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The Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

The following is a submission to the Senate Standing Committee on Rural and Regional Affairs and Transport about the administration of CASA. My submission to the Standing Committee concentrates on CASA staff's behaviour on 10 February 2003. It is only a small part of a much larger concern I have had with CASA damaging my aviation career and business.

Before my concerns were put to the Senate in February 2003, a staff member of Senator O'Brien's office warned me that CASA would denigrate my operations. I found this strange but assured him that I had a perfect record and that CASA staff had been only complementary about my operation.

On 10th February 2003 the Senate Estimates Committee put my complaints to CASA. The answers provided by CASA were I believe intended to deceive the Senate Committee and to put my operations in a very poor light.

Senate Committee Transcript of 10 February 2003 (Attachment A)

I make the following comments about the transcript:-

- 1. Page 134 : When asked by Senator O'Brien if it is normal to issue an AOC for six months when there are no concerns about the operation, Mr. Collins replied that it is not normal but is not uncommon.*

This is not correct, as can be seen from **Attachment B**. This document was sent out to thousands of charter customers (Note: customers NOT operators) by CASA. It explains that if an AOC applicant has a 1 year AOC and their compliance history is OK they will receive a longer AOC.

Also in **Attachment ZZ** I put forward a summary of a critique made by Peter Rundle. He is a former CASA Flying Operations Inspector and was recommended to me by the Aircraft Owners and Pilots Association as a consultant who could assist in determining the veracity of CASA's claims. The critique is highly critical of Mr. Collins' comments to

the Senate as Mr. Collins had been Executive Manager of Regulatory Services which is responsible for approving CASA's internal procedures manual AOCM which states clearly what a normal term for a AOC should be and issues related to lack of surveillance by CASA.

Furthermore, only 4 days after this Senate Estimates Committee meeting, I received a phone call from my former Flying Operations Inspector in Darwin, Ron Beech. He stated that CASA was lying to the Senate at the time of my AOC renewal CASA was short on staff and unable to undertake the necessary surveillance. This was the reason for the 6 months AOC. It was nothing to do with the quality of my operation. He stated this could be confirmed by a Freedom of Information Application for a Standard Form Recommendation. He provided the necessary folio numbers for me to pursue this. He also stated that from his computer he could determine that CASA's Legal office had recently accessed the Standard Form Recommendation and they would have known before the Senate Estimates Committee meeting on 10 February the real reason for my 6 month AOC. **Attachment C** is the Standard Form Recommendation I received.

2. *Page 135 : Mr. Collins stated that deficiencies were brought to Mr. Leonard's attention on 31 May 2000.*

There were no deficiencies and the only contact I had with CASA at this time was with Brenda Jarrett (Administration Officer in CASA's Darwin Office) on 1 June 2000 requesting why the AOC was only issued for 6 months. **Attachment C** again clearly shows that the reason for the 6-month AOC was that no surveillance had been done. **Attachment D** is the next Standard Form Recommendation made six months later. It states that when surveillance was carried out the results were satisfactory. No Non Compliance Notices were ever issued.

Mr. Collins' comments fail to take account of the contents of **Attachment C**, namely "I have sighted the flying ops and the airworthiness checklists in relation to this reissue and they appear to be in order" and "there is nothing on file and I am not aware of anything that would throw doubt on CASA's ability to be satisfied with respect to the matters in Section 28 of the Civil Aviation Act 1988".

Attachment E is a copy of emails exchanged with handwriting on the side that I obtained under FOI. Note the handwriting at the bottom says "shorter than normal period ... is due to the fact that no surveillance has been done yet".

Senate Committee Meeting Transcript of 29 May 2003 (Attachment F)

1. *Page 373 (Point 1) Mr. Ilyk said to the Committee "Mr. Leonard refused and indicated that he wanted to pursue the matter through the Senate".*

Mr. Ilyk failed to mention to the Senate that the reason I had not sent him information was that I had asked him if I could use the CASA Ombudsman and he had refused. He wanted to review the information himself before passing on to anyone else.

The Senate Committee needs to consider this information in the context of someone trying to run their business while it is being regulated by an Authority that is capricious, deceitful and thereby potentially malevolent. While ever a representative of a Government entity can lie and mislead the Senate and its Committees, then individuals will be reluctant to trust the Senate.

Yours faithfully,

A handwritten signature in cursive script that reads "Robert Leonard".

Robert Leonard

Senator O'BRIEN—So it is a very new policy and has not even been the subject of a review yet?

Mr Toller—Not since the 2001 issue, no, Senator.

Senator O'BRIEN—Is there any feedback at all that you have received about the working of the charter? Is it working well?

Mr Toller—You will always get people who point out when you do not adhere to your service charter, Senator. No organisation is perfect and does adhere to it. Equally I would reflect on the fact that certainly the perception is that there is a significant decrease in the number of complaints against CASA, which probably means that we are sticking pretty well to it.

Senator O'BRIEN—I wanted to ask some questions about a company named Air Bush Charter, which was apparently caught up in the fuel contamination fiasco. In January 2000 CASA requested details from all aircraft owners affected by the Mobil fuel contamination. I understand this company responded very quickly. A Mr Leonard, I think, from the pharmacy organisation had his aircraft on the ground as a result. The minister put out a release on 14 January 2000, advising that CASA would fast-track approvals for GA operators affected by the contamination. CASA set up a web site and the minister in the statement that CASA would give these companies priority so they could stay in business. Was the authority able to gear up to meet the commitment given by the minister?

Mr Toller—Senator, the simple answer is yes. It is also true to say that the number of applications as a result of that was significantly less than we would have anticipated. We expected a fairly heavy rush but we did not get that many people looking for variations and changes in their AOCs to cope with the problems that had come about as a result of the Mobil fuel crisis.

Senator O'BRIEN—Did you reallocate staff to cope with the commitment?

Mr Toller—No, it was done within the normal duties of the staff we had and did not require any reallocation of staff.

Senator O'BRIEN—How did you communicate with the general aviation sector, beyond the minister's media release, that fast-tracking was available?

Mr Toller—I would like to take that one on notice, Senator. It is a few years ago now and I cannot remember exactly how we communicated that matter to the industry participants, other than that we were having a lot of meetings at the time with affected operators, particularly around the Moorabbin area. There was a lot of verbal briefing going on. What else we did I do not know, so I will take that one on notice.

