Australian Government
Civil Aviation Safety Authority

OFFICE OF THE CHIEF EXECUTIVE OFFICER

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Senator Susan McDonald
Chair
Senate Rural and Regional Affairs
and Transport Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator McDonald

First Supplementary Submission of the Civil Aviation Safety Authority to the Senate Inquiry into General Aviation

Thank you for the opportunity to make a further submission, supplementary to the initial submission made by the Civil Aviation Safety Authority (CASA) on 17 November 2020.

In this supplementary submission our comments focus on aspects of the testimony given in evidence before the Committee by Mr Glen Buckley, who appeared in a private capacity on 20 November 2020. We reserve our prerogative to make further supplementary submissions, so long as the Committee is prepared to receive submissions.

Comment on the testimony of Mr Glen Buckley, appearing in a private capacity

In his testimony before the Committee on 20 November 2020, Mr Buckley ventilated aspects of his personal grievances with CASA and certain individual CASA officials. He did so at some length, but with little supportive detail. Some of Mr Buckley's remarks concern issues about which reasonable people might well differ—and CASA most certainly does disagree with many of Mr Buckley's contentions in relation to those matters. Much of what Mr Buckley said, however, consisted of statements, claims and assertions purporting to be true and correct, but which are false, misleading, and unfair.

It is not CASA's intention to address every such element of Mr Buckley's testimony here, or to prosecute a 'defence' to his groundless allegations. Where some of his statements reflected unfairly and adversely on certain named individuals, and on CASA itself, we have responded to those accusations in a separate submission lodged in accordance with Resolution 1(13) of the Resolutions relating to Parliamentary Privilege agreed to by the Senate on 25 February 1988.[1]

[1] Letter from Shane Carmody to Senator Susan McDonald, *Submission in Response to Evidence Reflecting Adversely on Certain Persons* (14 December 2020).

Before responding here to a selection of Mr Buckley's other questionable statements, we draw the Committee's attention to a fundamental principle of Australian justice, namely, that a person who makes claims of wrongful and harmful conduct on the part of another must substantiate those claims with credible and competent evidence, based on objectively demonstrable facts.

This is something Mr Buckley has failed to do in his many communications with CASA and the CASA Board, as well as his commentary in internet blogs and his remarks to uncritical media outlets. And this is something he failed again to do so in the course of his evidence to the Committee. Mr Buckley seeks to garner sympathy and support for himself, while inciting hostility with false accusations of victimisation, distracting attention from his own determinative role in creating the difficult circumstances in which he seems to find himself.

On reflection, CASA recognises that aspects of the way in which Mr Buckley's affairs were dealt with could have been handled differently and more effectively. In the main, however, Mr Buckley has been the architect of his own destiny, and unfortunate as his current situation may be, this is not something that can fairly be sheeted home to CASA.

With these considerations in mind, we identify below some, but by no means all, of the statements Mr Buckley made in his testimony that are factually incorrect, incomplete or have otherwise been misleadingly conveyed. In each instance, we offer brief corrective and/or clarifying comments in response.

1. **Mr Buckley:** . . . Before I proceed, I want to be perfectly clear, as Mr Carmody will present before you shortly, I put the question to him to clearly outline any safety case for the action that you took against me and clearly outline any regulatory breaches [p. 35].[2]

As CASA has repeatedly pointed out to Mr Buckley, at no time did CASA take administrative action 'against' him or what had been his flight training organisation. Rather, when it became apparent to CASA that critical elements of the organisational arrangements under which his flight training activities were being conducted might not comply with the requirements specified in the civil aviation legislation, CASA sought evidence from Mr Buckley that would substantiate the existence of a necessary measure of operational control by him, as the authorisation holder, over the activities said to be covered by his flight training authorisations.

