



Parliament of the Commonwealth of Australia

**Administration of the Civil Aviation Safety Authority
Matters Related to ARCAS Airways**

**Report of the
Senate Rural and Regional Affairs
and Transport Legislation Committee**

October 2000

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CONDUCT OF THE INQUIRY

Standing Order 25 (2)(b) of the Senate gives power to a Senate Legislation Committee to inquire into matters relevant to the performance and administration of Departments and Agencies allocated to that Committee.

Under this power, the Senate Rural and Regional Affairs and Transport Legislation Committee commenced an inquiry into the administration of air safety in Australia by the Civil Aviation Safety Authority (CASA) following examination of CASA during the Committee's 2000-2001 budget estimates on 2 May 2000 and 24 May 2000. A reporting date to the Senate for this inquiry is yet to be decided.

The Committee's attention was specifically drawn during estimates hearings to CASA's administration of ARCAS, trading as Air Facilities. Subsequently, Senator O'Brien successfully moved in the Senate on 7 June 2000 that the Minister representing the Minister for Transport and Regional Services (Senator the Hon Ian Macdonald) table all files, reports and all other materials held by CASA relating to the operation of ARCAS.

Based on the documents provided in the return to order by Senator the Hon Ian Macdonald, the Committee held hearings into CASA's administration of ARCAS in Canberra on 6 July 2000 and 1 September 2000. The *Hansard* of the hearings is available at the Hansard site at www.aph.gov.au.

The Committee took evidence from three senior officers of CASA: Mr Laurie Foley, Assistant Director, Aviation Safety Compliance; Mr Robert Elder, Executive Manager, Government, Industry and International Relations; and Mr Peter Boys, Manager, Compliance and Enforcement. The Committee also heard from four technical and field officers with CASA: Mr Mark Haslam, an Adelaide-based investigator; Mr Robert Noble, a Senior Airworthiness Inspector, South-East Region; Mr John Priestly, Team Leader, Flying Operations in Wagga Wagga; and Mr Victor Garland, Team Leader, Airworthiness in Wagga Wagga.

In addition, the Committee heard from two former officers with CASA: Mr Clinton McKenzie, former General Manager, General Aviation Operations and Mr Robert Hoy, former Acting Regional Manager for the South West Region.

Finally, the Committee also took evidence from two representatives of ARCAS: Mr Leslie Sears, the Managing Director; and Mr Anthony Haines, engaged by ARCAS from Haines consulting. A full list of attendees at the two separate hearings is in Appendix 1.

Following hearings on 6 July 2000, the Committee received three written submissions from Mr McKenzie, Mr Hoy and CASA, responding to matters raised during the

hearing. In addition, the Committee also received a fourth written submission from Mr Sears which he asked to be incorporated in Hansard.

Mr Sears' submission included a number of criticisms of the Committee's conduct of this inquiry. The Committee notes however that while providing this submission, Mr Sears declined the Committee's invitation to appear at its second hearing on 1 September 2000. Given that the Committee was not in a position to pursue matters raised in the submission, the Committee refused Mr Sear's request that it be incorporated in Hansard. The submission was however noted by the Committee and is referred to in this report. It is included in the documents tabled in the Senate pursuant to this inquiry.

Finally, following the Committee's second hearing on 1 September 2000, the Committee received a fifth and sixth written submission from Mr McKenzie and Mr Hoy respectively, again responding to matters arising in the hearing. A list of submissions is at Appendix 2.

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ABBREVIATIONS

ANAO	Australian National Audit Office
AOC	Air Operator Certificate
A/g SERM	Acting South East Regional Manager
ATSB	Australian Transport Safety Bureau
CAR	Civil Aviation Regulation
CAA	Civil Aviation Authority
CAAP	Civil Aviation Advisory Publication
CASA	Civil Aviation Safety Authority
DAM	District Airworthiness Manager
DFOM	District Flight Operations Manager
DO	District Office
DPP	Director of Public Prosecution
FOI	Flying Operations Inspector
GMGAO	General Manager, General Aviation Operations
ICAO	International Civil Aviation Organization
M/R	Maintenance Release
NCN	Non-compliance notice
RPT	Regular Public Transport

EXECUTIVE SUMMARY

ARCAS Airways Pty Ltd, trading as Air Facilities, is a regional airline operating out of Albury. It has provided regular public transport (RPT) services between Canberra and Albury since 1992, and air charter services since 1975. The company currently operates three planes: two Piper Chieftain PA-31s, designated VH – MZV and VH – VZI; and one Cessna 310R, designated VH – SKT. The two Chieftains were bought from Hazelton Airlines in 1993.¹ Since 1975, ARCAS has been owned and directed by Mr Leslie Sears.

The Committee undertook an inquiry into ARCAS following evidence in budget estimates that the company concealed from CASA, the federal statutory authority responsible for the maintenance of air safety in Australia, unofficial defect books pertaining to each of its three aircraft. These defect books were concealed for at least three, and probably six years, and were only discovered following the execution of a search warrant of ARCAS' premises by CASA investigators on 15 February 1999.

The defect books were used by ARCAS' pilots and engineers to record defects on the company's aircraft. However, in many instances, those defects were not also recorded in the official CASA maintenance releases, as inspected by CASA. This raises serious safety concerns that ARCAS flew aircraft with known defects that under CASA airworthiness rules would have required rectification prior to them again being allowed to fly.

In addition to investigating the safety of ARCAS' aircraft, and the actions of ARCAS personnel, notably Mr Sears, the Committee also investigated during this inquiry the actions of CASA officials prior to and following the discovery of the defect books. In particular, the Committee investigated closely the actions of Mr Foley, Assistant Director, Aviation Safety Compliance at CASA.

Following discovery of the defect books, Mr Foley initially endorsed the advice of his subordinate, Mr McKenzie, that ARCAS no longer be permitted to conduct RPT operations. Subsequently, Mr Foley reversed this decision, based on advice from CASA officers in day to day contact with ARCAS, and assurances from Mr Sears that he would step down from the day to day management of ARCAS.

The Committee accepts that Mr Foley, as the responsible CASA delegate, was ultimately required to make a judgement on the ARCAS operation. However, the Committee does not believe that Mr Foley was justified in reversing the suspension of ARCAS' AOC, and rejects argument by CASA that subsequent investigations have

1 Evidence, RRAT, 6 July 2000, p 3. See also M.Haslam, Interim Summary of Investigation, Arcas Airways Pty Ltd t/a Air Facilities, Albury Airport, NSW, p 1

proved Mr Foley's decision to be correct. The ultimate escape of ARCAS personnel from any form of sanction or possible prosecution for their actions clearly sends the wrong message to the aviation industry.

This report is in four chapters. Chapter One provides as background a chronology of events discussed in this report. Chapter Two examines the important issue of air safety, and whether ARCAS met the required airworthiness standards during the period in which the defect books were employed. Chapter Three considers the actions of CASA officials, notably Mr Foley, prior to and following the discovery of the defect books. Chapter Four presents conclusions and recommendations.

This report also includes a brief additional comment on the provision of evidence to this Committee by CASA.

LIST OF RECOMMENDATIONS

Recommendation 1

The Committee recommends that the actions of Mr Sears and employees and staff of ARCAS in apparently acting in deliberate breach of airworthiness safety rules (notably CAR 50) be referred to the Director of Public Prosecutions for examination of all the circumstances of the case and for appropriate action.

Recommendation 2

The Committee recommends that CASA, having regard to this Committee's findings in relation to Mr Foley's administration of the ARCAS matter, consider whether any appropriate action should be taken against any CASA officers, including Mr Foley, as the senior responsible CASA officer involved in the case.

Recommendation 3

The Committee recommends that CASA take steps to recommit itself to strong action through prosecution or suspension of those operators who deliberately breach maintenance, airworthiness and reporting and recording requirements, thereby compromising air safety. The Committee notes the advice from CASA, following a request from the Committee Chairman, Senator Crane, that it has recently undertaken significant reform of its investigative and enforcement processes.

Recommendation 4

The Committee recommends the creation of a new position of Deputy Director of Aviation Safety within CASA with special responsibility for the administration of investigative and enforcement processes as they relate to regional airlines, low-capacity RPT operators and charter service providers in rural and regional Australia.

CHAPTER ONE

BACKGROUND TO THE INQUIRY

Introduction

1.1 This chapter initially summarises certain aspects of the regulatory framework enforced by CASA to ensure the maintenance of air safety in Australia by air service providers such as ARCAS. Subsequently, it presents a chronology of events in CASA's administration of ARCAS, including the move to suspend ARCAS from flying on 22 February 2000, and the subsequent decision to revoke that suspension on 24 February 2000, the day it was due to come into effect.

The CASA Regulatory Framework

1.2 CASA was established as a statutory authority in July 1995 under the *Civil Aviation Act 1988*, as amended in 1995. Under the Act, CASA is responsible for upholding the maintenance standards of air operators in Australia. As stated, the main objective of the Act

is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation with particular emphasis on preventing aviation accidents and incidents.¹

1.3 CASA manages the entry of operators into the Australian aviation industry through the issuing of Air Operator Certificates (AOCs), according to the requirements of the *Civil Aviation Act 1988*. The operator of an aircraft that flies in, into or out of Australian territory for prescribed commercial purposes must hold an AOC.²

1.4 Other formal CASA regulatory controls are set out in the Civil Aviation Regulations (CAR) and Civil Aviation Orders. In particular, CAR 50 makes it compulsory for the holder of an aircraft certificate of registration, where he or she becomes aware of the existence of a defect on that aircraft, to enter it in the official maintenance release (or another document approved by CASA as an alternative to the maintenance release). CAR 47 states the circumstances in which a maintenance release ceases to be in force, thereby grounding the aircraft until the problem has been rectified.

1 *Civil Aviation Act 1988*, Section 3A

2 ANAO Audit Report No 19 1999-2000, *Aviation Safety Compliance: Civil Aviation Safety Authority*, November 1999, p 41

1.5 In addition, CAR 248 makes it compulsory for the pilot in command of an aircraft to report defects in the aircraft to the person specified by CASA. It is an offence under Section 20 AA (5) of the *Civil Aviation Act 1988* if the owner or operator of an aircraft permits that aircraft to be flown when the maintenance release is not in force.

1.6 On 6 November 1997, the then Deputy Chairman of CASA, Mr Dick Smith, wrote to all AOC holders, including Mr Sears, in relation to evidence from the Seaview Inquiry³ that some operators were placing undue pressure on their pilots to breach safety regulations. The letter noted that under Section 5 of the *Crimes Act 1914*, any person who is knowingly party to an offence against a Commonwealth law, including the *Civil Aviation Act 1988* and CARs, is deemed to have committed that offence. Similarly, section 7A of the *Crimes Act 1914* makes it an offence for a person to urge, aid or encourage the commissioning of an offence against a Commonwealth law, including the *Civil Aviation Act 1988* and CARs.⁴

1.7 Concurrently, Mr Smith also wrote to all licensed pilots, including Mr Gary Wood from ARCAS, reiterating that deliberate breach of air safety rules was totally unacceptable. Mr Smith's letter stated that should pilots find that they were subject to undue influence or pressure to breach safety rules, they should bring the matter to the attention of CASA, and 'CASA will take appropriate action against the offending operators.'⁵

1.8 In hearings on 6 July 2000, it was confirmed by Mr Elder that the approach indicated in the above letters from Mr Smith in November 1997 remains the approach of CASA to breaches of the *Civil Aviation Act 1988* and CARs.⁶

Chronology of Events

March 1998 Safety Audit of ARCAS

1.9 On 24 February 1998, ARCAS was issued AOC No. 085605-2 by CASA, valid for one year. Subsequently, on 24 and 26 March 1999, four officers of CASA based in the Wagga Wagga district office conducted a safety audit of ARCAS. They were Mr Bob Hoy, then Manager of Safety Audits, South East Region; Mr Arnold Long, Senior Airworthiness Inspector, Wagga Wagga District Office; Mr David Burley, Flying Operations Inspector, Wagga Wagga District Office; and Mr Robin Dezilva, Administrative Officer, South East Region.⁷

3 J.Staunton, *Commission of Inquiry into the Relations between the CAA and Seaview Air: Report of the Commissioner*

4 D.Smith, Letter to AOC Holders, 6 November 1997.

5 D.Smith, Letter to all Licence Holders, 6 November 1997.

6 Evidence, RRAT, 6 July 2000, p 35

7 B. Hoy, A.Long, D.Burley & R.Dezilva, Report Covering Safety Audit carried out 24th/26th March 1998 of ARCAS Airways Pty Ltd Trading as Air Facilities – Albury Airports, 30 March 1999, p 1

1.10 As a result of that audit, three non-compliance notices (NCN) were issued for corrective action by 9 May 1998. Notwithstanding these NCNs, the report of the audit team dated 30 March 1998 stated:

The team highly commended the MD and his staff on the “top class” professional approach and attitude by them in the provision of LCRPT services by Air Facilities.