Senator O'BRIEN—Mr Leonard's issue was raised with you very contemporaneously, I think on 31 January, in this committee by former Senator Woodley—who I hope is well and enjoying a nice retirement. I think you told him that no-one had sought to fast-track an assessment. But CASA officers had visited Mr Leonard's operation on 29 February—not a formal surveillance; just an opportunity to have a quick look at his operation, apparently—and at that time there was just an empty hangar. During that visit Mr Leonard asked about getting other aircraft onto his AOC, as he had no operational aircraft because of the crisis, and he was told he would have to follow normal procedure. What did this fast-tracking commitment by Mr Anderson—and any subsequent press release—mean in this context?

Mr Toller—It meant that we effectively put any work within this context on the top of the pile so that it became a top priority in terms of the work being done. In terms of the

requirements on the industry, there was not a significant number of changes. These were detailed in an instrument that I signed sometime in February that year. We could probably table that instrument, which would give you an indication. I regarded the fast-tracking at that stage as getting the job done. It did not mean it was going to make the job less. This was not about dropping standards; it was just about putting people to the top of the priority pile.

Senator O'BRIEN—Would it have been fair to assume that the fast-tracking would involve some sort of accelerated assessment process for those affected by the Mobil fuel crisis?

Mr Toller—I might ask our operational people to come in on this one, Senator. They can probably answer that better. I might ask Rob Collins.

Mr Collins—That instrument amended the requirement for operators of piston-engined class B aircraft to supply a detailed compliance statement about the regulatory aspects that would affect that aircraft, to put that aircraft on their AOC. At the time it was thought that this would have no safety effect but it would significantly reduce the bureaucracy and, hopefully, the time involved in getting these aircraft on the AOC. At the time, remember, this crisis only affected piston-engined aircraft. The amendment of that instrument was designed so that people could source another unaffected aircraft and have that added to their AOC so that operations could continue.

Senator O'BRIEN—That instrument was No. 48/00, dated 8 February, setting out those special procedures?

Mr Collins—That is correct, Senator.

Senator O'BRIEN—The letter to Mr Leonard states that 48/00 was not at that time available on the Web. Why was that the case? When did it actually go on the CASA web site?

Mr Toller—We definitely have to take that on notice, Senator. I would not know exactly what day anything went on the web site, I am afraid. The letter you were referring to is not one we have on our file at the moment. Could you give us a date and reference for it?

Senator O'BRIEN—I cannot see a date on mine. I will get that for you. Bill Riceman and Steve Bennett were calling in, at the end of February, on Mr Leonard. Why would they not have been able to advise him of the existence of 48/00?

Mr Toller—For a start, it is absolutely impossible to answer that question. We do not know the context in which that conversation took place, or what was said and in what way about what subject matter. I do not know whether somebody said to them, 'Would I be permitted to do precisely this?' or 'What were the general provisions?' or anything of that nature. It is impossible for us at this stage to say what was or was not said in that conversation.

Senator O'BRIEN—Mr Leonard said they failed to mention any special arrangements for operators as announced by Mr Anderson in January. Can I presume that CASA has spoken to those officers to find out what their recollections of the events are?

Mr Toller—We cannot answer that one, Senator. I will take that on notice.

Senator O'BRIEN—Mr Leonard had his AOC renewed in June 2000 but only for a period of six months. Is it normal that an AOC would only be renewed for a period of six months if there are no concerns about the operation?

Mr Collins—Perhaps I could answer that, Senator. It is not normal but it is not uncommon. In the case of Mr Leonard I understand that CASA was a little behind in their surveillance program, but in the process of assessing the AOC they had discovered that there were some minor technical deficiencies in the operations manual. These did not have an immediate or

lasting effect on safety and so it was decided that, in order for Mr Leonard to continue operations, the air operator's certificate would be reissued for a period of six months to allow these deficiencies to be rectified and to enable CASA to undertake surveillance of Mr Leonard's operation.

Senator O'BRIEN—Was Mr Leonard notified of those deficiencies at that time?

Mr Collins—I understand Mr Leonard was notified on 14 June that the reason his air operator's certificate was issued for a shorter period than what would be considered normal was because surveillance activities had to be completed. I also understand that the deficiencies in the operations manual were conveyed to Mr Leonard from the area office.

Senator O'BRIEN—Were they conveyed to the area office or were they conveyed from there to Mr Leonard?

Mr Collins—From the area office. I understand these deficiencies were brought to Mr Leonard's attention on 31 May of that year. As I say, they were not safety-significant in nature so we issued the air operator's certificate in order to enable him to continue operations while these minor issues were resolved. 2

Senator O'BRIEN—What precedent is there for that sort of action? How often do you issue something like a six-month AOC?

Mr Collins—It is not the norm but it is not uncommon. It might occur in 0.5 of one per cent of the air operator certificates that we would reissue in a year.

Senator O'BRIEN—So one in 200?

Mr Collins—We issue approximately 380 a year.

Senator O'BRIEN—About twice a year?

Mr Collins—Yes. It is a very small number. It is always taken on the basis that there will be no effect to safety in reissuing an air operator's certificate. We take all of the circumstances into account in determining the time period.

Senator O'BRIEN—When were these deficiencies noticed by CASA?

Mr Collins—I understand that the deficiencies were noticed between the dates of 18 May 2000 and sometime before 31 May 2000 when they were conveyed to Mr Leonard. It was a fairly short period of time during which the deficiencies were discovered. It is also significant to note that the air operator's certificate was received by the area office only 10 days before it was due to expire. This is not our normal practice. We encourage operators to make application for the air operator's certificate to be reissued up to 90 days prior to expiry to ensure that things run smoothly.

Senator O'BRIEN—Do you do that in writing?

Mr Collins—We now have a CASA service centre. We send letters, I think, at 90 days, 60 days, 30 days and 14 days. After 14 days our operators ring the operator.

Senator O'BRIEN—The first time you wrote to Mr Leonard, the letter in question was dated 13 March and signed by Brenda Jarrett, Administration Central Area, Darwin Office. It appears to be advice that the AOC expires at the end of May. That appears to be the first communication.

Mr Collins—This time was before the establishment of the regulatory services centre but it was the practice at the time that area offices would still write to operators to remind them that

their air operator's certificate was going to expire and that they needed to reapply for the certificate.

Senator O'BRIEN—Mr Leonard says that the issuing of a six-month AOC had a very negative impact on his business. He was advised that it was difficult to tender for contracts if there was a perception that an operation was not up to scratch and the issuing of a six-month AOC created that perception. He says that Mr Elder, in a meeting with Mr Leonard in Mr Elder's office on 15 July last year, told Mr Leonard that if he had only received a six-month renewal he must have 'stuffed up'.

Mr Collins—Senator, this is not unheard of, and in fact it is quite legal to issue an AOC for any period. The delegate has to be satisfied that the matters referred to in section 28 of the act will still be valid for the period of the AOC. Mr Leonard never conveyed to me or any of my officers, that I know of, that this was having an effect on his ability to bid for contracts.

