sup> report from G McLaws to his supervisors qualifying this cooperation and the CDPP's reasons for refusal

## 2001 Nov 26

Stan received two notices from CASA on Nov 26 2001; one demanding that he show cause why his approval as chief pilot, and the other why his company's AOC should not be cancelled. On these issues, the CASA website detailed the action taken against Stan and the company, available for public notice. Stan immediately engaged legal counsel and a written statement was prepared. At the same time the first request was made for the removal of the details from the Website, but no action was taken and the details remained displayed for the subsequent 15 months. Even when ordered by the AAT (April/May 2002) on several occasions to amend the details CASA simply ignored the matter. CASA has since ceased the practice, and now limits itself to stating the details of an actual suspension or cancellation. The Attorney General's Department in 1998 in respect of the Commonwealth's liability had warned all departments against this practice, the Commonwealth being liable for any defamation action.

## Nov 27 2001

A "show cause meeting" was scheduled and held on January 15 2002. John Maitland represented Schutt, and its area legal counsel Trevor Killmier, local manager John Botham; flight operations team leader Matthew Anderson; and an airworthiness inspector represented CASA. It is standard procedure at such meetings that guilt is presumed over innocence and the apparent purpose of such meetings is to determine the strength of the respondent's case and identify any weaknesses in CASA's position. As usual all questions were fielded by CASA and no decision was forthcoming at the meeting.<sup>14</sup> A final decision was left to CASA Delegate Ian Ogilvy, whom sources say never attends such meetings, inviting the inference that he relies on the views of those attending, who are normally the original initiators of the action.

In March 2002 CASA Chairman Ted Anson invited Moorabbin-based industry representatives to attend an "Open Forum" at Moorabbin Airport Victoria on April 17. In response Stan wrote to the Chairman and individually to each CASA Board member seeking answers to a series of (outstanding) questions relating to industry matters such as prosecution of Mobil and compensation to Industry in general and for CASA's role in the Avgas contamination "cover-up." This was clearly intended to avoid embarrassment should such questions need to be asked during the forum, and also to allow answers to be given as part of the CASA presentation. Note: at this stage CASA was still to respond to the ATSB finding, and finally did so a further two years later.

## Certificates cancelled

**April 16, 2002** No answers to Stan's questions to the Board were forthcoming with the exception of "Notices of Cancellation" of Stan's chief pilot approval and the company's A.O.C. These notices arrived by facsimile late on the eve of the "Open Forum."

A quote from an internal CASA Legal (in confidence) document written on the same day details the issues of policy and tactics which appear to have replaced considerations of due process and natural justice:

*OLC believes that this is a borderline case and were it to appear before the AAT, that the results of a review could not be guaranteed. However, both OLC and the Area Office argue that it is an important **policy** position to take action against Schutt, in order to dissuade other companies from attempting to circumvent legislation in this way.*

It has never been explained, exactly what specific piece of "legislation" Schutt was attempting to circumvent, nor has the sudden shift from an arrangement reached in consultation with CASA, the treatment of the whole matter as a regulatory breach. Copies of the notice of cancellation of the AOC and chief pilot approvals were attached.

At this stage it had taken five months to "ground" an allegedly unsafe operator which had already ceased all disputed operations. After the September letter from Botham, the intimidation of pilots by Baker and Rushbrook, licence checks and other forms of harassment, along with the effect of the tourist downturn, it was decided to cease accepting all Tasmania charters.

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<sup>14</sup> transcript is held available

Schutts had been conducting "regular" charter flights from Moorabbin to Launceston via Flinders island which were now all discontinued. RegionAir travel employed 6 staff in connection with bookings, flight handling at Launceston and Flinders Island and business promotion. These were all dismissed. As for Schutt it lost several hundred hours of aircraft utilisation from Moorabbin and several pilots sought alternative positions. Stan had recently invested some \$600,000 in the refurbishment of one Piper Chieftain, with a rebuild from the ground up. This aircraft sat idle for several months.

The loss of the AOC and Stan's CP approval meant that the company could not operate any commercial flights or training and this led to the demise of the whole company. The publicity initiated by the CASA was enough to drain the student and private pilot base even when an alternate CP had been employed.

It was later noted that Ian Ogilvy, a manager/delegate at CASA, but a person specifically not authorised to sign such notices of cancellation, had signed the notice. CASA in its "*Enforcement Manual 2001*" sets out a strict detailed "*schedule of authorised persons*" in the manner of a "flow chart." Under FOI request 2005-07 no copy was made available. At the 2002 AAT hearing, at Stan's request, CASA provided a "*back-dated*", copy of Mister Ogilvy's delegation which still didn't comply with its "*enforcement manual 2001*."