CASA was entitled to require this evidence of Mr Buckley,[3] in the absence of which CASA was under no obligation to continue considering the applications Mr Buckley had submitted to add additional training bases. At no time did CASA affirmatively allege that Mr Buckley had 'breached' a regulation. Rather, CASA quite properly sought evidence that Mr Buckley's operational model was consistent with the requirements of the regulations, and that he was demonstrably complying with the applicable regulations. In the absence of that evidence—which Mr Buckley never produced—it would certainly have been open to CASA to formally refuse to give the approvals for the addition of training bases for which Mr Buckley had applied. On the same basis, it would have been open to CASA to initiate administrative action to vary, suspend or cancel Mr Buckley's existing flight training authorisations.

Matters never came to that point, however, because CASA never took a decision of either kind. Instead, CASA repeatedly extended the time for Mr Buckley to demonstrate, on evidence, that a requisite measure of operational control over the entities forming part of his 'alliance' was in place; which is to say, that he was capable of complying with the applicable

[2] This and all further page references are to Senate Rural and Regional Affairs and Transport Legislation Committee, Australia's General Aviation Inquiry, Proof Committee *Hansard,* 20 November 2020.

[3] See sub-regulation 11.040(1), *Civil Aviation Safety Regulations 1998* (CASR).

legislative requirements. During that time, CASA provided Mr Buckley with substantial guidance, advice and individual support to assist him to satisfy CASA that organisational arrangements of the kind required were, as he claimed, effectively in place. This, as said, was something he was persistently unable or unwilling to do.

The 'safety case' for the regulatory requirements with which CASA was seeking evidence from Mr Buckley to demonstrate his compliance, preceded the adoption of those requirements, and is intrinsic to the substance of the legislation involved, namely, Parts 141 and 142 of the *Civil Aviation Safety Regulations 1998* (CASR) and the provisions of section 28 of *the Civil Aviation Act 1988*, under which the Air Operator's Certificate (AOC) required for the conduct of flight training operations under CASR Part 142 is issued.[4]

For Mr Buckley to suggest that his obligation to comply, and to demonstrate compliance, with those requirements must first be supported by the presentation by CASA of a justifying safety case is tantamount to saying that the validity of, and the legal obligation of a motorist to comply with, a legislated speed limit is dependent on the presentation by the motor traffic authority of a 'safety case' justifying the imposition of that speed limit.

Dissatisfaction with the substance of a civil aviation regulation is a matter properly raised in the consultative process of developing that legislation, or as a matter to be considered in the corresponding process by which that legislation is reviewed. Dissatisfaction with the way in which a legislative requirement is applied in any particular case is a judicial matter or, in the case of a reviewable decision, a matter for the Administrative Appeals Tribunal. It is not availing simply to claim that, because one does not like a legal rule, that rule does not, or should not, apply to them.

> 2. **Mr Buckley:** . . .The best analogy that I can give is that APTA is probably somewhat like IGA is in the supermarket industry. I took all the powerful approvals that I had in my school of 10 years and put them up the top and provided the opportunity for 10 schools to join underneath. [p. 36]

Mr Buckley's reference to franchise-like arrangements of the kind mentioned in the example he used in his evidence reveals his misunderstanding of the nature and implications of such arrangements. His misconception of this model highlights the inconsistency between the 'alliance' model he was promoting and the kind of arrangements it would seem he was actually offering his 'affiliates', as well as with the kind of operational control required by the civil aviation legislation.

Using the same analogy, Mr Buckley described the 'alliance' arrangements for prospective participants on his company's promotional website as follows:

> Importantly, you retain complete control over your own business. Your business maintains its identity and individuality. Your administration function and procedures remain completely your own, independent of the Alliance. There is a pooled system of manuals and procedures, directed by a shared high-powered team that will take on the responsibility for the Key Personnel requirements.[5]

Such arrangements depict a true franchise, under which a franchisee may enjoy the advantages of shared operational processes, procedural manuals, brand recognition and other features associated with the franchisor, while retaining the ability to operate as an independent business entity—as well as the legal responsibilities and obligations involved in the conduct of the activities an independent business enterprise.

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[4] See CASR 141.060, CASR 142.110 and paragraph 28(1)(b) of the Civil Aviation Act.

[5] This description, quoted directly from Mr Buckley's website at the time, and the concerns to which it gave rise, were expressly referenced in CASA's letter of 23 October 2018 to Mr Buckley's flying training organisation. See discussion in relation to statement number 3 below.