Senator O'BRIEN—Mr Leonard never said that to you?

Mr Collins—Not that I can recall.

Senator O'BRIEN—I note from CASA's view expressed in *Aiming Higher* in the May-June 1999 edition:

Air operator's certificates are usually issued for one year. This was a policy decision taken a long time ago to give AOC holders some commercial certainty for business planning purposes and was considered to be a good balance between short-term durations and perpetually issued certificates.

Mr Toller—I think that says it all, Senator—they are usually issued for one year. That does not mean to say they are always issued for one year. To get to the crux of the matter, CASA under the Civil Aviation Act is required to consider matters of safety and it has to be satisfied on matters of safety. It does not take commercial matters into consideration; will not take commercial matters into consideration.

Senator O'BRIEN—You say it has not taken commercial matters into consideration?

Mr Toller—It is not required to take commercial matters into consideration.

Senator O'BRIEN—Do you say that it has not?

Mr Toller—If there are commercial issues brought to our attention, then they can be part of the total picture. Commercial matters can be all sorts of things, obviously. If somebody is bringing in a new aircraft on such-and-such a date, then that puts a time frame in which we are aware the applicant would like the job to be done, but it does not mean to say that we have to do it in that time if we are not satisfied.

Senator O'BRIEN—When was Mr Leonard advised that a certificate had been issued for a lesser period of time pending the completion of surveillance? I have a letter of 14 June. Is that when he received that letter? Would that have been when he was notified?

Mr Collins—The process at the time was that, in order to expedite the whole process of reissue of this AOC—and others, incidentally—when the AOC had been processed it was faxed direct to the applicant. The letter that you see, dated 14 June, is the letter that would have gone out with the hard copy of that AOC. I obviously cannot recall, but I am fairly confident that either myself or one of my officers—more likely one of my officers—would have verbally advised Mr Leonard that a six-month AOC was what he should expect.

Senator O'BRIEN—How was this surveillance which was required carried out? When was it completed?

Mr Collins—You would have to ask my compliance counterpart.

Mr Toller—We could take that on notice, Senator. I do not think we have that detail of our dealings with them available.

Senator O'BRIEN—Can you find out how it fitted with the visit by CASA officers at the end of February to Mr Leonard's premises?

Mr Toller—We can see whether there is any tie-up between the two, yes.

Senator O'BRIEN—The June letter we were talking about said that once surveillance was completed another AOC would be issued for a longer period. Mr Leonard also sought a dog baiting approval in the AOC, but that was not provided. I think Mr Ilyk advised Mr Leonard in a letter on 20 September last year that he had failed to properly apply. Apparently the issue was addressed in his application, and he actually rang CASA officers in Darwin on that very matter. Did any officer speak to the Darwin office about Mr Leonard's complaint in relation to this matter?

Mr Collins—Not to my knowledge. I would have to take that on notice.

Senator O'BRIEN—Can you confirm that Mr Leonard had to wait six months to get the dog-baiting endorsement?

Mr Collins—I could not tell you when the dog-baiting endorsement was actually authorised on the AOC. However, I do recall that there were issues once again about including procedures in his operations manual and what have you. I am pretty confident that that was the issue at the time and, if you think about the six-month period of the AOC issued on 31 May, it probably tied up with that particular authorisation.

Senator O'BRIEN—Were there any safety issues or concerns with Mr Leonard's AOC over the period between May 2000 and May 2001?

Mr Collins—I would have to take that on notice. There was an issue about a dangerous goods manual, but I think we had better take that on notice.

Senator O'BRIEN—Mr Leonard apparently wanted to add another aircraft to his AOC in May 2001. Would he have been told that, if he wanted his AOC application dealt with quickly, he should take the aircraft to Darwin rather than wait for CASA officers to visit Kununurra? Is that policy?

Mr Collins—On occasion. Aircraft in those days had to be physically inspected by airworthiness inspectors. It is quite likely that, in order to reduce the cost of this activity and expedite the whole process, it may have been suggested to Mr Leonard that he could fly the aircraft from Kununurra to Darwin, where airworthiness officers could inspect it more quickly and at a much lower cost. That is not unheard of.

Senator O'BRIEN—At the time, he had to pay up-front for his AOC and then, after taking the aircraft to Darwin, it still took three months for his application to be approved.

Mr Collins—The normal practice is that applicants are provided with an estimate for service and, below a certain figure, we require them to make an up-front payment to ensure that they are fair dinkum about it. That is the normal process.

Mr Toller—To set the record straight, on our figures, it was two and a half months from the time of his application to the issue. That is an area which I still believe—for the sort of application that was being made—may be too long in certain circumstances, and that is something that has been the subject of discussion between myself and Rob Collins, as the executive in charge of regulatory services, on a number of occasions.

Senator O'BRIEN—Mr Collins, you wrote to Mr Leonard on 18 October 2001, agreeing to review the processes surrounding Mr Leonard's application for an additional aircraft to be added to his AOC. You reviewed this matter and refunded Mr Leonard the cost of processing his application. Did you consult Mr Leonard about the review in accordance with the CASA charter?

Mr Collins—I recall making a telephone call to Mr Leonard. In quite some detail, he outlined what he thought might be his case. I asked him to supply documentation or any evidence that he could supply to support his claim that he had been in some way disaffected. I did that, and two or three days later he sent me copies of two letters. There were no other diary entries, emails or anything else. It was fairly perfunctory, and I am pretty certain two letters are all he sent me, both of which were one page only.

Senator O'BRIEN—In this case, Mr Toller, has the statement on the front of your charter document which says, 'We have a responsibility to inform people about their rights and responsibilities' been complied with?

Mr Toller—I believe, in the dealings which we have had in the case and everything that I have heard, that every effort has been made to comply with that, yes.

Senator O'BRIEN—If we go back to the issue of the special consideration that was supposed to be available to a holder of an AOC with piston-driven aircraft, how was that advised to him?

Mr Toller—I am not aware of us actually having any application from Mr Leonard—

Senator O'BRIEN—You didn't, because he did not know about this special consideration.

Mr Toller—Then it is fairly difficult for me to—

Senator O'BRIEN—Yes, he did from the letter that was sent to him to renew his AOC in March—it is a letter from Brenda Jarrett of 13 March 2000—but not when he was visited.

Mr Toller—That was about the fact that his AOC was due for renewal at the end of May, which would have been a normal process anyway.

Senator O'BRIEN—No. At that time, he was concerned to receive some special dispensation to change the aircraft on his AOC, as I understand it, but you say you never received any application.