The standards of maintenance and cleanliness of the Company’s aircraft were such as to suggest that Air Facilities should be used as an example for others to follow.⁸

1.11 The audit team also recommended in its report of 30 March 1998 that in view of the high standards of maintenance by ARCAS, a letter of commendation be sent to Mr Sears, ‘complimenting him and his staff on their standards, attitudes and promotion of a safe LCRPT operation.’ This letter was sent on 6 April 1998, signed by Mr Trevor Burns, Regional Manager, South East Region.⁹

Informant Allegations against ARCAS

1.12 In November 1998, Mr Clinton McKenzie, formerly General Manager, General Aviation Operations (GMGAO) with CASA, was contacted by phone by a former employee and line pilot of ARCAS. This confidential informant requested a meeting with Mr McKenzie, indicating that he had some serious safety information that he wanted to disclose in relation to ARCAS.¹⁰ Mr McKenzie arranged to meet with the informant on 19 November 1998.

1.13 At that meeting, the informant claimed that ARCAS’ pilots and engineers were recording aircraft faults in defect books, as distinct from the CASA approved maintenance releases. He provided information on the location of those defect books, including photographs of the cupboard in which they were allegedly kept, together with photocopied extracts from the books.¹¹ He also claimed that he was placed under pressure not to record defects in the official maintenance releases, and that he believed his insistence that he should not have been flying aircraft with defects was one reason for his being dismissed from the employ of ARCAS.¹²

1.14 In addition, the informant also alledged that he was placed under pressure to falsify his flight and duty log so that his flight and duty times complied with regulatory requirements. In this regard, he provided to Mr McKenzie photocopies of

8 B. Hoy, A.Long, D.Burley & R.Dezilva, Report Covering Safety Audit carried out 24th/26th March 1998 of ARCAS Airways Pty Ltd Trading as Air Facilities – Albury Airports, 30 March 1999, p 4

9 T.Burns, Letter of Commendation to L.Sears, 6 April 1998.

10 Evidence, RRAT, 6 July 2000, p 63

11 M.Haslam, Application for an Offence Related Warrant, 12 February 1999, p 5

12 Evidence, RRAT, 6 July 2000, p 63

pages from his logbook.¹³ He also referred to an engine failure in aircraft VH-MZI on 15 September 1998 during regular public transport operations between Albury and Canberra which he claimed was not investigated by CASA.

1.15 The informant subsequently signed a formal written statement of these allegations in the presence of Mr Mike Shannon, a CASA investigator, on 4 February 1999.

Moves to Investigate ARCAS

1.16 Based on the allegations of the informant, Mr McKenzie prepared a minute dated 27 November 1998 to Mr Foley, Assistant Director, Aviation Safety Compliance, which he personally delivered, together with the associated file. That file contained the photographs of the defect books, the photocopies of some of the pages of the defect books, and the photocopies of the informant's flight and duty logs.¹⁴

1.17 In his minute, Mr McKenzie recommended an application for a warrant to enter the ARCAS premises to search for and seize the alleged defect books, together with surveillance of the arrival and departure times of ARCAS' pilots, for the purposes of comparing the operator's and pilot's recorded duty times.¹⁵ CASA indicated to the Committee that Mr Foley approved this recommendation on the same day.¹⁶ Coordination of the ARCAS investigation subsequently rested with Ms Narelle Tredrea, acting as coordinator in the Enforcement and Investigation Section, and directly responsible to Mr Foley.

1.18 In its written submission, CASA indicated that on 30 November 1998, Ms Tredrea sent an email to Mr Hoy, then Acting South East Regional Manager (A/g SERM) confirming that Mr Foley had approved the investigation of ARCAS, and requesting Mr Hoy to appoint an investigator.¹⁷ However, Mr Hoy indicated in his supplementary written submission that he did not take up the position of A/g SERM from the outgoing Mr Leaversuch until 18 December 1998, and that he was not aware of the investigation of ARCAS until mid-January 1999.¹⁸

1.19 Further investigation of ARCAS did not continue until 27 January 1999 when Mr Neil Enders, coordinating at the time CASA investigators, sent an email to Mr Hoy indicating that Mr Mike Shannon, a former senior CASA investigator based in

13 Submission 1A, p 2

14 Submission 1A, p 18

15 C.McKenzie, Minute to Laurie Foley, 27 November 1998, p 2

16 Submission 3, p 2

17 CASA response to question of notice 39, RRAT, 24 May 2000. See also evidence, RRAT, 24 May 2000, p 305

18 Submission 2A, p 1

Sydney, should conduct the investigation. Mr Shannon was requested to provide a report to Ms Tredrea by 2 April 1999.¹⁹

1.20 Following a review of the ARCAS files, including the allegations of the informant, Mr Shannon advised Mr Hoy that:

... the best way to handle this is with a search warrant, rather than asking them for the documentation or a direction under Reg 310 which would give them time if they are so disposed to loose same or make alterations.²⁰

1.21 On 5 February 1999, Mr Mark Haslam, a CASA investigator based in Adelaide, was called in to take the place of Mr Shannon due to resource difficulties in the Sydney office. He attended CASA's Sydney office on 8 February 1999, where he was briefed by Mr Hoy and reviewed the CASA files on ARCAS.²¹ Mr Foley gave his approval that Mr Haslam should obtain warrant to search the ARCAS premises on 9 February.²²

1.22 Between 9 - 11 February 1999, Mr Haslam spoke separately to the informant on several occasions. The informant confirmed his signed statement of 4 February 1999 to Mr Shannon. Subsequently, on 12 February 1999, Mr Haslam submitted a formal application for a search warrant under section 32AF of the *Civil Aviation Act 1988* to Senior Magistrate Malcolm Beveridge at the St James local court in Sydney. In the application, Mr Haslam noted:

It may be that (the informant) is a disgruntled ex-employee, however the evidence and information he has supplied if accurate, supports serious safety breaches by the Chief Pilot and Company Manager which may still be occurring today.²³

1.23 Magistrate Beveridge granted the application for the search warrant the same day. The warrant cited 'reasonable grounds for suspicion' that between June 1996 and August 1998, ARCAS was aware of the existence of defects on its aircraft, but did not enter them in the maintenance release or approved alternative documents, in breach of CAR 50.²⁴

19 Email from N.Enders to B.Hoy, Wednesday 27 January 1999, 11:42 am. See also Evidence, RRAT, 6 July 2000, p 37, 41

20 Email from M.Shannon to B.Hoy, Wednesday 27 January 1999, 1:46 pm

21 M.Haslam, Interim Summary of Investigation, Arcas Airways Pty Ltd t/a Air Facilities, Albury Airport, NSW, p 1

22 Email from L.Foley to N.Enders, 9 February 1999: 5:58 pm

23 M.Haslam, Application for an Offence Related Warrant, 12 February 1999, p 5

24 Commonwealth of Australia, *Civil Aviation Act 1988*: Section 32AF – Offence Related Warrant, 12 February 1999

Execution of the Search Warrant of ARCAS' Premises

1.24 On 15 February 1999, Mr Haslam, accompanied by Mr Gerry Comerford, a Sydney based investigator, executed the search warrant of ARCAS' premises. In his Interim Summary of Investigations dated 19 February 1999, Mr Haslam indicated that three defect books were located in the cupboard as advised by the informant.²⁵

Upon entering the building, we observed the Chief Pilot, Garry Wood seated in the pilots' operations room ...

He was asked if the company used a maintenance defect book. He replied, "we use the maintenance release". We again gave him the opportunity to produce these books and informed him the allegation was made by someone who was employed with the company at some stage. We were quite specific in what we were asking for and a description of how they were used and he still denied using such a method of recording defects or the existence of the maintenance defect books. (The books were located in the top drawer of a filling cabinet less than half a metre away from him. A large proportion of the defects entered in the three defect books had the initials GW entered under the pilots' signature block).

After two denials by the Chief Pilot, we produced the search warrant and started explaining the warrant to him. ... Wood then spoke to an office assistant by the name of Michelle and asked her to inform Mr Sears.

After producing the warrant, the Chief Pilot was again asked to produce the maintenance defect books which would save us having to rummage through his files. He again denied the existence of any defect books and reiterated that all defects are entered on the maintenance release.

Les Sears came into the room and we again introduced ourselves and verified his identity and position within the company. The allegations were put to him that pilots of the company were encouraged to enter aircraft defects in the defect book rather than enter them on the maintenance release.

He was then asked to verify the existence of these maintenance defect books. He initially told us "yes, well books or sheets that the engineers have. You would get a variety of things with these aeroplanes where it wouldn't be entered on the maintenance release, were he comes in and says the landing light's gone and Sid (meaning Paul Sidnell) goes out and changes it". He went on to explain there would be very minor things that would not be entered on the maintenance releases. We explained that we were talking about defects a little more serious and again asked him if the defect books existed or don't they. He said, "Well no, I think it's all verbal". We then explained the existence of the search warrant to him and explained the contents.

25 M.Haslam, Interim Summary of Investigation, Arcas Airways Pty Ltd t/a Air Facilities, Albury Airport, NSW, p 4

...

I explained the documents that we required under the warrant and then commenced the search, starting with the top drawer of a brown filing cabinet with orange drawers located in the operations room just inside the door (where our informant told us the books are normally stored). I located the three defect books in this drawer.²⁶

1.25 In evidence before the Committee, Mr Haslam reaffirmed this series of events. He indicated that his report of 19 February 1999 was based on both his recollection of events and handwritten notes. Those notes were made at his hotel approximately an hour after the execution of the search warrant.²⁷

1.26 Following the execution of the search warrant, Mr Haslam and Mr Comerford took possession of the defect books, together with the maintenance releases, for the three aircraft.²⁸ Each defect book pertained to one of the three aircraft operated by ARCAS for the period 1996 to 1999, with the ARCAS name and logo, and the words "Defect Record" printed on the top of each page. In his summary of their content, Mr Haslam stated:

In general, some of the defects entered on the Maintenance Release correspond to defects entered in the defect record book, in other cases there are entries on the Maintenance Release that do not appear in the defect books and more often there are defects entered in the defect books that do not appear on the maintenance release. In some cases, those defects that appear on both the maintenance release and defect book have different dates, specifically that the defect appears to have been presented some days or even weeks before it actually appears on the maintenance release.²⁹

1.27 In concluding his report, Mr Haslam recommended that other ex-employees of ARCAS be contacted to investigate further the apparent breaches of the CARs. In addition, Mr Haslam recommended that the defect books be subject to technical inspection as a matter of priority to assess the seriousness or otherwise of the defects recorded. As a general comment, Mr Haslam noted the high standard of the ARCAS facility, and that 'records and documents requested were easily identified and readily obtainable'.³⁰

26 M.Haslam, Interim Summary of Investigation, Arcas Airways Pty Ltd t/a Air Facilities, Albury Airport, NSW, pp 3-4

27 Evidence, RRAT, 6 July 2000, p 39

28 Submission 3, p 3

29 M.Haslam, Interim Summary of Investigation, Arcas Airways Pty Ltd t/a Air Facilities, Albury Airport, NSW, p 6

30 M.Haslam, Interim Summary of Investigation, Arcas Airways Pty Ltd t/a Air Facilities, Albury Airport, NSW, p 7

Recommendation to Suspend ARCAS' AOC

1.28 Mr Haslam provided his report to Ms Tredrea, copied to Mr Hoy, on 19 February 1999. Subsequently, Mr Hoy forwarded the report to Mr McKenzie on Saturday 20 February 1999 at 8:52 am. In his initial response at 12:38 pm, Mr McKenzie expressed concern at the delay in the referral of investigation until 27 January 1999:

In order that this kind of delay does not happen again, let's be in no doubt as to the extent of the liability to which we as individuals were - and indeed remain - exposed, while Arcas remains in the air. I was provided with first-hand allegations as to the deliberate and systematic failure by Arcas to record defects on maintenance releases, and as to the deliberate and systematic operation of aircraft with mandatory instruments and equipment unserviceable. I passed the file containing details of the allegations to Laurie [Foley] with a recommended for an investigation and concurrence with a search warrant, Laurie signed-off on the recommendation, and Laurie passed the file to Narelle [Tredrea].