Where such activities are subject to regulatory control and oversight under an authorisation, it is the franchisee, not the franchisor, who is directly and exclusively accountable to the relevant government authorities. Every individual IGA store is independently licensed to operate as a business. Its owner/operator (the franchisee) is individually accountable to the relevant regulatory authorities for the conduct of any regulated aspects of its business, and each individual owner/operator is bound to comply—and to demonstrate compliance—with applicable legislative requirements, including requirements designed to protect the health and safety of customers, consumers and business visitors.

While Mr Buckley maintained that his alliance affiliates (franchisee's) would be free to retain complete control of their flight training activities, he assured them (and sought to assure CASA) that he, as the authorisation holder, would be fully responsible for ensuring the compliance of every 'affiliate' with applicable regulatory requirements. While operational independence of the kind Mr Buckley insisted his affiliates would enjoy might well be consistent with conventional commercial franchise arrangements, it would be manifestly inconsistent with the level of operational control Mr Buckley, as the authorisation holder, would be required to maintain to comply with the safety-related organisational requirements specified in the civil aviation legislation.

For an alliance affiliate to conduct flight training operations *with the full measure of operational independence Mr Buckley assured them they would retain*, but without holding their own civil aviation authorisation to do so, would involve the unlawful conduct of flight training activities by an unauthorised entity.

It was this fundamental discrepancy in the organisational arrangements of Mr Buckley's alliance scheme that CASA questioned, and in respect of which CASA sought clarification from Mr Buckley. Whatever representations Mr Buckley may have made to prospective alliance participants about the nature and extent of their autonomy, CASA's concern centred on the need for demonstrable certainty that Mr Buckley's company, and Mr Buckley's company alone, was in the position to maintain full operational control over the regulated flight training activities that were meant to be conducted under his authorisations.

> 3. **Mr Buckley:** . . . On 23 October 2018, with absolutely no warning at all—not on the basis of any regulatory breaches and not on the basis of safety, Mr Jonathan Aleck, the executive manager of legal international and regulatory affairs at CASA had a change of mind. . . . I expect Mr Jonathan Aleck, before you shortly, to be able to show you the rules that were broken. There were none. Their conduct was vindictive and vexatious. [p. 36]

On 23 October 2018, CASA's then regional manager for the Southern Region, wrote to Mr Buckley, asking him to provide information and evidence of the kind described above within 7 days.[6] In the absence of such evidence, the regional manager advised that further action by CASA *might* need to be taken.

As it happened, Dr Aleck had absolutely no direct involvement in, and certainly no authority to make, the decision to send that letter to Mr Buckley. He was not, nor was there any reason for him to have been, personally aware that such a decision had been taken or that the (or any) letter had been sent.

> 4. **Mr Buckley:** . . . I was going to take all the compliance and safety responsibility for the operation and let them go about running their aero clubs [p. 36].

[6] The letter was addressed to the then Head of Operations of Mr Buckley's flying training organisation.

As discussed in our response to statement number 2 above, the regulatory and safety implications of Mr Buckley's contradictory assertions about the autonomy of his 'affiliates' and his own accountability for their conduct of regulated flight training activities is illustrative of the concerns CASA had about the true nature of Mr Buckley's organisational arrangements.

> 5. **Mr Buckley:** . . . What did CASA do to me? Okay. To simplify this story—we don't have a lot time, I appreciate—CASA did three things to me. The first stage they did overnight. For no reason at all, they changed their opinion, came in and placed my entire business on seven days [*sic*] notice of operations. That's classified as a cancellation, variation or a suspension of an air operator's certificate. There are very strict procedures and protocols they need to follow to take such substantive action. Bear in mind this is not on safety grounds; it is the complete reverse. They denied me my privilege under administrative law and they put restrictions on my ability to trade [p. 36].

As said, CASA gave Mr Buckley notice to provide, within 7 days, evidence that the prospective arrangements under which he sought to include additional 'affiliates' were consistent with the applicable requirements of the civil aviation legislation. If they were, there should have been no difficulty for Mr Buckley to provide that evidence.