Mr Collins—I am fairly confident that we never actually received an application to vary Mr Leonard's certificate to put another aircraft on his AOC for the purposes of alleviating his difficulties in relation to the fuel contamination crisis.

Senator O'BRIEN—Perhaps just for clarity, can the committee be supplied with all the documents relating to Mr Leonard's matter from 29 January 2000—we already have a number of them—rather than take up the time at this time of night.

Mr Collins—Yes.

Senator O'BRIEN—Thanks, Mr Collins. I will move to another matter. On the issue of the Dromader M18 aircraft and unapproved parts, is it true that on 22 July last year CASA was advised by letter that these aircraft were being fitted with unapproved parts—that is, the problem was the fitting of Garrett TPE331 engines and Hartzell propellers to these aircraft?

Mr Toller—I will call Mr McIntyre to the table. CASA is certainly aware of the allegations that the fitment kits for the turbine aircraft into the Dromader aircraft consist of unapproved parts. That modification is done under a supplementary type certificate that is issued by the Americans and there was automatic acceptance of that Type Certificate by CASA. We

Dangling the compliance carrot

Air Operator's Certificates are usually issued for one year. This was a policy decision taken a long time ago to give AOC holders some commercial certainty for business planning purposes, and was considered to be a good balance between short-term durations and perpetually-issued certificates.

AOCs that are about to expire cannot be renewed — they have to be reissued. You might think that's just semantics, but a reissue gives CASA the opportunity to completely vet the application and its accompanying compliance statement. (Compliance statements were discussed in the March/April edition of *aiming higher*.)

New AOC duration

CASA is phasing in longer duration AOCs. The first, effective immediately, are certain Aerial Work AOCs of 3 years' duration, and you can be considered for one if you meet the following conditions:

- ▶ You already hold an AOC.
- ▶ You've applied for another AOC to take effect when the current one expires.
- ▶ The AOC you've applied for covers the same things the current one does.
- ▶ The AOCs cover aerial work operations — except flying training or aerial ambulance — in Australian aircraft in Australian airspace, and
- ▶ Your current compliance history is acceptable to CASA.

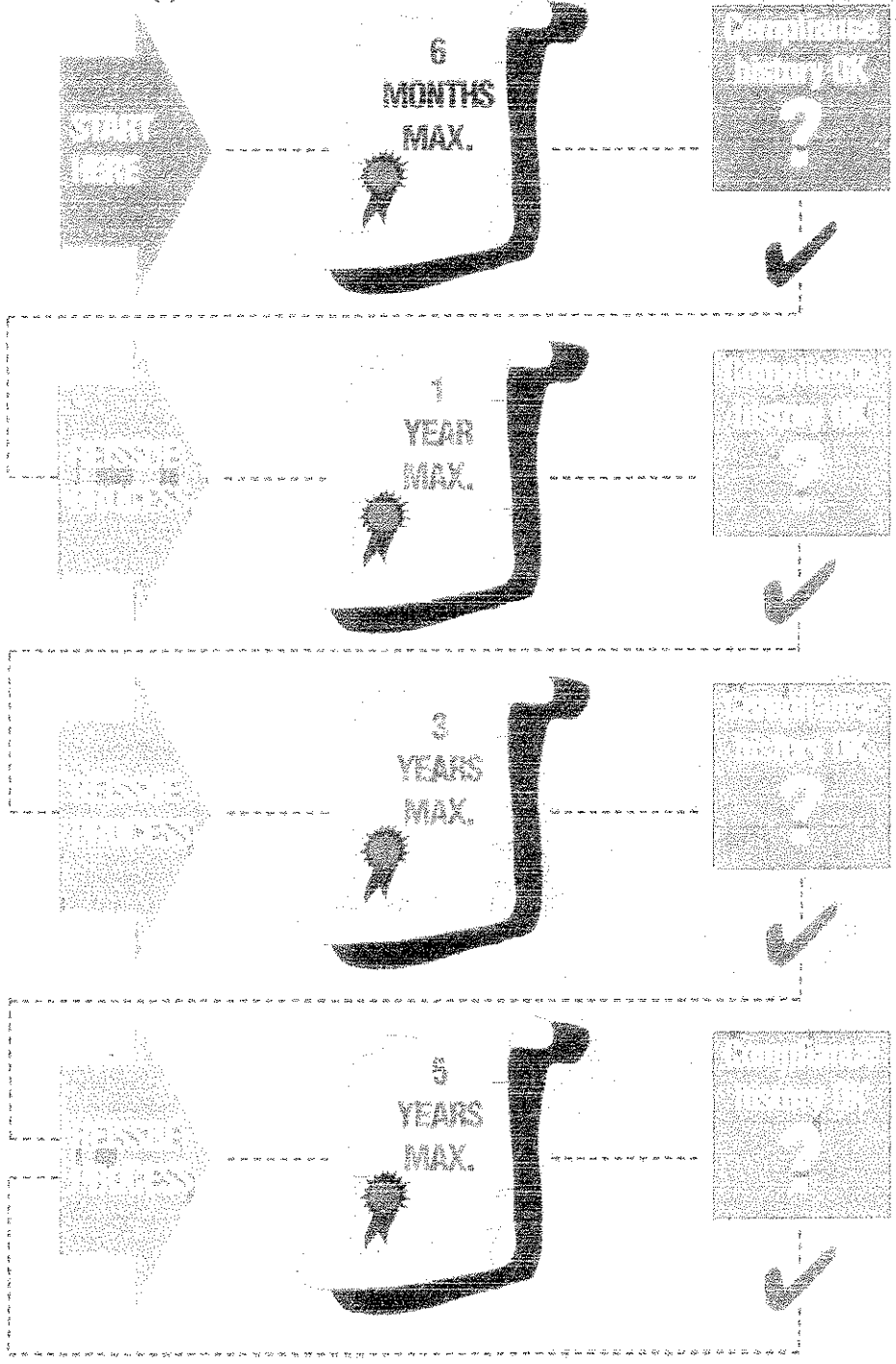
CASA intends to grant longer duration certificates for all AOC holders who have a good compliance history, and a plan to apply this across all types of AOCs is being finalised now.

Good history is rewarded

The message here is straightforward — if you have a good history of compliance, you can be issued with progressively-longer duration AOCs, as follows:

- ▶ If you don't hold a current certificate and your application for one is approved, it will be issued for a maximum of 6 months.
- ▶ Holders of (up to) 6 month certificates that are due to expire will be able to

New AOC Applicant



- ▶ apply for a reissue of up to 1 year.
 - ▶ Holders of expiring certificates of (up to) 1 year duration will be able to apply for a reissue for a maximum of 3 years.
 - ▶ Holders of (up to) 3 year certificates that are due to expire will be able to apply for a reissue of up to 5 years.
- Extending the durations of AOCs will benefit industry and CASA by significantly reducing some administrative tasks that don't contribute directly to safety.