Arcas engages in RPT of fare paying passengers. In the event that Arcas has an accident in which fare paying passengers are killed as a consequence of an unserviceability with which the aircraft should not be operating, we will [deletions by CASA].³¹

1.29 In a further response at 2:27 pm, Mr McKenzie stated:

Bob: I am appalled by what the investigation has revealed so far. I have just (1440 ESST 20 Feb 99) told Laurie Foley that I will be recommending immediate suspension of the AOC for 28 days, pending further investigation. You are to arrange for an FOI from the responsible DO to analyse the content of the report and draft a show clause letter by **COB 4 March 99** (his emphasis).³²

1.30 Subsequently, Mr McKenzie sent a minute to Mr Foley on 21 February 1999 recommending that ARCAS' AOC be suspended. To that end, Mr McKenzie drafted a letter to Mr Sears suspending ARCAS' AOC for 28 days, to take effect from 23:59 ESST 24 February 1999. The letter stated:

By reason of the facts and circumstances disclosed by the investigation of this matter to date, I am already satisfied that the company and flight crew members of the company have deliberately and systematically operated aircraft whose instruments and equipment were not serviceable prior to take off ...³³

31 Email from C.McKenzie to B.Hoy, 20 February 1999, 12:38 pm

32 Email from C.McKenzie to B.Hoy, 20 February 1999, 2:27 pm

33 Letter from L.Foley to L.Sears, Suspension of Air Operator's Certificate, 2 February 1999, p 5

1.31 The letter was signed by Mr Foley and faxed to Mr Sears on 22 February 1999. Also enclosed with the letter was a notice of appeal rights informing Mr Sears of his right to appeal to the Administrative Appeal Tribunal under the *Administrative Appeals Tribunal Act 1975*.³⁴

1.32 At the monthly CASA Board Safety Committee Meeting of 23 February 1999, the Safety Committee noted the list of operators under review, and was informed that ARCAS had come to the CASA's attention 'via a disgruntled pilot who had left the operation'. The Safety Committee endorsed the immediate suspension of ARCAS' AOC and remarked:

Initial investigations revealed the company deliberately and systematically failed to enter defects on MRs and operated a/c in pax carrying ops with mandated instruments and equipment u/s.³⁵

Revocation of the Suspension of ARCAS' AOC

1.33 On 24 February 1999, Mr Sears wrote to Mr Foley seeking to have the suspension of ARCAS' AOC revoked. To this end, Mr Sears indicated his intention to 'step down from the day to day management of the air operations side of the business and contract this management role out to a person suitable to the authority'. The person nominated by Mr Sears was Mr Haines of Haines consulting. Mr Sears stated in his letter:

Should CASA accept this proposal I will notify the Chief Pilot and the Chief Engineer that the responsibility of the day to day running of the business will go to Tony Haines. The management structure is for the Chief Pilot and Chief Engineer to report direct to Mr Haines and for Mr Haines to report direct to CASA.³⁶

1.34 In his correspondence, Mr Sears also enclosed an earlier letter of 24 February 1999 from Mr Haines to Mr Sears in which he accepted the proposed position. However, in his letter, Mr Haines stated:

... I would be able to perform a management role as discussed in order to address maintenance control problems as identified by CASA recently. As I indicated, this would be on a **part time basis** (emphasis added) at Albury with additional input able to be provided from my office.³⁷

1.35 Upon receipt of this correspondence from Mr Sears, Mr Foley sent an urgent email to Mr Hoy at 8:49 am on 24 February 1999, copied to Mr McKenzie, requesting:

34 Letter from L.Foley to L.Sears, Suspension of Air Operator's Certificate, 2 February 1999

35 Minutes of CASA Board Safety Committee Meeting, 23 February 1999

36 L.Sears, Letter to L. Foley, 24 February 1999

37 T.Haines, Letter to L.Sears, 24 February 1999

Bob, as a matter of urgency could you provide the following information from the Wagga office: I would like separate statements from both the Airworthiness and Flying Ops managers whether they consider that ARCAS are a safe operator and their justification for taking that particular position. As they are an RPT operator has the level of ASSP surveillance been met? Were either of the Managers or officers aware of this alternative maintenance release system?³⁸

1.36 Mr Hoy forwarded this urgent request for additional information at 9:02 am to the District Airworthiness Manager (DAM) in Wagga Wagga, Mr Vic Garland, and the District Flight Operations Manager (DFOM) in Wagga Wagga, Mr Ian Priestly.³⁹ Subsequently, at 10:53 am on 24 February 1999, Mr Foley faxed to Mr Hoy a handwritten note that Mr Haines' involvement in ARCAS would in fact be part-time.

1.37 In his response to Mr Foley, forwarded by Mr Hoy at 11:35 am on 24 February 1999, Mr Garland recommended that the suspension of ARCAS' AOC be revoked.⁴⁰ Mr Garland stated:

I have always considered them to be of the highest level of professionalism. ... Product audits have always revealed an excellent level of airworthiness ... The engines are never recycled minimum standard local rebuilds, they are always factory remanufactures ... Unlike some 'fringe dwellers' they very seldom use the exemption approval system ...⁴¹

1.38 Mr Priestly made a similar recommendation in his response, forwarded to Mr Foley by Mr Hoy at 2:49 pm, conditional on increased surveillance of ARCAS, and ARCAS' AOC being renewed for only 3 months.⁴² By comparison, Mr Hoy recommended that the revocation of ARCAS' AOC proceed:

There is no doubt in my mind that ARCAS had knowingly and deliberately used a system which was contrary to the legislation in the manner in which they recorded the defects. Further, if one accepts the statement from the informant together with, (at this stage) verbal evidence from a former pilot, that pilots were "leant upon" by both the Chief Pilot and Managing Director to use the unapproved system, **then this is totally unacceptable practice.** (his emphasis).

If a determination is made to lift the suspension (his emphasis) on the basis of the proposal put forward by ARCAS together with recommendations from the Technical Managers responsible for ARCAS, I

38 Email from L.Foley to B.Hoy, 24 February 1999, 8:49 am

39 Email from B.Hoy to V.Garland and I.Priestly, 24 February 1999, 9:02 am

40 Email from B.Hoy to L.Foley, 24 February 1999, 11:35 am

41 Email from V.Garland to B.Hoy, 24 February 1999, 11:29 am

42 Email from I.Priestly to B.Hoy, 24 February 1999, 2:19 pm

would strongly urge that the review of the defects and the acquittal action using the company's worksheets continue.⁴³

1.39 Following the receipt of this advice, Mr Foley wrote to Mr Sears on 24 February 1999 indicating that the suspension of ARCAS' AOC would not be enforced. However, ARCAS' AOC was only renewed for 3 months, pending further investigation to ensure the proposals for reform had been fully adopted. Mr Foley also indicated that the company would henceforth be subject to unscheduled audits:

Having now received your letter of 24th February 1999 and considered the proposal therein, and having been advised by the Authority's District Flying Operations Manager and District Airworthiness Manager for the Wagga Wagga District Office that those proposals meet and alleviate the concerns raised by the facts and circumstances upon which I was relying to suspend the Air Operators' Certificate, I have now decided that, provided the proposals are put into effect immediately, it is no longer necessary to suspend the Air Operator's Certificate.⁴⁴

...

As from today the company will be subject to unscheduled audit and should it become apparent from audit or other reliable evidence that the proposals have not been met or that the company is in breach of its Air Operator's Certificate conditions, the Certificate will be suspended without further notice.⁴⁵

Further CASA Investigation of ARCAS

1.40 On 24 February 1999 at 6:05 pm, Mr Hoy sent an email to Mr McKenzie, copied to Mr Foley, indicating that he was instituting an unscheduled audit of ARCAS.⁴⁶ This audit was conducted by Mr Doug Lynn and Mr Kevin Gardiner on 25/26 February 1999. To facilitate the audit, Mr Hoy faxed to Mr Garland in Wagga Wagga the last 6 pages of each of the three defect books, so as to determine whether the defects recorded had been acquitted 'in a timely and correct fashion'.⁴⁷

1.41 In their report of 1 March 1999, Mr Lynn and Mr Gardiner found in relation to the three ARCAS aircraft:

- a) VH-MZV – Of the 31 defects considered significant, 19 had no document trail with one defect remaining on the aircraft;

43 Email from B.Hoy to L.Foley, 24 February 1999, 2:49 pm

44 L.Foley, Letter to L.Sears, 24 February 1999

45 L.Foley, Letter to L.Sears, 24 February 1999

46 Email to C.McKenzie from B.Hoy, 24 February 1999, 6:05 pm

47 Email to V.Garland from B.Hoy, 25 February 1999, 9:26 am

b) VH-MZI – Of the 24 defects considered significant, 10 had no document trail with six defect remaining on the aircraft;

c) VH-SKT – Of the 25 defects considered significant, 19 had no document trail with four defects remaining on the aircraft.⁴⁸

1.42 Two permissible unservicabilities were issued to allow the aircraft to continue in operation. They related to a blown globe in a clock and a flickering checklist rheostat globe in VH-MZI.⁴⁹

1.43 It should be noted that in their report, Mr Lynn and Mr Gardiner indicated that prior to the conduct of their audit, some documentation, including expired maintenance releases, had been removed by CASA investigators. The Committee presumes this was by Mr Haslam and Mr Comerford.⁵⁰

1.44 A second series of unscheduled en-route flight operations checks were also carried out on 25 February 1999 by Mr David Burley, a flight operations inspector based in Wagga Wagga. In his report of 26 February, Mr Burley indicated:

All inspections were satisfactory. In particular, I observed no unservicabilities of any item, and the maintenance releases appeared in order.⁵¹

1.45 On 2 March 1999, Mr Noble provided to Mr Hoy his analysis of the defect books. Mr Noble found that the defect books recorded 119 major defects from 1996 to 1999, of which 111 were not entered in the maintenance releases, including 7 which in his assessment were AOG (aircraft on the ground) situations. In addition, he noted many instances where reported defects were not addressed for significant periods of time, if at all. For example, item 40 relating to the VH – MZH indicated that the altimeter was reported on 10 December 1997 as rolling right on a regular basis, however the overhaul was not conducted until 2 February 1998, during which period the aircraft flew up to 40 hours of operation.⁵²

1.46 Based on Mr Noble's report, on 2 March 1999, Mr Hoy sent an email to Mr McKenzie, copied to Mr Foley, noting that it suggested 'a deliberate and systematic approach to breach legislative requirements'. Mr Hoy also indicated his intention to draft a show cause letter to the chief pilot, Mr Wood, why his certificate of approval should not be suspended or cancelled.⁵³

48 D.Lynn & K.Gardiner, Report on Visit to ARCAS (Air Facilities), 1 March 1999, pp 1-2

49 Submission 3, p 12

50 D.Lynn & K.Gardiner, Report on Visit to ARCAS (Air Facilities), 1 March 1999, p 1

51 Email from D.Burley to I. Priestly, 26 February 1999, 9:20 am

52 B.Noble, Significant Details Contained in Air Facilities Defect Record Book, 2 March 1999

53 Email from B.Hoy to C.McKenzie, 2 March 1999, 3:14 pm

1.47 On 5 March 1999, Mr McKenzie and Mr Hoy together visited ARCAS' premises. In his subsequent email to Mr Foley on 6 March 1999, Mr McKenzie advised:

- a) 'Mr Sears remains in overall control of the day to day activities under ARCAS' AOC; ... Mr Haines' involvement has been, and will continue to be, intermittent'.
- b) 'The Chief Pilot has fundamental flaws in his knowledge and understanding of the regulatory requirements in relation to aircraft defects, and in particular, the application, interaction and effect of CARs 50, 47 and CAO 20.18.'⁵⁴

1.48 Based on this advice, Mr McKenzie again recommended that ARCAS' AOC be suspended:

On 20 February 1999 (sic) I recommended the immediate suspension of ARCAS' AOC. I have not retracted, and do not retract, that recommendation.⁵⁵

1.49 Subsequently, on 8 March 1999, Mr Sears wrote to Mr Foley informing him of his application on 6 March 1999 to the DFOM for the appointment of a new chief pilot, Mr Ian Douglas, to replace Mr Wood. In his letter, Mr Sears argued 'The replacement of our chief pilot will guarantee proper procedures are followed'.⁵⁶

1.50 In subsequent correspondence dated 9 March 1999, Mr Comerford (in possession of the defect books in Sydney) indicated to Mr Hoy that Mr Douglas had been with ARCAS since November 1998. From November 1998 to 12 February 1999, Mr Douglas had made 19 defect entries in the defect books, but only three entries in the maintenance releases. Mr Comerford stated that:

It should be noted that some of the defects recorded are what could be described as minor but certainly not the majority.⁵⁷

1.51 Given this finding, Mr Hoy indicated in subsequent correspondence with Mr McKenzie that Mr Douglas 'appears to be no different to the current Pilot given the types of defects entered ...'. Nevertheless, Mr Douglas was appointed as the new chief pilot on 24 March 1999.

1.52 Finally, the Committee notes that following the original informant's allegations to Mr McKenzie against ARCAS, CASA officers contacted and held meetings with three other former employees of ARCAS:

54 Email from C.McKenzie to L.Foley, 6 March 1999, 5:15 pm

55 Email from C.McKenzie to L.Foley, 6 March 1999, 5:15 pm

56 L.Sears, Letter to L.Foley, 8 March 1999

57 Email from G.Comerford to B.Hoy, 9 March 1999, 11:46 am

- a) On 24 February 1999, Mr Comerford reported the results of a meeting with another former, unspecified employee of ARCAS.⁵⁸
- b) On 4 March 1999, Mr Haslam reported the results of a meeting he held the previous day with a former chief engineer of ARCAS. Although the informant refused to make a formal statement, he agreed to notes being taken of proceedings;⁵⁹
- c) On 12 March 1999, an unidentified officer of CASA reported the results of a further meeting with another former, unspecified employee of ARCAS.⁶⁰

Renewal of ARCAS' AOC

1.53 ARCAS' AOC was renewed on an unconditional basis in May 1999 for a one-year period. Subsequently, on 11 May 2000, followed a further audit of the paperwork at ARCAS by Mr Priestly and Mr Smith, ARCAS' AOC was again renewed for a further three-year period.

58 Email from G.Comerford, 12 March 1999

59 Email to R.Hoy from M.Haslam, 4 March 1999, 12:52 pm

60 Email to G.Comerford, 12 March 1999

CHAPTER TWO

THE SAFETY OF ARCAS' AIRCRAFT

Introduction

2.1 This chapter initially examines the defect books employed by ARCAS and arguments put to the Committee that they constituted a better (albeit unauthorised) maintenance system than the official CASA maintenance releases. In the Committee's opinion, this disregards the fact that the defect books were unavailable to CASA officials for a period of at least three (and probably six) years.

2.2 Subsequently, the chapter considers in turn the report of Mr Noble, the findings of Mr Lynn and Mr Gardiner following their unscheduled audit of 25/26 February 1999, and other safety matters raised in evidence. The Committee is concerned that the aircraft operated by ARCAS failed to meet the required airworthiness standards at the time the defect books were in use.