As said, too, CASA did not take any action to vary, suspend or cancel Mr Buckley's CASR Part 141 or Part 142 authorisations, nor did CASA serve Mr Buckley with a notice to show cause why CASA should not take such action, which notice would, as a matter of procedural fairness, have necessarily preceded any decision to vary, suspend or cancel his authorisations.

> 6. **Mr Buckley:** . . . In the second stage, I retained my existing flying school, called Melbourne Flight training. CASA—this is a right they don't have; this was again their opinion; this isn't defined—came up with something called direct operational control. . . . [p. 37]

It is surprising that Mr Buckley seems to have such difficulty with the notion of 'operational control'. The concept is well-recognised and understood in the contemporary aviation community in Australia and around the world as central to the safe conduct of any air service operation, including flight training. Although the term itself may not appear in the Australian civil aviation legislation, demonstrable evidence of operational control is precisely what the legislation governing flight training activities under the civil aviation legislation requires.

In pertinent part, CASR Part 141 expressly provides that an applicant for, and the holder of, an approval to conduct flight training activities under that Part must satisfy CASA that:

- flight training can and will be conducted safely and in accordance with the authorisation holder's operations manual and the civil aviation legislation;
- the organisation is suitable to ensure that the training can be conducted safely, having regard to the nature of the training;
- the chain of command of the organisation is appropriate to ensure that the training can be conducted safely;
- the organisation has a sufficient number of suitably qualified and competent personnel to conduct the training safely;
- the facilities of the organisation are sufficient to enable the training to be conducted safely;
- the organisation has suitable procedures and practices to control the organisation and ensure the training can be conducted safely;
- each of the applicant's/authorisation holder's key personnel:
    - is a fit and proper person to be appointed to the position; and

- has the qualifications and experience for the position specified elsewhere in CASR Part 141D; and
- has any additional qualifications and experience required by CASA under the regulations.[7]

Corresponding requirements, expressed in virtually identical terms, appear in the Civil Aviation Act, in the provisions governing the conduct of operations under an AOC of the kind Mr Buckley was required to hold for his CASR Part 142 flight training activities.[8]

Under Mr Buckley's alliance model, the actual entities carrying out flight training, and other operational activities directly related to the conduct of flight training, would be separate, distinct and independent corporate entities, employing and engaging their own personnel for those purposes. Even in the absence of Mr Buckley's assurances to prospective 'affiliates' about the nature and extent of the autonomy they would continue to enjoy as participants in Mr Buckley's alliance scheme, the attenuated management arrangements of the kind reflected in any such model would need to be carefully assessed by CASA.

In the interests of safety, CASA would need to be fully satisfied that, as the authorisation holder, Mr Buckley had necessary and effective arrangements in place between himself and each of the entities carrying out crucial aspects of the operations for which he alone was accountable, which ensured he maintained a full and sufficient measure of operational control over those activities. This was explained to Mr Buckley on several occasions, and in comprehensively detailed advice provided to him on 21 May 2019.[9]

> 7. **Mr Buckley:** . . . In the third stage, I obtained employment in the industry and continued to defend my reputation on PPRuNe and Aunty Pru, until CASA sent a letter to my employer, saying my position was untenable, based on comments that I was making publicly. I was terminated that day [p. 37]

After Mr Buckley had sold his company, the Australian Pilot Training Alliance, Pty Ltd (APTA), he was evidently employed by APTA's new owner in an operational capacity. Inaccurate as was so much of what appeared in Mr Buckley's continuing public castigation of CASA, we recognised then, as we do now, that he is entitled to express (and presumably to be accountable for) those views.

When CASA's then-Southern Region Manager became aware that Mr Buckley was disseminating his personal views about CASA on APTA letterhead and using his APTA signature block, he sent an email to APTA's new owner questioning the propriety of Mr Buckley's expression of those views in a way that clearly implied that Mr Buckley was doing so with the imprimatur of APTA's new owner. The form of words used by CASA's then-Southern Region Manager was injudicious; and although his intention was, as said, to question the propriety of Mr Buckley's use of APTA's company letterhead as a vehicle for expressing personal views that might not be views held by APTA, it was possible that this might have been construed as suggesting that, if Mr Buckley were not expressing views shared by his employer, this was a matter that Mr Buckley's employer might deal with in a particular, if unarticulated, way.