The plan is to phase in the same principle for holders of Certificates of Approval. This will ensure consistent treatment by CASA of the majority of commercial aviation certificate holders, and not just for AOCs.



For all the details on longer duration AOCs and CoAs, fax CASA's Clinton McKenzie on 02 6217 1217, e-mail mckenzie_c@casa.gov.au, or freepost a letter to Reply Paid 744, GPO Box 2005, Canberra ACT 2601.

1800 814 366

6

Pam;

ALEGADO, ARCELI

We need to ring Rob and find out details of

From: CAMPBELL, CHRISTINE
Sent: Thursday, 1 June 2000 17:26
To: ALEGADO, ARCELI
Cc: COLLINS, ROBERT (ROB); RICEMAN, BILL; JARRATT, BRENDA
Subject: FW: Robert John Leonard t/a Air Bush Charter

- refusal
so we can inc
in cover letter +
explain to operators why his
given a shorter

Arce,

The operator rang Brenda Jarratt (Darwin admin) today, to find out why his AOC wasn't issued for the whole period. Apparently they didn't receive a covering letter (please see my note below). Could you please send the covering letter to Mr Leonard as soon as you can.

Thank you
Christine

period - valid
to AOC.
d/06/00

From: CAMPBELL, CHRISTINE
Sent: Wednesday, 31 May 2000 13:57
To: COLLINS, ROBERT (ROB)
Cc: ALEGADO, ARCELI
Subject: Robert John Leonard t/a Air Bush Charter



Leonard AOC v2_.doc

Rob,

Please find attached draft AOC for Robert John Leonard t/a Air Bush Charter which expires 31 May 2000, for your signature and approval. I will be sending SFR, draft AOC and check sheets via fax in a few minutes.

Arce,

If Rob approves this, could you please include in the covering letter with the AOC advice that it has been reissued for a shorter than usual period for CASA's administrative purposes, only.

Thank you
Christine Campbell
PA to Bill Riceman
Area Manager, Central Area

don't be charged for next issue

5/6/00
and Christine re shorter than normal period.
is due to the fact that no surveillance has been done yet

Senator O'BRIEN—The first recommendation says:

The ARG be given executive power to drive the implementation of NAS.

Is that impinging on CASA or Airservices?

Mr Gemmell—Airservices.

Mr Toller—We do not have any role in the implementation of the National Airspace System, apart from ensuring the safety of the implementation.

Senator O'BRIEN—Who would do the training for the new regulatory—perhaps 'regulatory' is only partially the word—airspace system?

Mr Toller—The education and training is currently being done by the implementation group, but we are supporting it in terms of helping with the production of the material because we have that expertise in house in CASA.

Senator O'BRIEN—I note that Dick Smith, the former chair of CASA, is on the ARG and I am sure that you are well apprised of his views on how airspace and aviation should be run. Do you agree that the view in the Willoughby report on competition for Airservices' functions reflects very much the views that Mr Smith has held for some time?

Mr Toller—I do not think that we could even start to comment on that. I actually do not have a view on it, because I have not read the report, but even if I had I do not think I would be the right person to be asking for a comment.

Senator O'BRIEN—Have you provided comment in the report to the minister?

Mr Gemmell—We provided comment to the ARG on the Willoughby report.

Senator O'BRIEN—I see. But the minister has not received a copy of that?

Mr Gemmell—We provided a copy to the ARG. The chairman of that is Ken Mathews, Secretary of the Department of Transport and Regional Services. Whether he has provided that to the minister, I have no idea. But CASA's comments on the draft Willoughby report were provided to the ARG.

Senator O'BRIEN—Mr Yuile, can you find out whether CASA's response to the report has been provided to the minister by Mr Mathews—or by anyone else for that matter?

Mr Yuile—Yes.

Mr Dolan—I would like to clarify something. At this point, because the ARG has not fully considered the range of responses to the Willoughby report, it has not provided advice to the minister on the contents of the report.

Senator O'BRIEN—How long has the report been with the ARG? It says February 2003 on the cover; is that about when it hit the deck?

Mr Dolan—It was with the implementation group at that point. My recollection, although I would have to confirm it, is that it was available to the ARG in April.

Senator O'BRIEN—What would you expect the process would be once it reached the ARG—in terms of response and advising the minister?

Mr Dolan—The ARG is an advisory body to the minister so once the ARG had come to a view, taking account of the various comments provided, that would be reported to the minister. As I think I indicated earlier, the next meeting of the ARG is next month.

Senator O'BRIEN—At the last estimates hearings I asked some questions about Air Bush Charter, and you provided me with some material, for which I thank you. You advised that you applied the FOI rules in determining which documents could be supplied and which could not. Am I correct in saying that normally FOI responses identify material not provided and explain why that has not been provided?

Mr Ilyk—That is generally the case when there is an FOI application. There was no FOI application made in relation to the issue. What we decided in relation to the material that we thought we would release to the committee was that it would be on the basis of the sorts of material that we would normally release to a third party if an FOI application were made. There had been none made.

Senator O'BRIEN—I understand that. You advised that you had applied the FOI rules, but what you are saying now is that you actually applied some FOI rules. Is that what you are saying?

Mr Ilyk—What we were trying to say is that we released the information we would normally release, not the information that we would normally withhold. We released the information that we would normally release under an FOI but, because there was no FOI application, we were not bound by the requirements of the FOI Act.

Senator O'BRIEN—I am not going to disagree with that assumption, because it is certainly true: there was no FOI application. Whether someone makes one or not is neither here nor there: what I am asking is why didn't you advise which documents you were not supplying?

Mr Hyk—Because there was no FOI request, Senator.

Senator O'BRIEN—Will you provide me with a list of the documents that you did not supply and the reasons you did not supply them?

Mr Hyk—We would if there had been an FOI request.

Senator O'BRIEN—Will you do that on my request now?

Mr Hyk—Yes, Senator. If there is an FOI request, we will do that. Or do you just want us to provide—

Senator O'BRIEN—I am asking you if you would provide such a list in response to my request rather than an FOI request.

Mr Hyk—I am happy to do that, yes.

Senator O'BRIEN—I assume that you have already made decisions about why documents would not be released, consistent with the FOI process. There were two issues in relation to this matter. The first was the failure to provide Mr Leonard with all the information he needed to enable him to manage the consequences of the fuel contamination problem, and the second was the decision by CASA to issue Mr Leonard with an AOC for only six months, not two years. Would you agree that the commercial consequences of that decision were significant for Mr Leonard?