2.3 In this regard, the Committee notes that following hearings on 6 July 2000, CASA invested considerable time and effort revisiting the ARCAS maintenance documentation, including ARCAS' work sheets and flight logs, particularly as they related to the findings of Messrs Noble, Lynn and Gardiner. A number of CASA officers were sent specifically to Albury for that purpose.¹ This was done in an attempt to demonstrate that ARCAS was a safe operator, despite the concealment of the defect books from CASA officials.

The Defect Books

2.4 In hearings on 6 July 2000, Mr Hoy indicated his belief that the defect books were not readily available to CASA officials. In particular, he argued that the exit meeting following the March 1998 safety audit, at which three NCNs were issued, would have been a 'golden opportunity' for Mr Sears and Mr Wood to draw his attention to the defect books, but that they did not do so.²

2.5 This evidence was contradicted by that provided to the Committee by Mr Sears at the same hearing. Mr Sears indicated that the defect book system was adopted at ARCAS following the purchase of the two Piper Chieftain PA-31s from Hazelton in 1993, and that he believed that CASA officials knew of the defect book system prior to the execution of the search warrant by Mr Haslam and Mr Comerford.³

1 Evidence, RRAT, 1 September 2000, p 97

2 Evidence, RRAT, 6 July 2000, p 74

3 Evidence, RRAT, 6 July 2000, p 4

Senator O'BRIEN—And up until 15 February 1999 that defect record was not regularly available to CASA inspectors, or officers generally, for perusal when they conducted a review of your operations in their day-to-day duties?

Mr Sears—The defect record books were open and would have been available to anyone.

Senator O'BRIEN—But they did not know about them, did they?

Mr Sears—I would not think that would be an accurate statement, no.⁴

2.6 When later asked whether he had formally checked with CASA whether the defect books complied with CASA regulations, Mr Sears stated:

Personally, no. But, to be fair to the engineers, I think they felt that the fact that it was with the aeroplane meant that it would have had CASA approval at some time of its life. Bear in mind that Hazelton may have had these aeroplanes for six, seven or 10 years – I am not sure – so the system would have gone back a long time.⁵

2.7 Similarly, in ARCAS' written submission, it was noted that the defect books, while technically not approved for use by ARCAS up until early 1999, had been approved for use by Hazelton Airlines at an earlier point in time. This was confirmed in a statement by the former Chief Engineer of Hazelton appended to the ARCAS submission.⁶

2.8 Mr Sears also rejected in written correspondence with the Committee any suggestion that the execution of the search warrant amounted to a "raid" on the ARCAS premises:

Senator O'Brien's reference to a raid is totally misleading. We have asked him to clarify what he means by this statement. He has replied that a search warrant was executed by Mr Haslam and Mr Cumerford on 15/2/1999.⁷

2.9 Mr Sears further stated that Mr Haslam and Mr Cumerford 'did **not** (his emphasis) discover a second set of records.' Rather, he argued that the Committee should distinguish between claims that the defect books constituted a second illegal set of records, and the use of the defect books by ARCAS as an alternative and effective (albeit unauthorised) maintenance system.⁸

2.10 It should be noted however that in hearings on 1 September 2000, Mr Boys from CASA acknowledged that Hazelton Airlines kept the defect books in the aircraft,

4 Evidence, RRAT, 6 July 2000, p 11

5 Evidence, RRAT, 6 July 2000, p 24

6 Submission 4, p 2

7 Submission 3, p 3

8 Submission 3, p 3

where they were available for CASA officials to inspect. By contrast, Mr Boys agreed that ARCAS kept the defect books on its premises.⁹

2.11 In addition, at the same hearings, Mr Foley acknowledged that he did not know of any CASA officers, including Mr Priestly and Mr Garland, who were aware of the defect books prior to the execution of the search warrant on 15 February 1999.¹⁰

2.12 The apparent unavailability of the defect books to CASA officials is of particular significance. As indicated, the informant who met with Mr McKenzie on 19 November 1998 alleged that he was “leant upon” by the chief pilot and managing director of ARCAS to record aircraft maintenance defects in the defect books rather than the official maintenance releases. The reason for this was that the defect books were not subject to CASA scrutiny.

2.13 CASA subsequently received confirmation of these allegations from the three other former ARCAS employees contacted. For example, Mr Comerford indicated in the record of his meeting on 24 February 1999:

Confirms use of defect recording book for each aircraft and instructions by Les Sears and Garry Wood in respect to entering the defects in the same and not on Maintenance Release. Instructed not to mention use of the defect books to CASA and reason not to make an entry on the Maintenance Release was to prevent the aircraft being grounded when it could be flying and making money.¹¹

2.14 Similarly, in the record of his meeting dated 4 March 1999, Mr Haslam noted:

The defect books were first introduced in about mid 1993 for all the RPT aircraft. They were introduced by Geoff Milton (the former Chief Pilot) after the company purchased or obtained a Chieftain from Hazelton Airlines and identical books came with the aircraft. These books used by Hazelton were approved as part of their system of maintenance but would remain in the aircraft at all times, unlike the ARCAS books which would remain in the office.¹² ...

Officially, the pilots were instructed to record all defects on the M/R and this appeared in company memos etc, however unofficially, pilots were told not to record matters on the M/R but to put them in the defect book. Basically, Sears did not want the aircraft grounded.¹³

9 Evidence, RRAT, 1 September 2000, p 102

10 Evidence, RRAT, 1 September 2000, pp 103-104

11 G.Comerford, Record of Meeting, 24 February 1999

12 Email to R.Hoy from M.Haslam, 4 March 1999, 12:52 pm

13 Email to R.Hoy from M.Haslam, 4 March 1999, 12:52 pm

2.15 Finally, the record of the meeting dated 12 March 1999, conducted by an unidentified CASA officer, indicated:

Les Sears is the driving force behind the use of the system within Air Facilities. Geoff Milton was the CP during most of my term and the books were kept in the filing cabinet in the operations room. The problem with that is when you have a change of crew on an aircraft and they do not have access to the books there were occasions when the other crew would possibly not be aware of the problems if any that the particular aircraft had.¹⁴

2.16 In response to such allegations, the Committee was presented with evidence both by Mr Sears and by CASA that the defect book system went beyond the requirements of CASA under CAR 50. Mr Sears argued in hearings that the defect book system captured more information than is captured on the CASA approved maintenance releases:

The system allows a greater level of safety to be practiced in our company than CASA's maintenance release ordinarily requires as it provides sufficient room for all defects and details to be recorded. As well, it provides a system to ensure no aircraft ever take to the air with impermissible safety problems or features.¹⁵

2.17 Similarly, CASA noted in its written submission that maintenance systems comparable to the defect books used by ARCAS have been approved by CASA for use by other operators (and have subsequently been approved for use by CASA):

The 'Defect Books' despite being unapproved for use by this operator had been approved by CASA for use by other operators.

Their use encouraged a reporting culture amongst pilots with a net result that there was no reticence in tabling defects, or potential defects, however small.¹⁶

2.18 The Committee accepts that the defect books have subsequently been accepted (in a modified form) as meeting CASA's reporting requirements. However, this does not overcome the apparent unavailability of the defect books to CASA staff over a period of at least three years between the first entry in the defect books in 1996 and the execution of the search warrant of the ARCAS premises in February 1999.

2.19 The evidence also suggests that ARCAS used a previous set of defect books which was again not available to CASA from the purchase of the two Piper Chieftain PA-31s in 1993 up until 1996, bringing to six years the period in which the defect

14 G.Comerford, Record of Conversation, 12 March 1999

15 Evidence, RRAT, 6 July 2000, p 4

16 Submission 3, p 15

books were unavailable. In this regard, the Committee notes the evidence of Mr Sears in hearings on 6 July 2000:

Mr Sears—but I understand that the system came with the aeroplanes when we purchased the aircraft. I would assume that, over a period, whatever system it came with would have run out of space, paper, whatever, and been reprinted.

Senator O'BRIEN—Yes, and you in fact had them reprinted?

Mr Sears—We reprinted those books with our logo on the top of them.¹⁷

2.20 The unavailability of the defect books, regardless of whether they would have met CASA reporting requirements, raises the fundamental issue of whether the aircraft operated by ARCAS complied with the airworthiness rules, and were in fact safe to fly, during the period in which the defect books were in use. This is discussed below.

The Report of Mr Noble

2.21 The airworthiness rules enforced by CASA are designed to compel a safety margin in the provision of all RPT air services in Australia. For instance, as was indicated to the Committee in hearings by Mr McKenzie, aircraft are required to have two serviceable and accurate altimeters, in case one fails:

If you take off with one (altimeter) that you know is inaccurate and then the accurate one fails and you are flying around on instruments in meteorological conditions, that is not safe. You may get to the other end in one piece; it is no different from someone driving a car with bald tyres, one headlight out, being a bit tired and having one too many drinks. You might get home, but the fact that you get home does not mean that the trip was at the required level of safety.¹⁸

2.22 Mr Noble confirmed in hearings on 6 July 2000 his opinion, based on the contents of the defect books, that ARCAS operated aircraft with mandatory equipment that was unserviceable. For example, Mr Noble suggested that the second recorded defect for aircraft VH – MZI, a lukewarm heater, had the potential to start a serious on-board fire, and indeed was responsible for just such an incident at Mascot Airport.¹⁹

2.23 In evidence to the Committee, Mr McKenzie indicated that receipt of Mr Noble's report confirmed his earlier decision to recommend suspension of ARCAS' AOC based on the report of Mr Haslam and the allegations of the informant:

17 Evidence, RRAT, 6 July 2000, p 11

18 Evidence, RRAT, 6 July 2000, pp 68-69

19 Evidence, RRAT, 6 July 2000, p 43

I noted in Mr Noble's report things like item 65, under VH – MZV, that left-hand oil temperature over reads – that is on the red line – on 28 January 1999, then "Action: disregard indication until new gauge is sought". That has no date. That is a mandatory instrument. It is there and it is mandatory because it indicates whether or not an engine is operating effectively.²⁰

2.24 Based on Mr Noble's findings, Mr McKenzie argued that it is implausible that the aircraft operated by ARCAS were not flown without at least some of the defects recorded in the defect books still on the aircraft. To argue otherwise, Mr McKenzie stated, would imply that ARCAS was physically fixing defects, and then deliberately recorded inaccurate information in the defect books:

The only alternative is this: that the physical repair was carried out but they just maintained two sets of documents with stuff in there that was not true. ... I did not accept that and I still do not accept it.²¹

2.25 In response to these concerns, Mr Sears argued in hearings on 6 July 2000 that following the discovery of the defect books, CASA officials did not avail themselves of 'additional information that ARCAS offered to make available'. He maintained that when CASA officials did conduct 'a proper crosscheck of our records' they found well-maintained aircraft and well-documented maintenance:²²

If anyone in CASA had bothered at the time, as they later did, to follow the system through, they could have concluded that everything was in order.²³

2.26 This position was reiterated in ARCAS' written submission. In particular, it was argued that Mr Haslam and Mr Comerford failed to carry out their initial investigation of ARCAS to the required level of professionalism and expertise:

The evidence for this is that the CASA investigators who visited the Company's premises in February 1999 lacked engineering expertise and were not aware of the nature of Tech Logs. Of most concern is the fact that these CASA officers repeatedly failed, despite requests from the Company that they do so, to look at the totality of the Air Facilities maintenance system. Their actions were inexcusable. It is those officers and the administration of CASA which should be investigated and not the operations of Air Facilities.²⁴

2.27 In addition, it was argued in ARCAS' written submission that Mr Hoy prevented Mr Long from attending the ARCAS premises on the second day of Mr

20 Evidence, RRAT, 6 July 2000, p 68

21 Evidence, RRAT, 6 July 2000, p 69

22 Evidence, RRAT, 6 July 2000, p 4

23 Evidence, RRAT, 6 July 2000, p 6

24 Submission 4, p 2

Haslam's investigation, to assist in further technical investigation of the ARCAS maintenance system.²⁵

2.28 Based on such arguments, Mr Sears claimed in written correspondence with the Committee that Mr Noble's analysis was based on incomplete information. In particular, he argued that Mr Noble did not have access to the maintenance releases and log books of each aircraft when compiling his report. Further, he argued that Mr Noble painted 'fantastic scenarios out of the most routine of minor defects', suggesting either 'an agenda beyond impartial analysis', or incompetence.²⁶

2.29 In evidence to the Committee in subsequent hearings on 1 September 2000, CASA endorsed this suggestion of Mr Sears that CASA officers were negligent in their initial investigation of ARCAS. For example, Mr Elder from CASA stated in hearings on 1 September 2000:

Certainly, from the evidence we have seen after the event we know that they did not go to the relevant documents to demonstrate whether the aircraft had actually been worked on and maintained properly.²⁷

2.30 The Committee finds the evidence in this regard difficult to follow, and notes that CASA did not provide to the Committee any of the additional documentation it cited. Of particular uncertainty is the documentation available to Mr Noble when he prepared his report. In hearings on 6 July 2000, Mr Noble indicated to the Committee that he had access to the defect books, the aircraft logbooks and the maintenance releases when compiling his report:

There are three sets of documents that I can recall: the aircraft logbooks, the maintenance releases and these defect notices – defect tech logs in the company.²⁸

2.31 And later:

I have just been reminded that I have not seen the maintenance documents, the work packages. All these comments were based on the three documents I mentioned earlier, including the log books and maintenance releases for the individual aircraft. That is all.