At the "*open forum*" accompanied by several others, Stan approached Mr. Anson and asked him to explain the "notice of cancellation". Anson acknowledged that he knew about the issue but told Stan to approach CEO Mick Toller about a meeting. Stan immediately approached Toller, who denied all knowledge when challenged. Anson knew immediately and opened the Forum with a statement that: "if there is any trouble here or insinuations against CASA, I will close the meeting immediately."

It is not made clear how a Chairman of the Board should be acquainted with such operational matters while CEO was not. Censored board minutes later released under FOI indicated that Mr Toller was equally well informed.

At a Senate Estimates Hearing in 2002 Mr Toller stated when questioned by Senator O'Brien, that he had "*met with [Mr van de Wiel] in early 2001 at Moorabbin Airport, and had had extensive discussions with Mr van de Wiel, regarding the Fuel Contamination issues and these were resolved.*" While Mr Toller did visit Moorabbin and address a group of industry representatives, he did not meet with Stan at any time, despite a meeting having been requested. The matters were never resolved. Stan remained in his office all day awaiting Toller's arrival and had alerted staff to call him immediately. He did not appear. Toller's diary details for the day were not made available under FOI.

Stan's (then) legal counsel applied to the AAT for a "stay" which was granted, initially with him as chief pilot for one month. Thereafter a new chief pilot had to be engaged. CASA fought vehemently against the granting of the stay, producing demonstrably concocted evidence against his person and stressing the seriousness of the "safety" aspects of the situation. Resultantly, as of November 2001, the company had voluntarily ceased the disputed charter operations.

The CASA Enforcement Manual specifically required all evidence to be available *before* the issue of a show cause notice. As discovered later under FOI (2005-08) no tangible evidence supporting the decision was available at that time, which also explains the CDPP's refusal to act, as there was no case to answer. CASA's in-house legal advice was that: "this is a difficult case."

### **Stacking the cards**

Internal CASA correspondence finally obtained under FOI reveals the mission-oriented in-house deliberations that can be applied in a hostile action against a certificate holder. The inescapable impression that the dialogue provides, is that a decision has been taken to take action that will result in Stan van de Wiel leaving the industry, and that nothing that does not have that outcome is worth considering.

In an e-mail to FOI Julian Smibert and Moorabbin manager Matthew Anderson, CASA lawyer Trevor Killmier laments:

*There is no specific "fit and proper" test which AOC applicant must pass which is a pity.*

But all is not lost, as he hastens to ensure his colleagues, discussing the options that remain available through administrative decisions, without resorting to legal processes which are unreliable because they are subject to all sorts of inconvenient prescriptions:

*There are other tests though under section 28 CAA [Civil Aviation Act] which achieve much the same.*

*Firstly, we must be satisfied the RegionAir is capable of complying with legislation that relates to safety.*

*A company can only act through its officers and employees. Given the facts and circumstances of the action we are principally taking against Schutt and Van de Wiel personally, with him and Grant in control of RegionAir, I do not think we can be so satisfied. After all, we are alleging that Schutt is running unauthorised RPT and those operations are run at a lower standard than they should be. That's a safety issue arising through a breach of the legislation.*

*Of course, if RegionAir did get its AOC, we might expect the people involved would lift their game to meet the appropriate standards, but the flagrant disregard of the law by them at present would cause me to doubt their resolve to comply.*

Having made that assertion, one might have expected Mr Killmier to march Stan and/or his company into the courts charged with "flagrant disregard of the law," however he declines to identify the disregarded law, and no such option has been discussed in any of the material we've seen. This Instead, Mr Killmier offers his colleagues some guidance on various administrative processes that may help scuttle RegionAir Express's application for a low capacity RPT AOC:

*Secondly, for much same reasons, how can we be satisfied that the organisation is suitable to ensure the operations can be carried out safely? These people are vital components of the organisation.*

*7.19 of the AOC manual deals with how we become "satisfied" and you might want to have a look at that too.*

*At this point, we have 3 choices. Delay, request more information or refuse the AOC application.*

The tactical analysis that followed almost defies belief as it represents a dialogue on three possible ways to abuse the administrative decisions process in order to achieve a defined goal.

*Refusal is probably justified for the reasons above but that decision would be reviewable in the AAT.*

How inconvenient! Surely there's a non-reviewable way?

*Tactically, it would be better to see what Schutt and Van de Wiel have to say in the show cause process and make up our minds after that. If we take no action against Schutt, e.g., the Regionair application is likely to proceed successfully and we do not have the complication of a review running with a show cause process. If we cancel or take other action on the Schutt/Van de Wiel, we are in a better position to deal with a review of that decision and any that results from the probable refusal of the AOC.*

Hmmmm – let's bookmark that option for the moment. What else can we get up to? Well,.....