It would appear that the matter was raised with Mr Buckley by his employer, and that at some point after that, Mr Buckley's position as an APTA employee changed and his employment

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[7] CASR 141.060(1).

[8] See paragraph 28(1)(b). Flight training conducted under CASR Part 142 is a prescribed activity for the conduct of which an AOC is required under subsection 27(9) of the Civil Aviation Act. See CASR 142.065.

[9] Letter of 21 May 2019 from Graeme Crawford to Glen Buckley.

by APTA subsequently terminated. Mr Buckley maintains this was the direct result of the concern raised by CASA's then-Southern Region Manager and Mr Buckley's employer.

Almost immediately after he communicated his views to APTA's new owner, CASA's then-Southern Region Manager contacted Mr Buckley's employer again, first by telephone and then by email, to make it clear that he had no intention of interfering with Mr Buckley's employment by APTA. Significantly, APTA's principal advised CASA's then-Southern Region Manager that (a) any change in Mr Buckley's employment relations with APTA had nothing to do with CASA's then-Southern Region Manager's remarks; (b) APTA's principal did not regard those remarks as constituting a direction or expectation on CASA's part that Mr Buckley ought not to remain employed by APTA; and (c) APTA did not consider CASA could or properly should seek to give a direction to APTA about whom they might or might not employ in any case.

The clear implication of Mr Buckley's evidence is that he was terminated by APTA because of the remarks CASA's then-Southern Region Manager made to APTA about Mr Buckley's expressing his views about CASA publicly, and as a consequence of CASA having given a 'direction' of some kind to APTA's owner that Mr Buckley be terminated. Both of these contentions are untrue and incorrect.

8. **Mr Buckley:** . . .The only offer that CASA has made to me, to be honest, I don't recall the amount of because I found it so offensive that I opened the email only once. It was a lot less than $5,000. My recollection is that they offered me a total of about $3,500, somewhere in that vicinity [p. 38]

Shortly after the event to which Mr Buckley referred in statement number 7 above, and in keeping with the requirements of the Victorian defamation legislation, CASA received a letter from solicitors representing Mr Buckley, inviting CASA to make amends for the allegedly defamatory comments by CASA's then-Southern Region Manager to Mr Buckley's employer at APTA.

In response, CASA's then-Southern Region Manager wrote to Mr Buckley personally expressing his unreserved apology for his poor choice of words, and for any apprehension this may have caused Mr Buckley. At about the same time, CASA made an offer of settlement to Mr Buckley, through his solicitors, having regard to the facts that (a) Mr Buckley had not lost his employment with APTA on account of the remarks made by CASA's then-Southern Region Manager; (b) there was no basis on which Mr Buckley could claim any economic loss resulting from the remarks made by CASA's then-Southern Region Manager; and (c) the only person to whom CASA's then-Southern Regional Manager (or CASA) had conveyed the remarks in question (or information about those remarks) was APTA's new owner. On this basis, CASA made an offer of settlement in the amount of $5,000 plus up to $2,500 to cover Mr Buckley's legal expenses.

CASA has not received a response to this offer of settlement, either from Mr Buckley's solicitor or from Mr Buckley himself. We are aware, however, that Mr Buckley has claimed on the internet that he had instructed his solicitor to reject CASA's offer and to mount legal action against CASA for defamation. Neither CASA, nor to the best of our knowledge CASA's then-Southern Region Manager, has been notified of the commencement of legal proceedings for defamation. We further understand that the period of time within which such an action might have been initiated in the Victorian courts expired several months ago.

9. **Mr Buckley:** . . .To simplify the matter, they used a document called the aviation ruling, which is a document designed for the charter industry, not for flight training . . . The Commonwealth Ombudsman has completed phase 1 of his investigation and he found that CASA had erred because they used the wrong document [p. 39].