2.32 However, in its written submission, CASA interpreted these statements by Mr Noble as follows:

Mr Noble conceded to the Committee that he did not (CASA's emphasis) have access to any of the Operator's other technical documentation and

25 Submission 4, p 9

26 Written Correspondence, 8 August 2000, p 1, Submission 4, p 8

27 Evidence, RRAT, 1 September 2000, p 120

28 Evidence, RRAT, 6 July 2000, p 42

records, such as worksheets, rectification or unscheduled maintenance records, aircraft, engine or propeller logbooks, aircraft handbooks, etc, when he undertook his review of the defect books.²⁹

2.33 Similarly, Mr Foley stated in hearings on 1 September 2000:

He has said quite clearly in his evidence to the Senate that all he looked at was the defect books and he did not look at the work sheets of any other supporting documentation.³⁰

2.34 Based on this argument that Mr Noble did not have access to all the necessary documentation when compiling his report, CASA further argued in its written submission that his report was ‘severely limited in its objective value’.³¹ For example, in response to Mr Noble’s claim that there was the potential for a serious fire on board a Piper Chieftain PA-31 arising from a lukewarm heater, CASA argued that Mr Noble had misunderstood the redundant safety systems of the Janitrol fuel heating system on Piper Chieftain PA-31 aircraft.³² In hearings on 1 September 2000, Mr Foley stated:

If he had looked at the appropriate aircraft handbook and other related material ... he would not have been able to draw that conclusion and it is totally wrong. Section 13.9 of the service manual clarifies the position ... The manual states:

Performance of the air blower assisted by the use of ram air during flight. A different pressure switch cuts off the heater operation whenever the fuel-air mixture is not appropriate for efficient heater operations.³³

2.35 Mr Foley also referred in hearings on 1 September 2000 to the finding of Mr Noble in relation to records #0455 and #0456 in the defect books which referred to a sticking electric trim system. Mr Noble’s report indicated that this was an AOG situation. However in hearings, Mr Foley argued that it is not a requirement for aircraft to have the electric trim system operating.³⁴

2.36 In response, Mr McKenzie argued in his supplementary written submission that the problem with the electric trim was not, as suggested by Mr Foley, that the electric trim was not operating, but that it was sticking after the pilot released the trim switch. ‘If ARCAS pilots were not using and did not want to use the electric trim, how did they discover the defect?’³⁵

29 Submission 3, pp 8-9

30 Evidence, RRAT, 1 September 2000, p 121

31 Submission 3, p 10

32 Submission 3, p 11

33 Evidence, RRAT, 1 September 2000, p 122

34 Evidence, RRAT, 1 September 2000, p 122

35 Submission 1A, p 37

2.37 Given CASA's criticisms of Mr Noble's findings, Mr Foley reiterated Mr Sears' argument that ARCAS repaired defects on the ARCAS aircraft as required. In particular, he indicated in his opening statement to the Committee in hearings on 1 September 2000 that a re-analysis of Mr Noble's report had indicated that only 2 of the 119 defects listed could have been subject to a different corrective process.³⁶

2.38 This raises a significant point. The fact that faults on the three aircraft operated by ARCAS were repaired is less in dispute than the time taken for those repairs. The Committee accepts that all the 119 major defects listed in Mr Noble's report were eventually repaired, but remains concerned that ARCAS continued to operate their aircraft while known faults that should have prevented them from flying remained on the aircraft.

2.39 In this regard, the Committee has already noted Mr McKenzie's belief that it was implausible that ARCAS was physically fixing defects, and then deliberately recorded inaccurate information on the timing of repairs in the defect books. However, the Committee was presented with just such evidence by Mr Foley:

A good example was the comment about an oil pressure gauge where it was said the aircraft flew for 40 hours without the defect being signed off. When you go to the work sheets and the records of maintenance, that defect was closed off a month before it was indicated in the thing (defect book). The work was actually done on the aircraft, and that is our interest.³⁷

The Unscheduled Audit of Mr Lynn and Mr Gardiner

2.40 Given the conflicting interpretation of Mr Noble's report, the Committee was guided by the findings of Mr Lynn and Mr Gardiner, who physically checked ARCAS' aircraft for defects during their unscheduled audit on 25/26 February 1999. Mr Lynn and Mr Gardiner indicated that of the major defects listed on the last 6 pages of each of the three defect books, 48 had no document trail, and significantly, 11 remained on the aircraft, requiring the issuing of two permissible unservicabilities. CASA has confirmed that the defects for which the permissible unservicabilities were issued were recorded on the ARCAS maintenance releases, in accordance with the requirements of CAR 49.³⁸

2.41 In hearings on 6 July 2000, the Committee raised with Mr Sears the findings of Mr Lynn and Mr Gardiner. In response, Mr Sears noted that it would have been necessary for Mr Lynn and Mr Gardiner to have access to expired maintenance releases to follow some of the document trails.³⁹ As indicated in Chapter One, Mr Lynn and Mr Gardiner noted in their report that CASA investigators had removed

36 Evidence, RRAT, 1 September 2000, p 92

37 Evidence, RRAT, 1 September 2000, p 119

38 Evidence, RRAT, 1 September 2000, p 146. See also CASA Response to Questions on Notice, 5 October 2000

39 Evidence, RRAT, 6 July 2000, p 26

some maintenance releases some days earlier. In addition, the ARCAS written submission noted that there were a number of avionics defects which would have been repaired out of house.⁴⁰

2.42 CASA also responded to the audit report of Mr Lynn and Mr Gardiner in hearings on 1 September 2000, reiterating the acknowledgment of Mr Lynn and Mr Gardiner that certain documentation had been removed from the ARCAS premises prior to the conduct of their audit. In addition, as with the evidence of Mr Sears, CASA likewise cited the statement of Mr Lynn and Mr Gardiner that some defects related to electrical or aviation faults, for which there was no in-house clearing system.⁴¹

2.43 In response, Senator O'Brien noted in hearings that prior to the conduct of their audit, Mr Lynn and Mr Gardiner were given advice by Mr Sears that all the defects 'had been actioned' and that document trails existed for all of them.⁴² The Committee also notes CASA's acknowledgment in hearings on 1 September 2000 that as a result of its review of the 119 defects in the defect books, CASA had been able to cite the appropriate documentation of repair in only around 70 per cent of cases.⁴³

2.44 CASA also argued in hearings on 1 September 2000 that the 11 defects remaining on the aircraft were not necessarily significant – a recognition light unserviceable, a checklist rheostat flickering at night and so forth. Similarly, CASA suggested that the faults requiring the issuing of two NCNs (two unserviceable light globes on the clock and checklist rheostat) also were not serious, and noted that Mr Lynn and Mr Gardiner allowed 10 days in which they were to be fixed.⁴⁴

2.45 The Committee notes however that a number of the defects recorded in the defect books and investigated by Mr Lynn and Mr Gardiner are recorded under Civil Aviation Advisory Publication (CAAP) 51-1 dated 1 March 1992 as major defects.⁴⁵ For example, 'malfunctioning, stiffness, slackness or limited range of movement of any controls' is cited as a major defect. Mr Noble's report for aircraft VH-MZI included:

Record #0413 Right throttle very sticky during take off. 16/4/97. Action – new cable on order. No date.

40 Submission 4, p 11

41 Evidence, RRAT, 1 September 2000, p 143

42 Evidence, RRAT, 1 September 2000, p 143, See also D.Lynn & K.Gardiner, Report on Visit to ARCAS (Air Facilities), 1 March 1999, pp 1-2

43 Evidence, RRAT, 1 September 2000, p 148

44 Evidence, RRAT, 1 September 2000, pp 145-146

45 Evidence, RRAT, 1 September 2000, pp 150-151

Record #0414 Right throttle sticks badly. 5/5/97 Action – New throttle cable fitted.⁴⁶

2.46 In response, CASA did not agree that these faults with the throttle cable constituted a major defect, and argued that they would only have done so had the cable prematurely broken or been deformed, or had it not performed its function. In addition, in relation to CAAP 51-1, CASA noted that this is an advisory publication only. The second paragraph of CAAP 51-1 states:

The information in this publication is advisory only. The Civil Aviation Regulations set out the legal requirements that must be complied with in relation to the subject matter of this publication.⁴⁷

2.47 The Committee also noted in hearings on 6 July 2000 the apparent discrepancy between the findings of Mr Lynn and Mr Gardiner, and the findings of Mr Burley from his unscheduled audit of 25 February 1999. In response, both Mr Priestly and Mr Hoy suggested that this discrepancy arose because Mr Burley's audit was of flight operations at ARCAS, whereas Mr Lynn and Mr Gardiner audited the airworthiness of ARCAS' aircraft.⁴⁸ However, Mr Hoy further argued:

Depending on what Mr Burley actually looked at on those check sheets, the defects could well have been still on the aircraft but were not noted by him.⁴⁹

2.48 In response, CASA argued in its written submission that this begs the question as to what is to be regarded as good evidence by CASA:

To assume that there may have been undetected defects on the aircraft is already working from the premise that the operator is non-compliant. To reach such a conclusion, which is contradicted by objective evidence could leave the Authority open to a complaint of bias.⁵⁰

Other Safety Issues

2.49 A number of other safety issues were also raised in evidence with the Committee. Mr Sears noted in correspondence with the Committee that ARCAS submitted major defect reports to CASA as appropriate, including 2 in 1997, 12 in 1998 and 7 in 1999:

46 See Submission 1A, p 31

47 CASA Response to Questions on Notice, 5 October 2000

48 Evidence, RRAT, 6 July 2000, p 55, 76-77

49 Evidence, RRAT, 6 July 2000, p 77

50 Submission 3, p 15

Mr Clinton McKenzie and Bob Hoy have access to these files and would be aware that the company submits Major Defect Reports, but elected not to mention this fact to the hearing.⁵¹

2.50 Similarly, CASA noted that ARCAS submitted 38 major defect reports to CASA from 1994 to the present. These were provided to the Committee in an attachment to CASA's written submission. In addition, 6 further matters have been reported, but are yet to be recorded in the database.⁵² In response, Mr McKenzie's noted that he did not raise the issue of major defect reports in hearings, but nevertheless commented that:

stating how many Major Defect Reports have been submitted by ARCAS is not the same as stating that ARCAS has submitted a Major Defect Report on each and every occasion the law required one to be submitted.⁵³

2.51 CASA also on a number of occasions alluded to the March 1998 safety audit of ARCAS as demonstration that ARCAS was a model operator.⁵⁴ However, as this audit was conducted prior to the availability of the defect books to CASA officials, the Committee does not believe that any weight can be attached to the findings of this audit.

2.52 Finally, also in relation to flight operations at ARCAS, the Committee notes that in his opening statement on 6 July 2000, Mr McKenzie argued that at the time of his visit to ARCAS on 5 March 2000, the Chief Pilot, Mr Wood, displayed a fundamental misunderstanding of the airworthiness rules:

More alarmingly, when Bob (Mr Hoy) and I asked the chief pilot a couple of very basic airworthiness control questions, and given the circumstances in which the operator found itself, I would have thought that they would have had an encyclopaedic knowledge of the airworthiness rules when we visited, the chief pilot got both questions wrong. They were very simple questions.⁵⁵

2.53 In regard to this statement, the Committee notes that issues relating to other aspects of the ARCAS operation, such as the actions of its chief pilot and chief engineer, were not considered at great length by the Committee during the conduct of this inquiry. The focus of the Committee was upon safety concerns relating to the defect books. Nevertheless, the Committee believes that these issues are significant, and warranted further investigation by CASA.

51 Written Correspondence, 8 August 2000, p 2

52 Submission 3, p 21

53 Submission 1A, p 32

54 Evidence, RRAT, 1 September 2000, p 91, 92, 120

55 Evidence, RRAT, 6 July 2000, p 66

CHAPTER THREE

CASA'S ADMINISTRATION OF ARCAS

Introduction

3.1 This chapter initially considers the investigation of ARCAS conducted by Mr McKenzie and Mr Hoy, and Mr McKenzie's recommendation that ARCAS' AOC be suspended. In evidence, CASA argued that Mr McKenzie and Mr Hoy failed to investigate all aspects of the ARCAS operation prior to and following the discovery of the defect books.

3.2 Subsequently, the chapter also considers the decision of Mr Foley, based on advice from the DFOM and DAM in Wagga Wagga, to revoke that suspension of ARCAS' AOC. As indicated, CASA argued that subsequent reappraisal of documentation relating to ARCAS has justified the decision not to suspend ARCAS' AOC. The Committee is nevertheless concerned at various anomalies in the decision making process.

3.3 The chapter finally places CASA's administration of ARCAS within the context of previous inquiries into the administration of air safety in Australia. In particular, the Committee notes the findings from the inquiry into Seaview Air that revealed a culture of institutional timidity within CASA's predecessor, the Civil Aviation Authority (CAA), in the conduct of prosecution.

The Actions of Mr McKenzie and Mr Hoy

3.4 CASA argued in hearings on 1 September 2000 and in its written submission that Mr McKenzie and Mr Hoy were negligent in their investigation of ARCAS.