*Delay is also an option. We could delay processing the AOC application until the show cause is resolved. This also seems the fairest thing to do by Van de Wiel too. A refusal now is no help to him. Perhaps this could be explained to him if he starts pushing for a result. I think it is reasonable to say to him that on the information available to us at present, we could not grant or recommend the grant of AOC. The disadvantage of this approach though is that he has not [been] given an opportunity to convince us to progress with the application. In theory he could take proceedings to compel us to make a decision. In a practical sense, this prospect might be discounted but he could make some mileage of the situation – we are holding up an important authority and his new airline on the basis of the alleged problem with a separate operation. It might look as though we've made up our minds too.*

Well now, that would never do would it?

*The third alternative is to put the problem back to him. Under 27AC we can require Regionair to give us further information that is reasonably required for us to consider the application. I am not sure exactly what the notice might say but I expect along the lines that we have concerns as above and matters which we need to be satisfied about under the legislation.*

This appears to be an open proposal to abuse process by prevarication.

*Please convince us that the Regionair operation will be safe given the apparent attitude taken by Van de Wiel (and Grant?) in the Schutt operation. It would probably look a bit like the show cause further at least in part. It would be difficult for him to respond and my guess is that his legal advice will be not to until the show cause matter is sorted out. This gives us a legitimate reason to delay under 27AF.*

*Whatever we do is likely to be untidy. Our recommendation is to give Regionair a 27AC notice and see what happens from there. If nothing else, we gain some time and Van de Wiel has the opportunity to have his say in the process. I'm happy to help with the drafting.*

## **2002 Apr 16**

In a letter dated April 16, signed by Mr Ogilvy, Stan's chief pilot approval was cancelled on the grounds that as chief pilot he had failed to ensure that Schutt's operations were "conducted in compliance with the Act, the Regulations and the Civil Aviation Orders." **Note:** at this stage all Tasmanian Charters had been cancelled since Dec 2001 – four months earlier.

The rationale for that decision was Mr Ogilvy's assessment that "Regionair Travel appears to function solely for the benefit of the company and not as an independent travel agency." Aviatour t/a RegionAir travel was duly licensed as a travel agency and carried the required insurances, Aviatour also held its own AOC for charter, used extensively for its outback tours. This AOC could not be used for Tasmanian routes as then it would have been RPT – this was the loophole. But Schutts, an independent AOC holder and recognised as a separate company (legal entity) by CASA, could operate such flights, hence the need to introduce the "transposed entity" document in 2009 by John McCormick. It was not explained why, if the legislation used against Stan was adequate, there was any need for change; and why take nine years to remedy such an "unsafe" situation?

Unbeknown to Stan, nor submitted to the AAT (September 2002), in **October 2001** CASA's Manager, Enforcement and Investigations, Mr Rob Paice, had assigned investigator Geoff McLaws to investigate whether Schutts was conducting RPT services whilst only holding an AOC permitting charter operations. Mr McLaws' report which was returned on June 17, 2002, made *inter alia* the following points:

1. Until September 2001, Schutt's were operating this service (with Regionair livery) under an arrangement that satisfied CASA's policy on the classification of charter and RPT operations; i.e. that an 'interposed entity' (Small World Travel) existed which stood at arms length from Schutt's and that entity arranged travel on Schutt's behalf.
2. On September 1 Small World Travel withdrew from the relationship and was replaced by Aviatour P/L, of which Stan van de Wiel was also a director.
3. Although there was no travel agent activity at the premises to support the contention that a similar arrangement existed and was operating in the same way as the arrangements with Small World Travel,