Mr Hyk—No, I do not agree with that.

Senator O'BRIEN—Why not?

Mr Hyk—There is no information and no evidence to support Mr Leonard's allegation at this stage. In fact, after the last Senate estimates, Mr Leonard spoke to me on the phone about this issue. We discussed it at some length—for about 30 or 40 minutes. At the end of the day, I got the impression that Mr Leonard's view was that, because he has made an allegation, that allegation must be true. I indicated to him that that is not necessarily the case and we would want to have some supporting evidence of that. He indicated to me that he had a lot of material that we probably had not seen and that, if we had seen it, we would probably come to a different conclusion. I then indicated to Mr Leonard that, if he had that information, I would be more than happy to receive it, have a look at it and review the matter at that stage. He said to me that he would provide me with that information.

A couple of days later, or about a week later, I spoke with Mr Leonard again, because I had not received the information. At that point, I asked him if he was going to provide the information so I could look at the matter. Mr Leonard said, 'No, I would prefer to deal with this matter through the Senate.' I said, 'That is your choice, but I would be happy to look at any information you have which may put a different perspective on this and provide me with additional information.' Mr Leonard simply refused and indicated that he wanted to pursue the matter through the Senate.

Senator O'BRIEN—In terms of the actual decision to issue Mr Leonard with an AOC for six months, are you saying that it did not have commercial consequences?

Mr Hyk—Whether it did or did not, I do not know. I am not in a position to know whether that is a fact or not.

Senator O'BRIEN—It is his view that the fact that he received a six-month AOC would lead people to conclude that there was a safety reason for that action.

Mr Hyk—That is what his allegation is. I have no idea whether that is factual or not. I have no idea. If he has information to that effect then I would certainly want to have a look at it. I should mention that this matter has now been referred to the Commonwealth Ombudsman for an investigation, so the Commonwealth Ombudsman will be looking at all of the issues raised by Mr Leonard. We are in a bit of a difficult situation, because we have Mr Leonard wanting to pursue this through the Senate. He has issued letters through his solicitor threatening legal action, and now the matter is currently before the Ombudsman as well. So there are all these—

Senator O'BRIEN—Put there by Mr Leonard, I take it?

Mr Hyk—It was referred by the department.

Senator O'BRIEN—I see. I recall at the last hearing that Mr Collins told us that Mr Leonard was issued with a six-month AOC because CASA were behind in their surveillance program but discovered some minor technical deficiencies in the operations manual—but these problems were not of a significant safety nature. Therefore, it was decided to allow Mr Leonard to continue to operate with a six-month AOC.

Mr Hyk—As I understand the facts, from the recommendation that went up before the AOC, the six-month issue was based on the fact that there had been no surveillance done of the operator. Therefore, on that basis,

they issued an interim six-month AOC, pending that surveillance being undertaken. It was undertaken in June and, at the completion of the six months, the AOC was issued for its full term, to the end of May 2003.

Senator O'BRIEN—In answer to a question on notice, I have been advised that a review of media releases and your web site did not reveal any information issued by CASA detailing the fast-tracking of AOC for operators affected by the fuel contamination problem. I take it that that would lead you to the view that that information was not available or accessible to Mr Leonard when it should have been.

Mr Ilyk—I understand that instrument 48/2000 was not included on the CASA web site and those miscellaneous type instruments were not being placed on the web site until some time after that period. But, from the material I have seen, Mr Leonard appeared to be aware that there were some special rules in relation to aircraft contaminated by the fuel crisis: he mentioned that in his conversation with the inspectors who visited him in February. At the end of that visit CASA in fact sent Mr Leonard that particular instrument—on about 13 March. So from 13 March Mr Leonard was very aware of those rules, and those rules indicated that if you applied before mid-May—about 12 or 13 May—then you would be given essentially an exemption from the need to submit a compliance statement. It was not an exemption from the requirements for CASA to comply with section 28 of the act; it was just an exemption from the need to submit a compliance statement. So for several months Mr Leonard was aware of that but did nothing about it, and he put in his application right at the end of May.

Senator O'BRIEN—You have confirmed that instrument 48/2000 was not made available on the CASA web site.

Mr Ilyk—As far as our searches can tell. My searches have indicated that that was not put on the CASA web site.

Senator O'BRIEN—Do you put that down to an oversight? Assuming it did not appear, is there some reason—have you investigated it?

Mr Ilyk—I am not sure what the reason was, but at that time not all instruments were being put on the CASA web site. Miscellaneous instruments, regulations and orders were being put on the CASA web site, but not every CASA instrument was being put on. That happened subsequently. The area officers should generally have been aware of those, and Mr Leonard was told at the time to set up a pre-application meeting in relation to his issue, and he did not do that. He was also, as I have mentioned, provided with a copy of that instrument about two weeks after that meeting in Kununurra.

Senator O'BRIEN—In answer to the question headed CASA 05, we were told that Mr Leonard's AOC was due for renewal in May 2000, and you advised that CASA considered that the operator liaison visit conducted by Mr Riceman and other CASA officers referred to in answer to question 04 was not sufficient to enable CASA to reissue the AOC.

Mr Ilyk—Indeed, Senator. The visit by Mr Riceman in February was purely an informal visit. Mr Riceman advised Mr Leonard on 1 February by fax, saying: 'We will be up in Kununurra. If time permits, we may drop in to see you. It is not a formal surveillance; it is just to see how you are going—to see if things are okay.' It certainly was not any kind of formal AOC review or any surveillance. It was purely an informal visit.

Senator O'BRIEN—What would have needed to happen on that visit to enable CASA to reissue the AOC?

Mr Ilyk—That visit was not for the purpose of issuing an AOC.

Senator O'BRIEN—I understand that. You have said that. I am asking what would have needed to happen—

Mr Ilyk—I do not know what the delegate's view would have been and what he would have wanted to do. I have no idea.

Senator O'BRIEN—When the AOC application was made, where was it directed in the first instance and who would have dealt with it?

Mr Ilyk—During the visit in February, Mr Riceman advised Mr Leonard to make an appointment for a preapplication meeting with the Darwin office. It was being dealt with at the Darwin office.

Senator O'BRIEN—Is that effectively the district office?

Mr Ilyk—As far as I am aware, that was the one that would have been responsible for the matter.

Senator O'BRIEN—Would they make recommendations to head office?