3.5 In relation to the actions of Mr McKenzie, CASA argued in its written submission that Mr McKenzie failed to investigate a number of issues arising from his interview with the informant. In hearings on 1 September 2000, Mr Foley indicated that when this was drawn to his attention on 24 February 2000, he was left with no option but to review the assessment process for ARCAS' AOC.¹

3.6 An example of such failure on the part of Mr McKenzie cited by CASA related to the informant's allegations that there had been an engine failure on aircraft VH – MZI on 15 September 1998 during a flight between Albury and Canberra. In its written submission, CASA noted that the engine on VH – MZI did not fail, but was shut down by the pilot, who elected not to continue with the flight but to land at the

1 Evidence, RRAT, 1 September 2000, p 96

nearest airport, Wagga Wagga. This was despite the capacity of the aircraft to operate with payload on a single engine.² In commenting on this incident, CASA stated:

Had CASA staff investigated this matter further, they would have been alerted to the fact that the operator, contrary to their portrayal by the informant, did repair defects.

It seems that accepting the information offered, without any verification has led to the adoption of a conservative and narrow view of the operator.³

3.7 In response, Mr McKenzie argued in his supplementary written submission that he made his recommendation for suspension of ARCAS based on the most serious of the allegations raised by the informant. That was that aircraft had been operated on RPT operations with known defects. By implication, other allegations of the informant such as those relating to the reported engine failure on VH – MZI were secondary to his decision to recommend suspension of ARCAS' AOC.⁴

3.8 Furthermore, he indicated that neither himself nor Mr Hoy was in a position to conduct a full investigation of all the allegations against ARCAS, and that this responsibility rested with Ms Tredrea in the Enforcement and Investigation Section, and ultimately Mr Foley:

Following suspension, all of the allegations should have been investigated in detail. Mr Foley's attempts to place responsibility for the curtailment of the investigation of the allegations of falsification of flight times, among other allegations, upon other people, is in my opinion disingenuous. Neither I nor Mr Hoy controlled the CASA investigators or approved applications for warrants: the investigation function had been centralised and was managed by a separate cell reporting directly to Mr Foley. Neither I nor Mr Hoy managed that cell. Mr Foley, not I nor Mr Hoy, had to approve investigations and applications for warrants. That is why I took my Minute to Mr Foley for approval, and then passed the Minute to Ms Tredrea. So far as the investigation by technical staff is concerned, Mr Foley effectively curtailed that investigation by revoking the suspension decision and by rejecting all of my subsequent recommendations in relation to the operator.⁵

3.9 Mr McKenzie nevertheless responded to CASA's specific evidence in relation to the engine failure on VH – MZI. Mr McKenzie argued that CASA attempted in its written submission to distract attention from the fact that a component of the engine failed, regardless of whether it was a voluntary decision on behalf of the pilot to shut the engine down. In particular, the report of the Australian Transport Safety Bureau (ATSB) referred to engine failure:

2 Submission 3, p 20

3 Submission 3, p 20

4 Submission 1A, p 3

5 Submission 1A, p 3

The aircraft owner sent the turbocharger to the manufacturer for examination. This examination found the impeller and bearing damage had occurred as a result of the ingestion of soft foreign material from an unknown source. The owner reported that no soft material was found following the engine failure.⁶

3.10 In turn, Mr McKenzie indicated that the informant believed that ARCAS had successfully managed to avoid investigation how the ‘soft foreign material’ had entered the engine, and that CASA had attempted to distract from this issue by citing the fact that ARCAS had submitted a major defect report for the incidence:

Of course, the cause of the failure is the safety issue, and CASA should have investigated how the material described by the manufacturer as “shop towels, water, paper, filter media or some plastics” got into the turbocharger of an engine fitted to an aircraft engaged in passenger carrying regular public transport. Instead, CASA’s Submission 3 attempts to distract from that issue by emphasising the reporting issue, in what is in my view an attempt to cast doubt upon the informant’s credibility.⁷

3.11 Mr McKenzie further noted that Mr Foley, by his own evidence in hearings on 1 September 2000, was not aware of the above findings of the ATSB, and that Mr Foley stated that CASA’s involvement in the matter ceased with the submitting of a major defect report by ARCAS. Mr McKenzie argued that the submission of a major defect report should be the start, not the end, of an investigation by CASA.⁸

3.12 CASA was also critical in hearings on 1 September 2000 and in its written submission of Mr Hoy. In evidence to the Committee on 6 July 2000, Mr Hoy indicated that he held similar concerns to those of Mr McKenzie following the discovery of the defect books, and that he believed there was sufficient evidence to warrant the grounding of ARCAS. In addition, Mr Hoy endorsed Mr Noble’s report as an accurate reflection on the maintenance of ARCAS’ aircraft.⁹

3.13 CASA was particularly critical of Mr Hoy for failing to follow up certain recommendations of Mr Haslam following the discovery of the defect books. For example, CASA stated in its written submission:

Despite Investigators confirming the existence of the ‘Defect Books’, it was their recommendation that, as further documentary evidence was available from the operator, it should be reviewed by technical staff before any contemplated action.

6 ATSB, Occurrence Brief 199803860, Piper Aircraft Corp, Chieftain, 15 September 1998. See also CASA Response to Questions on Notice, 5 October 2000

7 Submission 1A, p 5

8 Submission 1A, p 6

9 Evidence, RRAT, 6 July 2000, p 70

This advice was ignored by Mr Hoy who was in a position to direct staff to undertake this task.¹⁰

3.14 Subsequently, in hearings on 1 September 2000, Mr Foley reiterated Mr Haslam's statement in his report that it would be likely that investigators would require further documents such as work sheets and flight logs. Given this to be the case, Mr Foley further stated that he was 'somewhat surprised' that the investigation process had not followed through on this documentation.¹¹

3.15 In addition, Mr Foley noted that if Mr Hoy held such concerns as to the airworthiness of ARCAS aircraft at the time of the decision to revoke suspension of ARCAS' AOC, he had the power to remove the certificate of airworthiness for those aircraft (although not ARCAS' AOC) under regulations.¹²

3.16 In defence of Mr Hoy, Mr McKenzie again responded that the investigation of ARCAS was originally referred to Ms Tredrea in the Enforcement and Investigation Section, and that management of the investigation did not rest with the A/g SERM (or any regional managers). It was only subsequently that Mr Hoy undertook further investigation when he filled the position of A/g SERM that had been vacated by Mr Leaversuch. In his written submission, Mr McKenzie stated:

Whilst Mr Hoy eventually (and fortunately) progressed the investigation, it should have been underway, and in my opinion completed, before he became the A/g SERM, and should have been managed by the responsible section.¹³

3.17 Mr Hoy also disputed that as A/g SERM, he had the delegated power to suspend certificates of airworthiness on ARCAS' aircraft, arguing that the role of regional managers was essentially administrative.¹⁴ Even were this not the case, Mr McKenzie noted that CASA's *New Approach to Enforcement* discussion paper at the time publicly stated that all decisions to suspend or cancel licences, certificates or authorities were to be made by a single senior manager in central office by the director personally.¹⁵

3.18 Finally, CASA was also critical in hearings on 1 September 2000 and in its written submission of both Mr McKenzie and Mr Hoy for the alleged failure of Mr Noble to be provided with sufficient documentation to prepare his report:

10 Submission 3, p 15

11 Evidence, RRAT, 1 September 2000, p 97

12 Evidence, RRAT, 1 September 2000, p 132

13 Submission 1A, p 20

14 Submission 2A, p 4

15 Submission 1A, p 51

Additional maintenance documentation was available from and offered to CASA by the operator, but despite its existence being known to the Ag SERM and the GMGAO it was never requested by them in order to put the contents of the books beyond doubt.¹⁶

3.19 As a result, CASA argued that

the comments by Messrs Hoy, Noble and McKenzie appear to be at the extreme conservative end of the continuum advocating immediate rectification, and intimating catastrophe if not carried out.¹⁷

3.20 In response, Mr McKenzie disputed any intimation of catastrophe on his behalf, and indicated that his role as GMGAO was to secure compliance with the law:

... So far as “advocating immediate rectification” is concerned, *the law* – not my opinion - required immediate rectification of some of the defects in Arcas’ ‘defect books’. My duty was to secure compliance with that law. As I said above, the gravamen of contravening the legally required safety standard in my opinion lies not in whether the aircraft has an accident – an accident makes the effect of the contravention more serious, and often demonstrates why the standard was set. The gravamen of contravening the legally required safety standard lies in exposing people to risks to which they are entitled not to be exposed.¹⁸

3.21 The Committee believes that the actions of Mr McKenzie, Mr Noble and Mr Hoy in this matter were appropriate. In particular, the Committee recognises that Mr McKenzie made his recommendation for the suspension of ARCAS’ AOC based on strong evidence of deliberate deception on behalf of ARCAS personnel, and that the ARCAS operation did not meet appropriate air maintenance standards. Subsequent evidence presented to this Committee by CASA does not alter this finding.

The Actions of Mr Foley

3.22 As already indicated, Mr Foley, as the CASA delegate, overturned the suspension of ARCAS’ AOC on 24 February 1999, instead granting a temporary three month AOC, and requesting an increased level of surveillance.¹⁹ This decision followed receipt of Mr Sears’ letter earlier that day. The Committee is concerned at a number of aspects of this decision.

3.23 First, the Committee is concerned at the apparent uncertainty surrounding the proposed role of Mr Haines at ARCAS at the time of Mr Foley’s decision to revoke the suspension of ARCAS’ AOC. In his letter to Mr Foley of 24 February 1999, Mr

16 Submission 3, p 10

17 Submission 3, p 16

18 Submission 1A, p 39

19 Evidence, RRAT, 1 September 2000, p 130

Sears stated that he would step down from the day to day management of ARCAS in favour of Mr Haines, on the basis that:

I firmly believe that under the guidance of Mr Haines I will have the systems and skills in place to prevent the re-occurrence of this type of breach that has occurred.²⁰

3.24 However, Mr Sears subsequently informed Mr Foley that Mr Haines would in fact only be part time. The Committee notes however that Mr Foley nevertheless continued with his reassessment of ARCAS' AOC, despite his knowledge that Mr Haines would not be in a position to assume day to day management of ARCAS.

3.25 Secondly, in his opening statement read to the Committee on 6 July 2000, Mr Foley indicated to the Committee that his decision to revoke the suspension of ARCAS' AOC was made following consultation with Mr Hoy, Mr Garland and Mr Priestly, who were the individuals with 'the greatest knowledge of the operator's day-to-day activities':

The views of the DFOM and DAM, together with the alternative recommendation of the Acting South East Regional Manager, ASERM, assisted me in coming to the decision that I ultimately made. The DFOM, DAM and ASERM are all very senior technical operational staff. I would not dismiss their views lightly. Based on the information provided to me by technical staff, I considered that there was no threat to air safety.²¹

3.26 As noted, both Mr Priestly and Mr Garland recommended that ARCAS' AOC be renewed (Mr Priestly agreed with the granting of a temporary 3-month AOC), with Mr Hoy in dissent.

3.27 The Committee endorses Mr Foley's consultation with the Wagga Wagga DFOM and DAM as in accordance with the recommendations of the October 1998 *Review of the Regulation by the Civil Aviation Safety Authority of Aquatic Air*, conducted by Mr Stephen Skehill. The Committee notes however that neither Mr Priestly nor Mr Garland was aware of the full maintenance history of ARCAS' aircraft when providing their advice to Mr Foley.

3.28 In evidence to the Committee on 6 July 2000, Mr Garland indicated that he was not aware of the contents of Mr Haslam's reports when he made his recommendation for the suspension of ARCAS' AOC to be revoked.²² Similarly, Mr Priestly indicated that he had not seen the contents of the defect books (although he

20 L.Sears, Letter to L. Foley, 24 February 1999

21 Evidence, RRAT, 6 July 2000, p 31

22 Evidence, RRAT, 6 July 2000, p 57

had read Mr Haslam's report), and acknowledged to the Committee that, as a consequence, he did not know whether ARCAS' aircraft were airworthy.²³

3.29 Mr Priestly also acknowledged his understanding that Mr Haines was to manage the day to day affairs of ARCAS as one of the reasons for his original recommendation to Mr Foley for the suspension of ARCAS' AOC to be revoked.²⁴ However, Mr Priestly did not agree that he would have altered his advice of 24 February 2000 had he been aware that Mr Haines would in fact be part-time.²⁵

3.30 The Committee notes that Mr Foley asked in his email of 24 February 1999 to Mr Hoy, then forwarded to Mr Priestly and Mr Garland, 'were either of the Managers or officers aware of this alternative maintenance release system?' Having asked this question however, Mr Foley failed to ascertain the answer, apparently accepting the advice of Mr Priestly and Mr Garland without further inquiry.

3.31 Given Mr Foley's failure in this regard, the Committee acknowledges the belief of Mr McKenzie and Mr Hoy, as stated in their supplementary submissions, that Mr Foley had already decided prior to contacting Mr Hoy, Mr Garland and Mr Priestly on 24 February 1999 to revoke the suspension of ARCAS. As Mr Hoy stated, Mr Foley 'needed supporting recommendations from the Wagga office'.²⁶ Similarly, Mr McKenzie commented:

... it appears to me that Mr Foley also took advantage of the District Office staff's naivety by using them to provide an ostensibly reasonable justification for what was in fact an *a priori* revocation decision.²⁷

3.32 Thirdly, the Committee is concerned at the failure of Mr Foley, as the CASA delegate with ultimate responsibility for air safety, to consider other evidence available to him at the time, aside from the advice provided by Mr Garland, Mr Priestly and Mr Hoy. In particular, Mr Foley was in receipt of the file related to ARCAS containing photocopies of some of the pages of the defect books, and photocopies of the informant's flight and duty logs. However it appears that at no stage did Mr Foley return to the original allegation of the informant that he was pressured to falsify the duty log.