4. On December 21 McLaws had recommended against further action<sup>15</sup> but also recommended that CASA should at least consider action to refer a brief of evidence to the Commonwealth DPP for consideration of prosecution.
5. He had received approval to proceed with the investigation with a view to preparing such a brief, and the Australian Federal Police submitted an affidavit to the DPP for approval to go before a magistrate to seek a search warrant to access documents viewed as essential to freezing the money link between Stan van de Wiel's companies and the existing and previous travel agencies.
6. After asking and receiving further information, the DPP wrote: 'Having perused the supporting documentary evidence, we have serious concerns with this application. More particularly we don't believe that the material contained within the present draft affidavit would provide sufficient justification for a valid search warrant and we urge you to consider meeting with us to discuss this application further before proceeding.'
7. When the issue of dual directorships was raised, Stan van de Wiel had voluntarily removed himself as a director of AviaTour, and: "At every stage that CASA took issue with the arrangements that apparently existed, Schutt's or van de Wiel answered CASA's concerns and this included removing himself as a director even though he had sought independent legal advice that he need not do so."
8. "The central issue that the DPP have difficulty with, in proving that an offence has been committed, is that at law, companies are legal entities having separate identities. As such they would be treated independently by a magistrate who would in all likelihood, based on the CASA **policy**, not issue a search warrant. In fact the magistrate was likely to view the exercise as a "fishing expedition" It was added that should their office receive a brief of evidence on the matter, a similar view would be likely to be taken and it was unlikely that they would initiate any prosecution action based on this view and on the prosecution policy of the Commonwealth.
9. For the reasons outlined above, the DPP's view is that a prosecution could not be implemented or proceeded with by them because it was not in the public interest and it was highly unlikely that it would succeed. I herewith request approval to cease the investigation of this matter forthwith and approval not to submit a brief of evidence to the DPP."

This crucial document was finally obtained from CASA in 2006 under FOI.

The immediate outcome of the chief pilot approval decision was that the company was compelled to cease all flying operations until an initial stay was granted allowing Stan to continue as chief pilot for one month only. However the continued publication of the cancellation was abused by competitors who approached clients directly with a print-out!

CASA refused to approve several candidates nominated for the chief pilot position despite having verbally reassured Stan that they would not require an instructor rating as Stan's Chief Flying Instructor approval was not challenged.

Due to the continued publication on the CASA website, the company lost the majority of its clientele to competitors. The company continued to employ its staff during this period despite the lack of revenue flying.

In August 2002, (two weeks prior the commencement of the AAT Hearing) CASA again carried out what it described as a routine audit; this one of a company working at 5% of its normal capacity. In the ensuing AAT Hearing, CASA used information gathered during this audit in another attempt to discredit Stan personally. The CASA Airworthiness Inspector duly failed to attend the compulsory closing conference. In fact the audit "closing conference" was not held because of his absence and the embarrassment as a result of his actions of removing a placard from one Cessna.

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<sup>15</sup> See Attachment 1

(The AWI consulted directly with the chief engineer of Turbo Aero Maintenance (a Schutt Company) who attended to matters raised on the spot. The (stamp sized) fuel calibration card which was located on the floor directly below its panel was represented as a serious maintenance deficiency in the later AAT hearing, CASA attempted to use *evidence* gathered in this manner to its advantage.

The full hearing commenced in September 2002 and lasted for four days. Senior Counsel Harvey, in-house solicitor Adam Anastasi and assistant represented CASA. Stan represented himself and Schutts, supported by Alan Baskett, a former CASA victim.

During the hearing CASA introduced new evidence purportedly against Stan's character. This evidence was obtained with the specific undertaking (to the providers) that it would not be used in public. The AAT disregarded the evidence but regardless it is now in the public domain (a privacy matter) and despite the material being inadmissible the AAT-permitted cross examination.

(This account is relevant to later matters because as we'll see, there were subsequent attempts by individuals within CASA to infer that Stan had been untruthful about his employment in Holland.)

### **Obvious attempt at character assassination**

In explanation of this matter, the Dutch system at that time did not allow for perpetual licenses as in Australia. For that reason there was no record of Stan's Dutch ATPL because in order to renew, one has to fly a minimum number of hours on "heavy" aircraft during the preceding 6 months, in addition, complete a flight test on type at the pilot's own expense. He didn't comply, so there was no licence on their records.

Had CASA staff asked the question "has he ever held..." They would likely have been better informed. As to employment with KLM he had used the term "KLM Academy" but when he was involved with their training programs (1980 – 1989) it was under the management of the Dutch government. The Academy was later sold for a nominal sum to KLM.

In November 2002, an AAT decision reversing the cancellations was handed down. However, due to "not being able to turn back the clock" a "suspension" was substituted in its stead [sic]. This suspension was lifted effectively on the date of the decision. CASA was later to attempt to argue in its appeal that the AAT had no authority to substitute such an order. CASA implied that the AAT had applied a penalty, leaving the incorrect inference that Stan was guilty of something. It was open to the AAT to reverse the cancellations altogether; being "not able to turn back the clock" is a lame excuse.

Significantly Mr Adam Anastasi of the CASA Office of Legal Counsel contacted Stan 26 days after the AAT decision asking whether he intended to appeal the decision. Stan replied that he was contemplating taking legal action against various individual CASA employees on the grounds of their vexatious conduct. Anastasi said he would have to speak to his superior (Peter Illyk) about this. Anastasi contacted Stan the following day and advised that because of his "threat," CASA would be filing an appeal in the Federal Court.