Mr Ilyk—Someone would have been making recommendations to the appropriate delegate in charge of issuing AOCs. In this case, in fact, I think—although I do not have all the facts in front of me—that the standard form recommendation actually came from the Adelaide office rather than the Darwin office. It may have subsequently been transferred to the Darwin office, but the May standard form recommendation, as I recall, went from the Adelaide office.

Senator O'BRIEN—Is there anything unusual about that? He was in Kununurra and you have got a Darwin office.

Mr Ilyk—I am not aware of there being anything unusual about that. I am not in a field office so I am not sure what the—

Mr Toller—The central area office used to have responsibility for that area. I have no idea why it would go from Adelaide rather than Darwin in the current circumstances, but we will take that on notice and give you a response.

Senator O'BRIEN—Are you saying that the recommendation that the AOC should be not be issued for a period of two years came from the Adelaide office?

Mr Ilyk—Yes, as far as I recall. It was based on the fact that there had been no surveillance of that operator undertaken.

Senator O'BRIEN—By the Darwin office?

Mr Ilyk—By anyone.

Senator O'BRIEN—Who else would conduct surveillance?

Mr Ilyk—I am saying that there had been no surveillance undertaken by CASA.

Senator O'BRIEN—Is that a recommendation that was made in writing?

Mr Ilyk—Yes. I think it is in the papers that have been provided.

Senator O'BRIEN—Thank you for that. The matter that strikes me as unusual—it may not be in your view—is that there was a visit to Mr Leonard's operation at the end of January 2000. CASA sent him an AOC renewal notice on 13 March, which was about six weeks later, but the January visit was not adequate—perhaps for the reason you outlined—to equip CASA with the information needed to process the AOC application. Why would you undertake a visit a matter of weeks before a renewal notice was issued and not check whether that issue was a matter that it was appropriate to deal with at that time, given that we are talking about going to Kununurra from Darwin?

Mr Ilyk—The people who went to Kununurra went there for other business. As I said, the formal note was sent to Mr Leonard on 1 February. It says:

Dear Mr Leonard,

As discussed last Friday afternoon, ... will be in your area on the 29 Feb - 1 March 00, and time permitting, may drop in to meet you and have a quick look at your operation.

Whilst this is not a formal CASA surveillance, they would like to overview your operation with a brief look at the systems that you are required to have in place.

It was not a formal thing, and it was only if time permitted. It was purely an informal visit.

Senator O'BRIEN—Were Mr Riceman and the other officer present competent to assess whether there were problems with the issue of an AOC?

Mr Ilyk—I cannot say.

Senator O'BRIEN—Can you advise me of that on notice?

Mr Ilyk—We can take that on notice.

Senator O'BRIEN—Perhaps you can tell us of the qualifications and experience of the two officers who visited the premises.

Mr Ilyk—I will take that on notice, too.

Senator O'BRIEN—Is the fact that there were no further visits until 25 May, which was for an airworthiness inspection—and then another month later one for an ASSP176 periodic inspection—attributable to anything other than the timing of the application process?

Mr Ilyk—I cannot say. I know that Mr Leonard was advised in March that he should be putting in his application. He did not put in his application until towards the end of May, leaving about 10 days before his AOC expired. And that was one of the problems—the fact that the application was put in very late. Normally, CASA requires 90 days. In this case, we had 10 days.

Senator O'BRIEN—Am I correct in saying that CASA has a policy that requires a number of inspections prior to the renewal of an AOC?

Mr Ilyk—I cannot say with any accuracy. I can take that on notice.

Senator O'BRIEN—If it is a recent policy, can you tell us when it came into force?

Mr Ilyk—Yes. I will take that on notice.

Senator O'BRIEN—Can you also tell us what inspections are required?

Mr Ilyk—I will take that on notice, too.

Senator O'BRIEN—Presumably the issue of the continuation of a business is important in terms of CASA's performance of its function. How do you ensure that the AOC renewal process, as far as it is within the control of CASA, does not impede the continuing running of a business?

Mr Ilyk—I think there have been significant improvements made to the whole process, with the establishment of the regulatory service division and the service centre.

Mr Gemmell—In more recent times, postdating anything to do with this particular case, we have had a program of trying to ensure that our surveillance inspections occur in an appropriate period before an AOC might expire so that a delegate has information on which to take the decision about the renewal of the AOC. Also we have policies that deal with what happens if we have some show cause action outstanding, for example, at the time an AOC is due for renewal.

Senator O'BRIEN—Can I categorise that process as one to avoid what happened to Mr Leonard?

Mr Gemmell—It is a categorisation but—

Senator O'BRIEN—Not precisely, but generally speaking.

Mr Gemmell—It is designed to ensure that, for example, an AOC does not expire before we get out there to have an inspection. It is designed to line up the cycles so that we have the information available to us for the delegate to take the decision before it expires.

Senator O'BRIEN—What exactly was referred to the Ombudsman?

Mr Ilyk—The whole of Mr Leonard's complaint is about not providing the information about the delay in the issue of the AOC and any other matters that are relevant to Mr Leonard's complaint.

Senator O'BRIEN—Has Mr Leonard commenced any legal action?

Mr Ilyk—We have letters from his solicitor and we have records on file from Mr Leonard saying, 'CASA has returned my payment for their issue of the AOC. I am not cashing that cheque because my lawyers advised me not to in the event that I commence legal proceedings.' So yes, we have had intimated to us that proceedings will be commenced.

Senator O'BRIEN—If what you said is right, it is under consideration rather than being commenced.

Mr Ilyk—Yes. They are threatening legal proceedings.

Senator O'BRIEN—Can you tell me what the authority's budget is for 2003-04.

Ms Bickford—CASA's budget under the portfolio budget statements is \$111,715,000.

Senator O'BRIEN—Where would I find that information relevant to the period back to the establishment of CASA? Is there a document to sight?

Ms Bickford—There are a number of places. It would obviously be in previous portfolio budget statements. It would also be in our annual reports for each of the years of what our actual revenue and expenditure was for each year, rather than the budget per se.

Senator O'BRIEN—Would it be difficult for you to put together a summary of what funds have been available to CASA in each year since it was established?

Ms Bickford—No. I can do that for you.

Senator O'BRIEN—Thank you. The major item for CASA in the budget seems to be the increase in excise to cover your revenue reduction as a result of the decline in industry activity. Do I understand that correctly?

Ms Bickford—That is the only change to CASA's budget. In fact, it was to restore CASA's budget to the anticipated level, so it is not actually additional funding to CASA.

Senator O'BRIEN—I think I said it was an increase in excise to cover your revenue reduction.

Ms Bickford—An increase in the excise rate.

Senator O'BRIEN—The government announced in the budget papers that a review of your funding will be conducted in the 2003-04 financial year. Was CASA aware of this intention to review funding prior to the budget announcement?