3.33 In this regard, the Committee raised in hearings on 1 September 2000 the recent appeal of Whyalla Airlines in the Administrative Appeals Tribunal after CASA withdrew Whyalla Airline's AOC, following the crash of one of its aircraft in Spencer Gulf on 31 May 2000. At those proceedings, Mr Shand QC, acting on behalf of CASA, argued that the actions of the chief pilot of Whyalla Airlines, Mr Brougham,

23 Evidence, RRAT, 6 July 2000, pp 48-51

24 Evidence, RRAT, 6 July 2000, p 52

25 Evidence, RRAT, 6 July 2000, p 53

26 Submission 2A, p 3

27 Submission 1A, p 46

in allegedly altering flight records of the hours flown by pilots constituted ‘a gross and serious breach of conditions’.²⁸

3.34 The Committee questions why Mr Foley did not require that a similar potentially ‘serious breach of conditions’ by ARCAS be further investigated. The Committee acknowledges Mr Foley’s argument that responsibility for further investigating duty times rested with Mr Hoy and Mr McKenzie, and that he did not micro-manage investigations.²⁹ However, the Committee notes that Mr Foley had the option of delaying making a decision on ARCAS’ AOC for a further 48 hours while further investigations were conducted.³⁰

3.35 The Committee also notes that in hearings on 1 September 2000, Mr Foley acknowledged that he was not aware of the independent corroboration of the allegations made by the original informant by another former, unspecified employee of ARCAS following his or her meeting with Mr Comerford of 24 February 2000.³¹ The Committee acknowledges however that this independent corroboration only became available on the day of Mr Foley’s decision to overturn the revocation of ARCAS’ AOC, and may not have been available in time to Mr Foley.

3.36 Finally, the Committee is concerned that Mr Foley took no further action in relation to ARCAS following the further recommendation of Mr McKenzie to again suspend ARCAS’ AOC on 6 March 2000.³² This was despite further evidence presented by Mr McKenzie following his visit to ARCAS on 5 March that Mr Sears remained in day to day control of ARCAS. In hearings, Mr Haines confirmed that he had never been in a position to take over the day to day running of ARCAS.³³

3.37 Similarly, Mr Foley also took no further action in relation to ARCAS’ AOC following receipt of Mr Noble’s report on 2 March 2000. Mr Foley remarked in his opening statement to the Committee on 1 September 2000:

Mr Noble’s report, which was not issued until March (some 10 days after my decision) was damning of the organisation but proved to be unhelpful, in that it only drew on the initial narrow evidence which had been provided to me and formed the basis of my initial decision on 22 February 1999.³⁴

3.38 The Committee questions why a report which Mr Foley has subsequently recognised was ‘damning of the organisation’ did not warrant upon receipt a review of

28 Evidence, RRAT, 1 September 2000, p 111

29 Evidence, RRAT, 1 September 2000, pp 116-117

30 Evidence, RRAT, 1 September 2000, p 116. See also CASA Response to Questions on Notice, 5 October 2000

31 Evidence, RRAT, 1 September 2000, pp 104-105

32 Evidence, RRAT, 1 September 2000, p 93

33 Evidence, RRAT, 6 July 2000, p 9

34 Evidence, RRAT, 1 September 2000, p 92

his decision of 24 February 2000 not to suspend ARCAS' AOC. In saying so, the Committee acknowledges that CASA has subsequently refuted the findings of Mr Noble. At the time however, Mr Foley could not anticipate this.

3.39 In this regard, Mr Boys acknowledged during hearings that there are instances where CASA would suspend or move to limit the operation of an air service provider because of concerns about safety, even prior to the completion of an investigation.³⁵

3.40 In evidence on this matter, Mr McKenzie stated:

I found this all very confusing. I did not understand why, given the preponderance of evidence and the way in which we treated other operators, effectively no action had been taken. I expressed that to the assistant director that I thought I had done my best. I had all these other operators out there and I could not be at war with the assistant director after I had made the recommendations. But my understanding is that he must have been satisfied. He has stated that there was no safety issue, that it was essentially a paperwork issue, not a safety issue.³⁶

3.41 Based on the concerns raised above, the Committee believes that Mr Foley displayed a tolerance of unsafe practices and breaches of regulation by ARCAS that was inappropriate. Even if the contravention of CAR 50 was not a deliberate act on the part of Mr Sears and ARCAS staff, which the Committee does not accept, Mr Foley's decision to essentially allow ARCAS to emerge from the episode without penalty sent the wrong signal to the aviation industry.

3.42 Rather, the Committee believes that the proper precedent for action in this matter was stated in the letter sent by Mr Dick Smith to all AOC holders on 6 November 1997. As noted earlier, that letter cited evidence from the Seaview Inquiry that some operators were placing undue pressure on their pilots to breach safety regulations. In response to such evidence, it was stated:

The CASA Board views such actions on the part of operators to be totally unacceptable. Operators should be aware that where they engage in such practices they are liable to severe penalties.³⁷

3.43 Finally, the Committee is aware of the suggestion by Mr McKenzie in hearings on 6 July 2000 that relations between certain CASA officers and ARCAS staff were inappropriate:

When I visited the organisation I walked away thinking that only one of two things can happen here: either they simply do not understand the seriousness

35 Evidence, RRAT, 1 September 2000, p 150

36 Evidence, RRAT, 6 July 2000, p 77

37 D.Smith, Letter to AOC Holders, 6 November 1997.

of what has happened, or they have complete contempt for the authority and for some reason they know that whatever happens they will stay in the air.³⁸

3.44 The Committee further investigated this suggestion during hearings on 1 September 2000. In particular, the Committee notes that at the meeting of the Board Safety Committee of 23 February 1999, it was reported that ‘CASA may have provided the operator with incorrect advice’, in apparent mitigation of the actions of ARCAS personnel.³⁹

3.45 In addition, the Committee notes that in estimates on 2 May 2000, Mr Foley acknowledged that he personally knew Mr Haines prior to his appointment as a consultant to ARCAS.⁴⁰ However, Mr Foley subsequently indicated to the Committee on several occasions that he had no involvement in the appointment of Mr Haines to ARCAS.⁴¹ Without any evidence to the contrary, the Committee wished to stress that it makes no finding of corruption amongst CASA officials, including Mr Foley.

Institutional Timidity within CASA

3.46 In the broader context, the concerns raised by this Committee relating to CASA’s administration of ARCAS echo the concerns raised following investigations into the Monarch, Seaview and Aquatic Air accidents. In each case, the appropriateness of the actions of certain CAA officials, and the diligence and propriety with which they discharged their responsibilities, was called into question.

3.47 In particular, the Committee cites the findings of Mr James Staunton AO QBE QC in the report of the *Commission of Inquiry into the Relations between the CAA and Seaview Air*. On 2 October 1994, an aircraft of Seaview Air crashed on a journey from Williamstown to Lord Howe Island. Nine lives were lost.

3.48 In his report, Mr Staunton cited within CAA a culture of ‘institutional timidity’ against taking strong action, including prosecution, against operators knowingly and often wilfully breaching aviation law:

What were plainly serious breaches, including, in one case, an apparent fraud in respect of the renewal of an instrument rating, were never referred to prosecution. Indeed, this illustration and others suggested that the CAA was afflicted by an institutional timidity against taking strong action for transgressions by the aviation industry.⁴²

38 Evidence, RRAT, 6 July 2000, p 78

39 Evidence, RRAT, 1 September 2000, p 129

40 Evidence, RRAT, 2 May 2000, p 100

41 Evidence, RRAT, 2 May 2000, p 100. Evidence, RRAT, 24 May 2000, p 309. Evidence, RRAT, 1 September 2000, p 128

42 J.Staunton, *Commission of Inquiry into the Relations between the CAA and Seaview Air: Report of the Commissioner Volume 1*, September 1996, p 3

3.49 The Committee believes that the ‘institutional timidity’ cited by Mr Staunton also characterises CASA’s administration of ARCAS. In this regard, the Committee also notes that Mr Hoy was one of the principal witnesses in the Seaview inquiry, having urged the company’s suspension on 13 January 1994. In commenting on Mr Hoy’s actions, Mr Staunton stated:

The suggestion that Mr Hoy was heavy handed does not withstand examination. In no case did Mr Hoy recommend prosecution, even when he would have been justified in doing so. He tried to regulate. He sought to bring those guilty of wrongdoing to account, although not in a draconian way. Certain members of the industry who were subject to his regulatory action, however, were used to bluffing their way out of such situations, and in many instances they were able, by appeal to Mr Hoy’s superiors, to reverse his sanctions. ...

Mr Hoy’s treatment by his superiors explained why his warnings were ignored. He was perceived as being “out of step with the rest of the army”. Yet the Commission believes that it was Mr Hoy who was in step, in that he was implementing standards embodied in aviation legislation. Management (and perhaps much of the army) was out of step. In its efforts to please and appease industry, the management of CAA, and certainly those who managed Mr Hoy, seemed to regard standards set by the regulations and orders as negotiable. In the face of a determined operator, such standards were sacrificed in order to neutralise a complaint. ...

In its submissions, the Authority has failed to extend to Mr Hoy the apology for his treatment that he deserves. Indeed, the submissions disclose the same irritation with Mr Hoy that was the root cause for his warnings having been ignored. That attitude, in the Commissioner’s belief, signals that the lesson of these events has not been learned, not withstanding the acknowledgment of timidity.⁴³

3.50 The Committee believes that many of the points raised by Mr Staunton have parallels in CASA’s administration of ARCAS. In dealings with ARCAS, CASA management displayed a partial acceptance of unsafe practices and breaches of the Civil Aviation Regulations, despite recommendations to the contrary by subordinate officers. The Committee notes the statement of Mr McKenzie that:

The tenor of Submission 3 and CASA’s evidence during the 1 September Hearings seems to me to be that so far as CASA is concerned, the law should be enforced on the basis of what Mr Foley considers to be safe or unsafe, rather than what the law requires. The aviation regulator has been criticised in the past – quite correctly in my view – for enforcing the law on

43 J.Staunton, *Commission of Inquiry into the Relations between the CAA and Seaview Air: Report of the Commissioner Volume 1*, September 1996, pp 20-22

the basis of what someone thinks the law *should* say, rather than what the law does say.⁴⁴

3.51 The Committee also cites the findings of Mr Stephen Skehill in his *Review of the Regulation by the Civil Aviation Safety Authority of Aquatic Air*. This review was conducted following the crash of a seaplane Cessna operated by Aquatic Air on 26 July 1998 while attempting to land at Berowra Waters, north of Sydney. Again Mr Skehill indicated an apparent unwillingness on behalf of CASA management to enforce regulatory sanctions against Aquatic Air, despite frequent and repeated breaches of various regulatory requirements.

3.52 Given the considerations raised in these earlier reports into CASA's administration of various air service providers, the Committee noted with concern evidence presented during the conduct of this inquiry.

3.53 For example, in an email to Mr Hoy on Tuesday 2 March 1999, Mr Garland commented that if you sent investigators into other operators like ARCAS armed with a warrant you would probably find similar grounds for withdrawing their AOC. Subsequently, Mr Garland stated:

Interstate investigators armed with a warrant went into Air Facilities, on the word on an industry person, it seems a disaffected sacked pilot no less.

And in contrast, when I have pushed issues to the point of embarrassment, over operators, complete with proved breaches, that make Air Facilities look like angels, and I can't get investigators interested, DPP interested, R/M interested beyond a little talk to an operator, nor anyone else in the organisation. And I would have thought my position as an Airworthiness Manager inside the organisation should have carried some weight when action of this nature is required.⁴⁵

3.54 The Committee sought clarification of this statement from CASA. In response, CASA suggested that Mr Garland's statement reflected the frustration of CASA officers prior to the implementation of CASA's new investigative structure. Under the previous structure, investigators were required to work directly to one of the 30 DFOMs or DAMs in the 15 District Offices. As such, investigators had very little autonomy, with the possibility of disagreement arising between DFOMs and DAMs regarding investigations. In turn this led to a lack of national uniformity in investigative matters.⁴⁶

44 Submission 1A, p 39

45 Email from V.Garland to B.Hoy, 2 March 1999, 5:12 pm

46 CASA response to Questions on Notice, 31 August 2000

3.55 Given this concern, Senator Crane requested in hearings that CASA provide the Committee with an indication of the internal reforms that it has adopted in order to improve maintenance investigation and enforcement procedures.⁴⁷

3.56 In response, CASA indicated that in May 1998, a major organisational restructure was undertaken within CASA with the creation of four new divisions: Aviation Safety Compliance Division; Aviation Safety Standards Division; Aviation Safety Promotion Division and Corporate Services. As part of this restructure, a new Enforcement and Investigation Branch was also formed in order to centralise the investigation process and coordinate prosecution action with other enforcement action.