CASA commenced its appeal but at the first "mention hearing" was told to submit an acceptable case because the judge was not prepared to accept such an ill-prepared document. CASA failed to meet the time requirements for its amended case. However, the appeal did not proceed, due the forced liquidation of Schutt Flying Academy on (date?). Stan's chief pilot approval was linked to the company, so if there was no company, there could be no chief pilot. In the interim there had been uncertainty at CASA as to how to reinstate his chief pilot approval. CASA claimed it had been cancelled, whilst the AAT had changed that to a suspension. CASA disputed the AAT's right to make such a decision. No conclusive answer was ever received but Stan (acting on the AAT decision,) resumed his position until the company's demise. All these actions have been in direct conflict with the Attorney General's Model Litigant Directions, yet a complaint to the Court, the Attorney General and the Minister, met with no response.

During all these months CASA had failed to remove the cancellation or alter its Website to reflect the true situation, and even though it was ordered by the AAT on two occasions, failed to obey. The Website was finally altered by removing the whole message in March of 2003, co-incidentally effective with the liquidation of the company. ASIC rules require a company to remain "solvent" to trade.



CASA's actions, again contrary to *Model Litigant Directions*, had succeeded in taking the company over the edge, a goal which lawyers believe was intended all along. CASA had fulfilled the "*need to set an example*," expressed in the FOI document.

Information in relation the CASA website protocol was requested under FOI 2005-07 as were copies of instructions to the *webmaster* but again were not forthcoming. Since the orchestrated failure of the Schutt Group, Stan attempted on numerous occasions to communicate with CASA. Bruce Byron, the new CEO, initially gave the appearance of wanting to resolve the impasse, but apart from the initial meeting and the resurrection of the action against Qantas nothing happened. It is apparent from *Hansard* that Byron met with considerable and effective internal opposition in trying to root out systemic problems. To Byron however, Stan's issues were among the least of these.

In **2005, after persistent attempts to obtain Alternative Dispute Resolution (ADR)**, Stan commenced an FOI application, only to be frustrated at every step, dealing with OLC head Adam Anastasi. Once documents were released, albeit reluctantly, it became clear why Anastasi had refused access. It also became very clear why CASA had withheld many documents from the 2002 AAT hearing. The CDDP reference document to "there is no case" should have been enough to raise questions over CASA's Model Litigant credibility. The "Obligation to Assist the AAT" requires *all* relevant documents to be provided to the tribunal, yet the most relevant documents were held back as revealed by the FOI disclosures. This illustrates the lengths to which CASA will go to defend its position. Continuing requests for alternative dispute resolution (ADR) as dictated by legislation were also ignored. Such requests have been repeatedly made in correspondence with current CEO John McCormick, again with total disregard.

In relation to freedom of information requests, at a telephone directions hearing (2006) with Dept President Forgie of the AAT, Anastasi advised that it was impossible to access any records for release. At the next hearing some four months later, Ms. Forgie offered the mildly scathing suggestion that CASA could perhaps conduct a *dedicated word search*. Two months later at the next telephone conference CASA advised that they had been able to access all of approximately 13,000 related folios. CASA would require several months to scrutinise these for release. Some 2200 documents (many triplicated) were finally received late 2006. Several of these have been referred to in this document.

**July 2007** Stan attended a formal AAT hearing before Member E. Fyfe seeking the release of privileged documents. A. Anastasi (S.M. Fyfe made a point to stress that Mr Anastasi was under oath) stated that "CASA does not hold personal files on (pilots)". When questioned later he admitted [CASA] *does* hold medical files on individual pilots. As it obviously also does at least in respect of licences, approvals, other ratings, and correspondence with the certificate holder. Mr Anastasi's denial that "CASA does not hold personal files on pilots" has never been researched, even when reported to the A.G. Dept.

In his AAT application Stan referred to the "Brazil Directions of Prime Minister and Cabinet"

## **'BRAZIL DIRECTION': CLAIMS OF LEGAL PROFESSIONAL PRIVILEGE**

### **ATTORNEY-GENERAL'S DEPARTMENT**

#### Claims of Legal Professional Privilege Exemption under the Freedom of Information Act

Section 14 provides that nothing in the Act is intended to prevent or discourage agencies from giving access to exempt documents where they can properly do so

Where a client agency wishes to assert a claim of legal professional privilege in respect of a document which has no apparent sensitivity, the attention of the client agency should be drawn to the Cabinet decision mentioned above. The client should be advised that legal professional privilege should be waived unless some real harm would result from release of the documents.