Ms Bickford—Yes.

Senator O'BRIEN—How could the current funding model for CASA be improved?

Ms Bickford—The issue that has brought this into focus is the volatility of the fuel excise volumes and the fact that it has been difficult for us to forecast future volumes and therefore revenue, so it is really an opportunity to look more broadly at CASA's revenue sources and what potential there could be in relation to that revenue.

Senator O'BRIEN—What sorts of revenue sources should be looked at?

Ms Bickford—That is a matter for government policy. In terms of the review, I do not know whether the department would like to comment.

ATTACHMENT ZZ

The following comments about the issue of the 6 month AOC have been made by Peter Rundle a consultant recommended by the Aircraft Owners and Pilots Association to determine the veracity of CASA's claims.

CASA delegate, Robert Collins, the Executive Manager Regulatory Services, based in Brisbane, acted inappropriately and outside CASA's internal procedures manual in "mirroring" the recommendation of Area Manager Riceman. Collins issued Air Bush with a 6-month short term AOC based on the grounds that CASA had failed to meet its policy audit-surveillance program, and not accepting the statement from Area Manager Riceman that there was nothing on File to indicate CASA could not be satisfied under Section 28(1) of the Act.

Area Manager Riceman acted inappropriately and outside CASA's internal procedures manual in recommending delegate Collins issue a 6-month AOC based on the failure of his Darwin Office to carry out surveillance on Air Bush, and acted outside the "transparency principle" in recommending that delegate Collins should not advise Air Bush of the real reason why only a 6-month AOC was issued.

- CASA did Not issue an AOC in the context of a normal AOC – CASA issued a limited AOC

NOTE: The CASA internal procedures manual, AOCM, was issued in both "hard Copy" and "via CASA's internal website".

In the era around 2000 and 2002 the AOCM was approved by the Executive Manager Regulatory services, Robert Collins

The normal term of an AOC

Section 27 (7) of the Civil Aviation Act 1988

"The term of an AOC shall be as determined by CASA"

NOTE: - Parliament has not set a fixed term for AOCs; CASA Policy decides the term of AOCs, and affects the financial viability of commercial businesses without enhancing the safety of air navigation.

Macquarie - "normal" – "conforming to the standard or common type, regular, usual or not abnormal"

AOCM – Air Operator Certification Manual – CASA's internal policy and procedures manual

AOCM – 1999 – section 2.3 Note 6 – "the normal term is 12 months from issue"

2003 – section 2.3 Note 6 – "Initial issue 12 months, subsequent issue not more than 3 years"

2005 – printed form CASA website 11/2/06, still the same as for 2003

- **THEREFORE** – The "issue" of an "AOC" is the issue of "a normal AOC", not a "limited AOC"

Issue of an AOC – "normal AOC"

AOCM - CASA must issue – Sect 2.1.2.3 – dated Oct 2005 – "Issue of AOC cannot be refused if CASA is satisfied"

Sect 28(1) of the Act - CASA must issue an AOC if CASA is satisfied"

AOCM – "CASA or the delegate cannot refuse to issue an AOC if the applicant satisfies the requirements of Sect 28(1) of the Act" –
"Such action would be in breach of CASA's statutory obligations"

- Area Manager Riceman stated in writing to delegate Collins “*there is nothing on file that would throw doubt on CASA’s ability to be satisfied with respect to matters in Section 28 of the Act*”
- **THEREFORE** – CASA should have issued a normal AOC – a normal AOC in the context of Sect 28 of the Act and the guidance of the AOCM – 12 months or more.

AOCM - Notes for Delegate – The AOCM clearly states that lack of surveillance is not grounds for refusing to issue an AOC

1999 – section 3.1.2.3.1 – dated Aug 1999

2003 - section 3.1.2.3.1 – dated May 2003

2005 - section 3.1.2.3.1 – dated Oct 2005

All three state the same – “Lack of surveillance is not in itself grounds to refuse the renewal of an AOC”

“Do not use short term AOCs for non-compliant operators, the delegate is either satisfied under Sect 28 of the Act or not satisfied”.

NOTE: CASA policy is not to issue a short term AOC for non-compliant, yet issued a short term for compliant Air Bush due CASA’s failure to comply with CASA’s surveillance policy periods

Surveillance

Section 9 of the Civil Aviation Act 1988 – Functions of CASA

Sect 9(1) (f) – “conducting comprehensive aviation industry surveillance”

BUT the Act does not state when and where for surveillance – that is internal CASA policy, not express requirements by Parliament

In the 1990’s the ASSP plan provided computer based information on the progress of surveillance by each Area Office and sub-offices – Area Manager Riceman should have been aware that the Air Bush AOC was due for renewal and his Darwin Office had not conducted their planned surveillance – in the 1990’s the “annual inspection” was planned prior to AOC expiry date.

“Mirroring” another person’s decision or recommendation

Under Administrative Law a Delegate must arrive at a decision; the delegate must not mirror another person’s decision.

AAT hearing – QLD – CASA v Helijet

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The Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
PO Box 6100
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CANBERRA ACT 2600

Dear Sir/Madam

The following is a submission to the Senate Standing Committee on Rural and Regional Affairs and Transport about the administration of CASA. My submission to the Standing Committee concentrates on CASA staff's behaviour on 10 February 2003. It is only a small part of a much larger concern I have had with CASA damaging my aviation career and business.

Before my concerns were put to the Senate in February 2003, a staff member of Senator O'Brien's office warned me that CASA would denigrate my operations. I found this strange but assured him that I had a perfect record and that CASA staff had been only complementary about my operation.

On 10th February 2003 the Senate Estimates Committee put my complaints to CASA. The answers provided by CASA were I believe intended to deceive the Senate Committee and to put my operations in a very poor light.

Senate Committee Transcript of 10 February 2003 (Attachment A)

I make the following comments about the transcript:-

- 1. Page 134 : When asked by Senator O'Brien if it is normal to issue an AOC for six months when there are no concerns about the operation, Mr. Collins replied that it is not normal but is not uncommon.*

This is not correct, as can be seen from **Attachment B**. This document was sent out to thousands of charter customers (Note: customers NOT operators) by CASA. It explains that if an AOC applicant has a 1 year AOC and their compliance history is OK they will receive a longer AOC.

Also in **Attachment ZZ** I put forward a summary of a critique made by Peter Rundle. He is a former CASA Flying Operations Inspector and was recommended to me by the Aircraft Owners and Pilots Association as a consultant who could assist in determining the veracity of CASA's claims. The critique is highly critical of Mr. Collins' comments to