3.57 In May 1999, Mr Boys was appointed manager of the Enforcement and Investigation Branch. Upon his appointment, Mr Boys initiated an audit of the investigation process, leading to the adoption of a new investigative model which has centralised the investigative process. Under this revised structure, investigators may be tasked to provide assistance wherever it is needed, not only within particular District Office locations, as was previously the case. This has increased nationally uniformity in investigations, and made individual investigators accountable in terms of workload, timing of reports, recording of information and the status of matters forwarded to the Director of Public prosecutions.⁴⁸

3.58 Mr Hoy also raised the additional concern in hearings that some of the problems that arose in relation to ARCAS were attributable to 'a lack of proper standardised and basic training by the authority of its inspectorate staff'. In this regard, Mr Hoy noted the submission of the CAA into the Seaview inquiry that stated:

... with the benefit of hindsight a number of problems directly going back many years were evident. These problems include field staff and industry that were given extensive delegation with little or no guidance on how such delegations should be applied, causing consistency problems.⁴⁹

3.59 In response, CASA indicated that all inspectors currently undertake a three week and a one week residential induction program, followed by briefing on local systems in each local area:

This represents one of the most comprehensive Induction Training Programs currently operating in the Public Sector, and has gained international interest from other Aviation Regulatory Authorities, including a request to provide information to the ICAO Training Managers conference.⁵⁰

47 Evidence, RRAT, 1 September 2000, pp 151-152

48 CASA response to Questions on Notice, 31 August 2000. See also CASA Response to Questions on Notice, 5 October 2000

49 Evidence, RRAT, 6 July 2000, p 79

50 CASA response to Questions on Notice, 31 August 2000

3.60 CASA also noted in response to Mr Hoy's suggestion that there is a lack of standardisation in CASA Training that it is currently developing a National Core Competency Training Programme, which is in the process of being validated by the International Civil Aviation Organization.⁵¹

3.61 The Committee acknowledges the argument that CASA has undertaken significant reforms in the last two years in an attempt to address issues arising out of accidents such as Seaview. In addition, the Committee acknowledges the finding of the Australian National Audit Office in its Performance Audit of CASA that:

It needs to be recognised that the staff of the Authority have experienced considerable turmoil with frequent top management turnover and accompanying changes in strategic emphasis and policy direction.⁵²

3.62 Nevertheless, the Committee believes that the travelling public was entitled to significantly higher standards from certain CASA officials in CASA's administration of ARCAS.

51 CASA response to Questions on Notice, 31 August 2000

52 ANAO Audit Report No 19 1999-2000, p 119

CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS

4.1 The Committee's investigation into ARCAS Airways Pty Ltd, trading as Air Facilities, was conducted as part of the Committee's broader inquiry into CASA's administration of air service providers operating in Australia. That inquiry is investigating a number of matters, including the maintenance standard of both small and large RPT providers, and the enforcement of airworthiness rules by CASA officials. A reporting date for that part of the Committee's inquiry is yet to be fixed.

4.2 During the conduct of its inquiry into CASA's administration of ARCAS, the Committee was presented with evidence that, for a period of three (though in all probability up to six) years up until 1999, the defect book system maintained by ARCAS was deliberately concealed from CASA officials. The defect books were only discovered by CASA officers following receipt of information from an informant and the execution of a search warrant of the ARCAS premises on 15 February 1999.

4.3 The concealment of these defect record books raises serious concerns that ARCAS knowingly operated and flew aircraft that were not legally airworthy. It was argued by ARCAS that its defect book system provided a more detailed and thorough maintenance system than the official maintenance release system, and that ARCAS' only breach of relevant airworthiness regulations was administrative. However, this does not, in the Committee's view, overcome the fact that CASA officials were not aware of the true status of ARCAS' aircraft due to the apparent concealment from them of the defect books.

4.4 The Committee notes that CASA presented evidence at the Committee's second hearings on 1 September 2000 that Mr Noble's assessment of the ARCAS defect books had presented a worst case scenario. Rather, CASA cited analysis by CASA technical officers that only 2 of the 119 anomalies that were listed in the defect books could have been subject to alternative corrective action.

4.5 However, the fact that the defects recorded in the defect books were ultimately remedied is less in dispute than the time taken to undertake that action. In this regard, the Committee notes that the audit by Mr Lynn and Mr Gardiner confirmed that ARCAS' aircraft were operating with recorded defects still remaining on the aircraft. There must still be some conjecture as to the document trails relating to entries in the defect books, and whether those documents were available to Mr Lynn and Mr Gardiner. However, this does not affect the fact that known defects, which rendered the aircraft unfit for operations, were found on the aircraft.

4.6 The Committee is satisfied that Mr Sears, and other personnel of ARCAS at the direction of Mr Sears, knowingly and deliberately maintained defect books in

contravention of CAR 50. Specifically, they must, in the Committee's view, have been aware of the existence of defects on their aircraft, but failed to enter them in the maintenance releases or approved alternative documentation. This rendered the aircraft operated by ARCAS legally unavailable for flying operations.

Recommendation 1

The Committee recommends that the actions of Mr Sears and employees and staff of ARCAS in apparently acting in deliberate breach of airworthiness safety rules (notably CAR 50) be referred to the Director of Public Prosecutions for examination of all the circumstances of the case and for appropriate action.

4.7 In this regard, the Committee notes that ARCAS may have breached CAR 47, CAR 50, CAR 174A, CAR 177 and CAR 248. The Committee also notes the provision of CAR 296 which states:

A prosecution in respect of any offence against these regulations may be commenced at any time within 3 years after the commissioning of the offence.

4.8 Given the lapse of nearly 20 months since the execution of the search warrant of ARCAS' premises on 15 February 1999, the Committee notes that this matter requires prompt assessment by the Director of Public Prosecutions.

4.9 The Committee also investigated the actions of CASA staff in their administration of ARCAS following the discovery of the defect books. The Committee endorses the original recommendation to suspend ARCAS' AOC by Mr McKenzie, formerly General Manager, General Aviation Operations with CASA. The Committee also endorses the investigation of ARCAS by Mr Hoy. However the Committee remains concerned regarding the actions of Mr Foley and other CASA staff.

4.10 In evidence to the Committee, Mr Foley, Assistant Director, Aviation Safety Compliance, indicated that as the responsible CASA delegate, he was ultimately required to make a judgement whether the initial suspension of ARCAS' AOC should be revoked. The Committee has no evidence of inappropriate personal dealing between Mr Foley and Mr Sears in relation to ARCAS' AOC. However, the Committee is nevertheless concerned at the diligence and propriety with which he discharged his responsibilities:

- a) Mr Foley continued to consider revoking the suspension of ARCAS' AOC despite evidence that Mr Haines would not be full time, and that Mr Sears would remain in day to day control of the operation;
- b) Mr Foley relied on the advice of the Wagga Wagga DFOM and DAM in revoking the suspension of ARCAS' AOC without ascertaining whether they were in possession of the full facts in relation to ARCAS;

c) In relying on the advice of the Wagga Wagga DFOM and DAM, Mr Foley did not consider other concerns relating to ARCAS. In particular, at no stage did Mr Foley return to the original allegation of the informant that he was pressured to falsify the duty log recording his hours of duty;

d) Mr Foley took no further action following receipt of Mr Noble's report, and the further recommendation of Mr McKenzie on 6 March 1999 that ARCAS' AOC again be suspended.

4.11 In addition to the actions of Mr Foley, the Committee remains concerned at the apparent lack of attention and thoroughness by other CASA officers, including the Wagga Wagga DFOM and DAM, Mr Priestly and Mr Garland, and the acting coordinator of the Enforcement and Investigation Section, Ms Tredrea. Had these officers been more thorough in their actions, the initial cancellation and subsequent reinstatement of ARCAS' AOC may have been circumvented.

4.12 As a result of Mr Foley's decision not to instigate action against ARCAS, the Committee believes that ARCAS emerged from the matter without penalty. Even if the use and apparent concealment of the defect books was not a deliberate act on behalf of Mr Sears and his staff (which the Committee does not accept) the facts of this matter clearly send the wrong signal to the aviation industry.

4.13 Nonetheless, the Committee acknowledges that the actions of Mr Foley and other members of CASA staff – or their lack of action – were not the prime problem with the ARCAS suspension; it was, in fact, ARCAS' lack of diligence in meeting regulatory requirements. As noted by Senator Crane in hearings on 1 September 2000, if ARCAS had done things properly in the first place, the Committee would not have been required to investigate both ARCAS and CASA.

Recommendation 2

The Committee recommends that CASA, having regard to this Committee's findings in relation to Mr Foley's administration of the ARCAS matter, consider whether any appropriate action should be taken against any CASA officers, including Mr Foley, as the senior responsible CASA officer involved in the case.

4.14 In the broader context, the concerns raised by this Committee relating to CASA's administration of ARCAS echo the concerns raised following investigations into the Monarch, Seaview and Aquatic Air accidents. In each case, the appropriateness of the actions of certain CAA officials, and the diligence and propriety with which they discharged their responsibilities, was called into question.

4.15 The Committee in particular notes the findings of the *Commission of Inquiry into the Relations between the CAA and Seaview Air*. The Committee found no evidence of corruption in respect of any CAA officials, but indicated an 'institutional timidity' within the former CAA against taking strong action, including prosecution, against operators knowingly and often wilfully breaching aviation law. The

Committee believes that the administration of ARCAS by CASA can be characterised in similar terms.

Recommendation 3

The Committee recommends that CASA take steps to recommit itself to strong action through prosecution or suspension of those operators who deliberately breach maintenance, airworthiness and reporting and recording requirements, thereby compromising air safety. The Committee notes the advice from CASA, following a request from the Committee Chairman, Senator Crane, that it has recently undertaken significant reform of its investigative and enforcement processes.

4.16 Given the significant structural and administrative reforms undertaken by CASA since May 1998, including the adoption of four new divisions, the Committee believes that it is appropriate that the position of Deputy Director of Aviation Safety be created within CASA.

4.17 The Committee believes that the Deputy Director of Aviation Safety should have special responsibility for the administration of investigative and enforcement processes as they relate to regional airlines, low-capacity RPT operators and charter service providers in rural and regional Australia. This is in recognition of the importance of regional airlines, low-capacity RPT operators and charter service providers to regional centres and rural areas. In particular, this responsibility would require the Deputy Director of Aviation Safety to ensure that resources are directed to the areas and operators representing the highest safety risk.

Recommendation 4

The Committee recommends the creation of a new position of Deputy Director of Aviation Safety within CASA with special responsibility for the administration of investigative and enforcement processes as they relate to regional airlines, low-capacity RPT operators and charter service providers in rural and regional Australia.

**Senator Winston Crane
Chairman
October 2000**

ADDITIONAL COMMENT ON THE PROVISION OF EVIDENCE TO THE COMMITTEE BY CASA

The Committee wishes to comment on the apparent unwillingness of CASA staff, in seeking to justify the actions of CASA, to provide this Committee with accurate and timely information. The Committee is particularly concerned that on some occasions, CASA staff demonstrated more of a concern to perpetuate earlier misleading or incomplete information than to facilitate the Committee's inquiry.

The Committee initially sought information from CASA on the administration of ARCAS through the Estimates process. In many instances, the responses from CASA staff were subsequently proved to be incomplete. In other instances, the response of CASA staff was simply to take all questions on notice. Responses to questions taken on notice taken by CASA were in many instances not provided by the requested date.

As noted in this report, prior to the hearing on 1 September 2000, CASA officials invested a great deal of time and energy in a reassessment of the Noble Report, and the actions of Mr McKenzie and Mr Hoy. As stated in CASA's written submission:

While not questioning the validity of the concerns which prompted Senator O'Brien to seek further information on this matter, the significant diversion of CASA resources which has been necessary to provide the Committee with the evidence to demonstrate the proper use of the Authority's procedures and delegations and the propriety of the delegate's decision-making has an impact on the officers involved.

The Committee questions whether more frank responses to questions raised in Estimates would not have reduced the effort to which CASA and this Committee was subsequently put, and have made the conduct of this inquiry significantly easier.

APPENDIX 1: LIST OF WITNESSES

CANBERRA, Thursday, 6 July 2000

ARCAS

Mr Leslie Sears, Managing Director

Mr Anthony Haines, Director, Haines Consulting

Private Capacity

Mr Clinton McKenzie, former General Manager, General Aviation Operations, CASA

Mr Robert Hoy, former Acting Regional Manager, South West Region, CASA

Civil Aviation Safety Authority

Mr Robert Elder, Executive Manager, Government, Industry and International Relations

Mr Peter Boys, Manager, Compliance and Enforcement

Mr Mark Haslam, CASA Investigator, Adelaide

Mr Robert Noble, Senior Airworthiness Inspector, South East Region

Mr Victor Garland, Team Leader – Airworthiness, Wagga Wagga

Mr John Priestly, Team Leader – Flying Operations, Wagga Wagga

CANBERRA, Friday 1 September 2000

Civil Aviation Safety Authority

Mr Laurie Foley, Assistant Director, Aviation Safety Compliance

Mr Robert Elder, Executive Manager, Government, Industry and International Relations

Mr Peter Boys, Manager, Compliance and Enforcement

APPENDIX 2: LIST OF SUBMISSIONS

1	Mr Clinton McKenzie	19 July 2000
2	Mr Robert Hoy	26 July 2000
3	CASA	31 August 2000
4	Mr Leslie Sears	1 September 2000
1A	Mr Clinton McKenzie	21 September 2000
2A	Mr Robert Hoy	27 September 2000