P. BRAZIL 2 March 1986

Despite the "Real Harm" having already been identified, it was not explained what such exempt documents could hold.

In 2007 Stan presented the new information he had just received to various politicians and wrote to the then Deputy Prime Minister, Hon. Mark Vaile requesting assistance with these issues. His response<sup>16</sup> was to request Bruce Byron (CEO of CASA) "to provide [Stan] with a detailed response so that these long standing issues may be resolved." In 2013 there had still been no response or resolution.

In Stan's ten year quest to *regain* his chief pilot approval, he was confronted with Civil Aviation Order 82.0 – Appendix 1. Subsection 5 – 1. Approval of Chief Pilot by CASA

*1.3 The appointment may be approved only if the person has: (a) in the opinion of CASA, maintained a satisfactory record in the conduct or management of flying operations;*

"According to all information available to Stan, he would be found unable to comply. Yet CASA is not prepared to substantiate its opinion either way on whether Stan's conduct had been satisfactory. If CASA now concedes that "*He maintained a satisfactory record*" CASA actions in 2001 are further proven to have been vexatious, vindictive and deliberate. Their suggestion in writing was for Stan to apply for a chief pilot position and see what happens. The poor delegate of CASA conducting the interview would have no option but to refuse such a delegation. That's why Stan asked the CEO for the exemption, he explains: "It is a Chess game!"

At this point CASA's Deputy CEO Shane Carmody put only Stan's question regarding chief pilot approval to the ICC, knowing full well that such (exemption) was an executive decision and the ICC had no jurisdiction.

The more important questions relating to the Avgas contamination cover-up were ignored as were those relating to the tactics in persecuting the company in relation to its alleged contravention of R.206 and "policy". In his subsequent communications with Michael Hart, Stan has on several occasions requested a simple yes or no answer to this question. However as this is an *executive decision* it is out of his jurisdiction. It only took 18 months to not get an answer. The CASA response to the Minister's request was quoted in Hansard as having been "satisfactorily completed." Apparently this was an internal decision by CASA and was not shared with the victim.

Michael Hart resigned as the Industry Complaints Commissioner with CASA after only 15 months in office.

### **New information?**

In his ongoing communications with current CASA CEO John McCormick, Stan has continually raised the unanswered issues. Mr McCormick has suggested that he will consider any "new information". However it appears that he does not regard the newly released FOI information as new. This would indicate that CASA knew of this information throughout the proceedings albeit failing to release it. Otherwise why would he not regard this as "new information?" There exists an "obligation to assist" the AAT, and withholding crucial documents does not assist the AAT.

The most recent response came from the current ICC, Ms Elizabeth Hampton suggesting if Stan didn't like the answer that he take legal action. Stan has since referred her to the *Model Litigant Directions*.

All approaches to the current Minister have met with a referral to CASA to investigate.

### **Conclusions**

This report is riddled with examples of the processes by which CASA works within available "administrative decisions" options to avoid due legal process. It also reveals how CASA treads a fine line between teamwork and conspiracy in developing tactics which exploit the availability of those administrative decisions and the proposition that "CASA must be satisfied."

It's easy to trace the change in the culture of CASA from Stan's initial dealings with the regulator to the present organisation where it appears that individuals within it interpret regulations to suit their own personal agendas but with the full backing of most of their colleagues. The organisation as presently

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<sup>16</sup> Ref. FOI doc 08170-2007

structured and overseen provides ample opportunity for corruption. It is statistically unlikely that such opportunity is not being embraced.

### **Recommendations**

An external review of CASA regulatory/enforcement practices and processes with extensive terms of reference, should be instituted. There are now an ample number of documented cases to illustrate the way in which the regulator routinely operates outside legal processes and initiates pre-emptive strikes with a clear aim of financially disabling its victims while it conduct a leisurely investigation of allegations it has already used to implement the shutdown of a business. Any investigation should examine:

1. CASA's conduct against the background of its legal obligations, its own and the Attorney General's Department guidelines, procedural fairness, transparency and accountability.
2. The adequacy of protections against existing subjective interpretations of the Civil Aviation Act, which appear to support non-transparent corporate misconduct.
3. A review of the concept that "CASA must be satisfied" and the manner in which this is routinely abused.
4. Conduct related to CASA's obligations under the Freedom of Information Act.
5. The position, independence and effectiveness of CASA's Industry Complaints Commissioner and whether that position is fulfilling any useful function at all.