From time to time, and in a practice similar to that of other regulatory authorities in Australia and overseas, CASA publishes general advice in the form of what we call 'Aviation Rulings'. These Rulings reflect neither more nor less than CASA's view of what particular legislative requirements mean, and how CASA interprets the operative legislative provisions. Every Aviation Ruling contains the following prefatory advice:

> **Aviation Rulings**
> Aviation rulings are advisory documents setting out CASA's policy on a particular issue. CASA makes rulings available to CASA officers and the public to ensure that there is a consistent policy adopted in administering particular aspects of the air safety regulatory regime. Rulings are intended to apply to a range of factual situations and are necessarily general in nature.
>
> CASA will proceed on the basis that a person who relies on a ruling is complying with the law, as long as that person:
>
> i. Exercises due care in acting in reliance on the ruling – i.e., a person who carelessly misreads the test of a ruling will not be entitled to rely on that misreading;
> ii. Relies on the ruling in good faith – i.e., CASA will not allow a person to frustrate the intent of the ruling by adopting an extreme or contrived interpretation of the words of the ruling which results in consequences that were clearly unintended by CASA at the time the ruling was issued;
> iii. Only relies on the clear statements of fact and policy in the ruling – i.e., the ruling is completely self-contained and does not permit any additional interpretation of the relevant law, or application of the policy to different fact situations.
>
> A user of aviation rulings should also be aware that a ruling is only a statement of CASA's policy. It is not a restatement of the law. Accordingly, while rulings are drafted to be consistent with the law referred to in the ruling as understood by CASA from time to time, they cannot displace any inconsistent legal requirements. You should notify CASA's General Counsel if you believe that compliance with this ruling would lead to a breach of a legal requirement or if you believe that a ruling is based on an erroneous factual assumption.

The same information appears on CASA' website where Aviation Rulings are available to the public. See https://www.casa.gov.au/rules-and-regulations/current-rules/aviation-rulings.

In 2006, CASA published an Aviation Ruling (No. 1 of 2006) entitled: *Franchise AOC arrangements*. In that Ruling, the essential elements of operational control are canvassed, along with the difficulties—legal and operational—that are likely to be encountered where a person who is not the holder of an AOC attempts to conduct regulated air service operations under the coverage of another person's AOC.

The examples given in the Aviation Ruling draw primarily from air transport activities conducted under an AOC. At the time the Ruling was published, however, it was not limited to the 'charter industry' and it most certainly did apply to flight training activities conducted under an AOC.

Mr Buckley is correct to say that flight training activities of the kind conducted under CASR Part 141 no longer require an AOC. What he fails to acknowledge, however, is that the very same principles and requirements relating to operational control that applied (and apply today) to activities conducted under an AOC are reflected, almost verbatim, in the threshold and ongoing operational control provisions set out in CASR 141.060 (as discussed in relation to statement number 6 above).

Moreover, as the conduct of flight training activities under CASR Part 142 require the person conducting those operations to hold an AOC for that purpose—as Mr Buckley did at all relevant times—the Aviation Ruling on *Franchise AOC arrangements* was fully applicable to Mr Buckley's flight training activities conducted under that Part of the Civil Aviation Safety Regulations.

Mr Buckley's issues in respect of the Aviation Ruling are misconceived. To be sure, the Ruling is not a definitive statement of the law, with which one is either compliant or not compliant. But CASA has never suggested that it was or was meant be. For all that, the principles of operational control reflected in the Ruling were and remain as applicable today to a broad range of regulated organisational activities conducted under the regulations without the need for an AOC, including flight training under CASR Part 141, as they were in 2006. As noted above, insofar as Mr Buckley's flight training operations conducted under CASR Part 142 were concerned, those activities were conducted under an AOC, to which the 2006 Aviation Ruling was always relevant.

To the extent some of the regulatory references in the 2006 Aviation Ruling were out of date, the Ruling has been withdrawn with a view to revising it to bring those references up to date. The principles operational control underpinning that Ruling remain sound, however, and this will be confirmed in any future iteration of the Ruling.