The need for such an extensive coverage of events spanning more than a decade has been created by the defiant attitude of a regulator that believes almost everything it does is unchallengeable at law. Requests on numerous occasions for the intervention of the Minister, the Attorney General and Ombudsman were to little avail. Yet documented evidence of deliberate wrongdoing by bureaucrats reflects poorly on the Australian system. The only assistance, but which could not be availed of at the time was the CDPP's advice to CASA; however there was never a control on actions taken by CASA despite the proof being furnished.

What, if any, scrutiny is there on Government Departments; what accountability?

Those questions need to be asked, the responses examined, and the regulatory loopholes plugged.

**ATTACHMENT 1: MINUTE from CASA investigator McLaws to his supervisor**

**Note: transcription of original on CASA letterhead**

June 17, 2002

Mr Rob Paice, Manager Enforcement and Investigations, CASA

**Re: Investigation of Schutt Flying Academy – allegations of conducting RPT services without holding appropriate Air Operators Certificate**

On 3 October 21 I was tasked with investigating allegations of Schutt Flying Academy (aka Regionair), were conducting scheduled services whilst only holding an AOC permitting charter operations. At the time, the Regionair P/L was an applicant for regular public transport AOC that was being processed but had not reached a stage where CASA was satisfied with their infrastructure and personnel. In addition, evidence suggested that although the AOC had not yet been approved, they were conducting RPT ostensibly as a 'closed charter'.

The investigation found that Regionair P/L had advertised a 'proposed winter timetable' and were conducting services to the advertised course coinciding with the timetable. However the situation was that until September 2001, Schutt's were operating this service (with Regionair livery) under an arrangement to satisfied CASA's policy on the classification of charter and RPT operations; i.e. that an 'interposed entity' existed which stood at arms length from Schutt's and that is the arrange travel on the Schutt's behalf. On September 1 the relationship changed.

Essentially, as one September 2001, small world travel ceased to act as the 'interposed entity' and Schutt's claimed that another company, Aviatour P/L, which holds a travel agents licence, took over the role. Stan van de Wiel is also a director of Aviatour P/L. It was subsequently found that although a similar arrangement was apparently in place, there is actually no travel agent activity at the premises to support the contention that a similar arrangement existed and was operating in the same way as the arrangements with Small World Travel.

In my report into the investigation of the above matter, dated 6 December 2001, I recommended against other action, but CASA should at least consider action to refer a brief of evidence to the Commonwealth DPP for consideration of prosecution. I reported that there is an abundance of evidence to show that Schutt provide a scheduled service to the published timetable and operated to the scheduled for at least 18 months.

CASA then instituted 'show cause' action against Schutt Flying Academy and their chief pilot Stan van de Wiel. This action is in the process of concluding before the AAT and has resulted in the relinquishment of the 'charter' aspect of their AOC whilst determination of the chief pilot aspect still remains.

Subsequently, I received approval to proceed with the investigation with a view to submission of a brief of evidence to the DPP. In addition, the then Australian Federal Police liaison officer, Fiona Sagripanti submitted an affidavit to the DPP for approval to go before a magistrate to seek a search warrant of various premises and the eventual institutions concerning Schutt's (sic) and associated companies. This was viewed as an essential to proving the money link between the companies of which van de Wiel is a director or secretary and between the previous travel agent and Schutt's.

The affidavit detailing information and evidence of which would be relied in seeking the search warrant, was submitted to the DPP in February 2002. The affidavit detailed the arrangement that existed when Small World Travel were the 'interposed entity' and in some parts, relied on evidence obtained since the changes took place.

We received a response to that request on 13 March 2002 in which the DPP asked for further information before making any decision regarding approval. The requested information was supplied on 22 March and the DPP responded on 27 March 2002.

At paragraph 3 of the response they wrote: 'Having perused the supporting documentary evidence, we have serious concerns with this application. More particularly we don't believe that the material contained within the present draft affidavit would provide sufficient justification for a valid search warrant and we urge you to consider meeting with us to discuss this application further before proceeding.'

At our subsequent meeting with the representatives of the DPP, Kim Saunders and Sean O'Sullivan, they expressed their reservations with the legislation as it currently stands especially in light of the existence of the CASA GAOB policy on the classification of charter and regular public transport operations.

"Whilst small world travel was providing the travel agency service, CASA was apparently satisfied the small world travel was a separate entity operating at arms length to the operator (Schutt's). The arrangement appeared to be exactly what the GAOB policy embraced. Once that relationship ceased, all of a sudden CASA became concerned that the travel agency (Aviatour P/L a.k.a. Regionair travel) was no longer an arms length of the operator. Added to this was the fact that Stan van de Wiel, a director of shouts, was also a director of AviaTour P/L a.k.a. Regionair Travel.

Once CASA took issue that van de Wiel was a director of both companies involved with providing a scheduled service, he took it upon himself to remove himself as a director of Regionair AviaTour P/L. At every stage that CASA took issue with the arrangements that apparently existed, Schutt's all van de Wiel answered CASA's concerns and this included removing himself as a director even though he had sought independent legal advice that he need not do so.

The central issue that the DPP have difficulty with, in proving that an offence has been committed, is that at law, companies are legal entities having separate identities. As such they would be treated independently by a magistrate who would in all likelihood, based on the CASA policy, not issue a search warrant. In fact the magistrate was likely to view the exercise as a "fishing expedition".

It was added that should their office receive a brief of evidence on the matter, a similar view would be likely to be taken and it was unlikely that they would initiate any prosecution action based on this view and on the prosecution policy of the Commonwealth. For the reasons outlined above, the DPP's view is that a prosecution would not be implemented or proceeded with by them because it was not in the public interest and it was highly unlikely that it would succeed. I herewith request approval to cease the investigation of this matter forthwith and approval not to submit a brief of evidence to the DPP.

Forwarded for your consideration,

Geoff McLaws

Investigator Victoria and Tasmania

**ATTACHMENT 2 -e-mail from CASA Director John McCormick**

**From:** CEO  
**Sent:** Friday, 1 May 2009 9:33 AM  
**To:** stan van de wiel  
**Subject:** RE: misfeasance in public office [SEC=UNCLASSIFIED]

Dear Mr van de Wiel

Thank you for your email message of 21 April 2009, and for welcoming me to my role as Director of Aviation Safety and CASA's chief executive officer. I embrace that challenge, and I am pleased to have the support of those who share my commitment to air safety, and to CASA's the enhancement of CASA's efforts to conduct its regulatory functions effectively, efficiently and in accordance with our obligations under the Civil Aviation Act.

I have had the opportunity to review much, though by no means all, of the correspondence and other material available to me concerning the various matters about which you have expressed your dissatisfaction with CASA, as an organisation, and with various CASA executives, managers and staff members, over the past many years. I have also had a chance to consider your submissions to last year's Senate Inquiry into CASA's Administration, and your comments on the National Aviation Policy Green Paper.

It seems to me that a number of your grievances have either been addressed and finally determined through the normal review processes available to anyone aggrieved of a reviewable decision by CASA, or you have chosen not to pursue your right to an objective and independent appeal against such decisions. In relation to these matters, I have no intention of reopening questions that have either been finally and authoritatively decided, or in respect of which you have elected not to pursue your remedies in a timely way.

You have also made some very serious, if, in my view, vague and overly broad, allegations against certain individuals who have been (and in some cases may still be) associated with CASA. The nature of your claims, if demonstrably true or credible, would surely be such as to have supported legal action, and yet it does not appear that you have ever sought to pursue such action on your own accord. Nor have you evidently been successful in enlisting the support of others, who might be in a position to assist you to advance or pursue legitimate claims of the kind you have made. In the circumstances, I am sure you will understand why I cannot and will not resurrect these unsubstantiated claims, merely on your insistence that I should do so.

For all that, however, let me say this: if--in relation to matters that *have not yet been* subject to review in the Administrative Appeals Tribunal or the Federal Court, or *which you could have raised in the Tribunal or the courts, but did not do so in a timely way*--you are able to provide me with specific, new, credible and factual evidence, that CASA, as an organisation, or any person who is currently employed by CASA, has conducted themselves in a way that contravenes the CASA Code of Conduct or the applicable law, I am quite prepared to consider that information, and to take such responsive action (if any) as may be appropriate in the circumstances.

I am *not* prepared to entertain vague, non-specific allegations that certain individuals (named or unnamed) have, at some time in the past, sought to 'cover up' instances or patterns of wrong-doing, have set out to 'ruin you' or have otherwise failed in their duty in ways that you believe have been detrimental to you. Nor will I re-consider claims or allegations that have already been reviewed by CASA, in relation to which you have been advised of CASA's disposition of the matter, but which dispositions have left you unsatisfied, unless, as said, you are able to produce new, credible and factual evidence that has not previously been drawn to any of my predecessors' attention.

Yours sincerely  
John McCormick  
Chief Executive Officer

## Endnotes

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<sup>i</sup> **Author details:** **Paul Phelan** flew for over 50 years in private, charter, corporate and regional aviation, worked in senior management roles with a major regional airline, and retains his pilot license. In parallel he has been writing for Australian and international aviation journals for well over 20 years on all aspects of aviation including aircraft evaluation, flying, industry affairs, infrastructure, manufacture, navigation, regulatory affairs, safety, technologies and training.