To the extent the Ombudsman had made some preliminary findings in relation to the relevance and application of the Aviation Ruling, those findings are preliminary. CASA has raised questions about aspects of the analysis on which those preliminary findings have been made, and the implications of certain conclusions based on what CASA considers can be shown to be a flawed analysis. More to the point of Mr Buckley's claims, however, any errors that might be seen to have been grounded in a misunderstanding of the nature or implications of the 2006 Aviation Ruling were demonstrably harmless.

> 10. **Mr Buckley:** . . . [T]hey came back to me and said, 'Well, you have to have contracts.' I said, 'I have contracts.' They said, 'No, you don't.' I said, 'Yes, I do have contracts and they've been provided to you previously.' They said, 'No, you haven't.' I provided evidence, and even Mr Graeme Crawford had been provided with a copy of the contract. There were just a lot of CASA errors [p. 39].

For the reasons discussed in response to statement number 6 above, where aspects of the activities conducted under an organisational authorisation are to be carried out for and on behalf of the authorisation holder by and through independent entities, it is essential that a full and sufficient measure of operational control in the hands of the authorisation holder can be demonstrated.

On that basis, if arrangements of the kind Mr Buckley would seem to have envisaged were to be acceptable to CASA, as a matter of safety and in keeping with the relevant legislative requirements, at a minimum, the contractual arrangements between Mr Buckley's company and each of those individual entities would need to specify clearly and unequivocally that operational independence of the very kind Mr Buckley promised they would retain was effectively ceded to Mr Buckley's company. Nothing in those contractual arrangements could operate to interfere with or impede the authority of the authorisation holder, and CASA would need to be satisfied that all of the contracting parties were, in fact, able and willing to operate accordingly.

Such contractual arrangements must be real and demonstrable in practice, not merely a fiction intended to superficially satisfy regulatory requirements designed to ensure the operational control of the authorisation holder. Viable contractually supported arrangements would require three things:

1. an effective and appropriately constructed contract drafted along the lines described above between the authorisation holder and each participating affiliate;
2. each of the affiliated entities must have executed such a contract; and
3. CASA must be satisfied of the efficacy of the arrangements contemplated by the contract, which is to say the demonstrable ability of both (all) parties to fulfill their safety-related obligations under the contract.

For reasons best known to Mr Buckley, insofar as his organisational arrangements were concerned, matters never progressed even to the first level, despite the very considerable guidance, assistance and support CASA had offered and provided. The various and ever-changing versions of the agreements Mr Buckley produced simply did not satisfy the essential requirements such arrangements would need to reflect clearly and unequivocally.

Beyond this, and to put beyond doubt any potential uncertainty about the legality of the proposed arrangements, assuming such arrangements could be achieved, CASA recommended that each individual 'affiliate' should also apply for and, if they qualified, obtain an approval under CASR 141.035 to conduct flight training activities. This too was something Mr Buckley was evidently unwilling to accept.

As said, it is quite likely that, in the absence of evidence showing that meaningful arrangements demonstrating that Mr Buckley's company maintained a sufficient measure of operational control of the kind outlined above were in place, CASA would have been obliged to initiate administrative action to vary, suspend or cancel Mr Buckley's authorisations under CASR Parts 141 and/or 142. As it happened, Mr Buckley's scheme fell of its own weight before it became necessary for CASA to consider such action.

11. **Mr Buckley:** CASA's regulatory program, as you are probably aware, is a decade behind schedule and hundreds of millions of dollars over budget. . . . Dr Aleck is the man responsible for this program. He is Executive Manager of Legal, International and Regulatory Affairs for CASA. He has been there for many, many years and many people have raised allegations against him, as I said. [p. 39].

The particular set of 'new' regulations with which Mr Buckley has been concerned, CASR Parts 141 and 142, were made in 2013. As it happens, the regulatory reform program is no longer behind schedule and the new regulations have now been made. CASA does not accept Mr Buckley's unsubstantiated claim that the cost of producing the new regulations was 'hundreds of millions of dollars over budget'.

In neither his current nor any of his previous roles in CASA has Dr Aleck been in a position in which it could correctly or fairly be said that he was responsible for CASA's regulatory program. Whatever views one may hold in relation to the historical progress of CASA's regulatory reform efforts, Mr Buckley's statement about Dr Aleck's responsibility for that program is simply false.

12. **Mr Buckley:** . . .On the aviation ruling, which was the document that CASA originally used, the CASA internal industry complaints commissioner came back and found that it wasn't worth investigating because CASA had taken it off the table [p. 40].
    * * *
    CHAIR: I just have one more question for you, Mr Buckley. At the very first step, when you went to the Industry Complaints Commissioner within CASA, what where the words you used—was it that CASA had said: 'It was off the table'?

    Mr Buckley: Correct. The document that CASA used—it must have been bring-your-kid-to-work day or something, because they used completely the wrong document. CASA's argument was that because it was off the table they weren't investigating [p. 41]

Mr Buckley's statement misrepresents the response of the Industry Complaints Commissioner (ICC), Mr Hanton, in relation to this issue.

On 16 August 2020, Mr Buckley sent an email to Mr Hanton asking for a copy of the ICC's review relating, among other things, to CASA's use of the Aviation Ruling:

> *where you stated that you would not be investigating the matter because 'CASA had taken it off the table* [emphasis provided].

In his response to Mr Buckley on 17 August 2020, which included a copy of the review to which Mr Buckley referred, Mr Hanton corrected Mr Buckley's mischaracterisation of his (Mr Hanton's) statement about that matter, saying:

> I state [in my review] that *because APTA had advised the Aviation Ruling had been taken 'off the table'* by CASA I didn't consider it an issue that remained in contention' [emphasis provided].

Clearly the ICC's decision not to pursue this particular aspect of the matter was based on advice he had received from Mr Buckley about CASA's supposed decision to 'take the Aviation Ruling off the table', not on any independent conclusion to which the ICC had come about the disposition of the Aviation Ruling.

13. **Mr Buckley:** . . .I wrote to Tony Matthews, the Chair of the CASA Board, for six months before I went public with this. He completely ignored every request. I raised substantive allegations against these personnel [p. 41].

Mr Buckley's statement is false and misleading. Mr Buckley has written to the CASA Board on many occasions, reiterating for the most part the same unsubstantiated claims and allegations he has aired publicly and before this Committee. He continues to do so, addressing the Chair of the Board, individual Board members and the Board as a whole. As far as we are aware, on each and every occasion receipt of his communications has been duly acknowledged and responded to appropriately.

As Mr Carmody pointed out in his testimony before the Committee, '[t]he CASA chair met face-to-face with Mr Buckley to go through these issues, a fact that [Mr Buckley] conveniently omits' [p. 43].

Concluding Comments

Australia has an enviable civil aviation safety record, and an approach to its regulatory functions that is widely acknowledged internationally and by the vast majority of Australians to be sound, sensible, fair and appropriate. CASA's contribution to both achievements has been, and continues to be, significant.

Reforming the regulations has been a long and sometimes difficult process, largely because of the need to effectively reconcile numerous competing views. But this process that has recently progressed with comparative speed and efficiency, and is now effectively completed—recognising that the task of responsible regulatory stewardship never really comes to an end. Here too, and certainly in recent years, CASA has led this process, collaborating meaningfully and constructively with a broad and diverse field of stakeholders, in an exercise that must inevitably conclude with the majority being broadly satisfied, even if some are less than entirely satisfied in some cases.

As the public record, including the records of this Committee, will show, CASA is no stranger to probing inquiries, searching reviews and strident critiques of its practices and procedures, as well as the substance of the regulatory standards in the development of which CASA has played an important, but by no means exclusive, part. Where the intent is to achieve better regulation, fairer processes and more efficient administration, consistent always with the primacy of safety, CASA welcomes these processes.

At the same time, however, CASA cannot properly stand idly by when our integrity as an organisation is unfairly impugned and the character of individual CASA officials is falsely and unfairly maligned.

Respectfully submitted

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Director of Aviation Safety