

19 August, 2003

The Chairman
House of Representatives
Standing Committee on Transport and Regional Services
Parliament House
CANBERRA ACT 2600

Dear Sir

When I recently gave evidence to your committee's inquiry into regional aviation services a member of your committee asked for documentation of the claims I made at the conclusion of my submission. I have attached copies of relevant documents to this letter.

While most of the documents are from the same period they relate to different CASA officers. I have attempted to place them in an order that should allow overview of each officers actions and statements. There may be some overlap of documents i.e. some documents may relate to two or more officers. The documents pertain to Terrence Farquharson, Stewart McAlister, Robert Collins, Graham Murray, Mick Toller and Rob Elder. All, with the exception of Graham Murray who is a Flying Operations Inspector, are, or were, senior officers with the Authority. Rob Elder is included simply because he was passed the batten of the correspondence burden by the former Director, Mick Toller. None of the assertions made in my submission apply to Rob Elder.

In the case of Farquharson you will see several incompatible statements.

- He claimed to me, in a letter dated 15 January, 2001, in relation to the investigation into the incident at Gunnedah "*it was considered that the investigation, vis a vis the company, not continue*".
- However in a letter to me dated 31 January, 2001 he advised that the investigation had been "*completed*".
- At a subsequent Senate hearing Farquarson informed the Senate Committee that the investigation was *almost* completed, that it was "in the final stages of writing up".
- * In a letter dated 17 May, 2001 he advised me that the report was in "*the final stages of writing up*".

Quite clearly Farquharson has considerable difficulty in understanding or knowing what was happening in the area under his control and remembering what he has previously stated. I might add that at this time I have not been advised if the report has been "finalised" or, in fact, it exists at all.

I have attached copies of the correspondence as Attachment A. I have also included in the attachment correspondence to me from McAlister which makes reference to the investigation and his expectation that it would not be finalised in January 2001. Further, I have attached copies of e-mail's dated the 12th of 15th February, 2001 between a number of CASA officers discussing what to do about my letter to Farquharson making reference to the lack of an investigation report and my threat to obtain any documents under Freedom of Information. Quite clearly, it can be seen from the e-mail's that no such investigation or report existed 2 weeks after Farquharson advised me in writing the investigation had been completed. It should be noted the final letter to me from Farquharson has been misplaced or misfiled and consequently is not included.

With McAlister four issues stand out. The first is the Standard Form Recommendation (dated 31 January, 2001, file ref 00/9879) provided by McAlister to Collins refusing to recommend the renewal of my Air Operators Certificate. The first paragraph states "*Singleton Air Services Pty Ltd is a charter and LC RPT operator. It has been involved in LC RPT for approximately five years.*" In fact Singleton Air Services Pty Limited had operated scheduled services since the company was formed in 1980. We had operated LC RPT services for almost 20 years. McAlister stated we were "*a charter and LC RPT operator*", in fact we were primarily a LC RPT operator who conducted a small charter operation with charter making up less than 3% of our hours flown. McAlister was then the Area Manager NSW Country Area. This is a senior contracted position within the regulator. If a person holding this level of appointment cannot be accurate about such a simple and well known matter, surely he does not have any right to hold any position within the regulator?

The second issue with McAlister is his intent to deceive the company and its management over the issue of the "interview" of the pilot following the incident at Gunnedah. As late as 11.30 am on the 3rd January, 2001 McAlister was requesting and confirming that I had arranged for the pilot to telephone Graham Murray at the Tamworth Field Office when she landed at Scone. Prior to this he had arranged approval for aircraft hire to transport Murray and two airworthiness officers to Scone. To add to the deceit when my Chief Pilot rang Murray at Tamworth just prior to 12.00 am on a separate matter Murray told the Chief Pilot, who is operationally responsible for the pilot, that he (Murray) couldn't talk. He had to go flying. No mention was made to the Chief Pilot that the purpose of the flight was to ambush the pilot as she arrived. It is clear to me that both persons fully intended to keep their actions from the company and its management. Whether this was by collusion or coincidence is beyond my knowledge.

The third issue with McAlister is related to the second. On the evening of the 3rd January, 2001 McAlister advised me of what check flights he wanted conducted by the Chief Pilot on the incident pilot. While he was giving me that requirement he was advising Farquharson on suspending the company's Air Operators Certificate.

The fourth issue with McAlister deals with the Standard Form Recommendation McAlister sent to Farquharson dated 4 January, 2001 (see paragraph above). You can see in the document (page 3) that the Notice of Immediate Suspension had already been cleared by the Office of Legal Counsel. I believe this confirms the duplicitous nature of McAlister's dealing with me. You can further read (page 1 last sentence of the first paragraph) that McAlister states "*The total non compliance history of Singleton Air Services Pty Ltd is of significant safety concern to me and to CASA*". In mid 1998, some 18 months before this McAlister led a three day audit of Singleton Air Services Pty Limited. At the conclusion of that audit McAlister authored a minute to the Director of CASA in which he states "...I assess Yanda Airlines as a compliant organisation" That minute is dated 30 June, 1999. As this date was only 18 months prior to McAlister saying above our non compliance history was of significant concern to him and to CASA I rather wonder at his view of "history".

I would also add that in February 2000 a standard audit was conducted by the Tamworth Field Office. I have obtained copies of the audit report forms under freedom of information and they all record a satisfactory standard with the recommendation of normal surveillance. Further McAlister personally carried out another multi day audit in June 2000 with similar results. McAlister's claims of "*total non compliance history of Singleton Air Services Pty Ltd..*" are significantly at odds with his earlier statements and are unsupported by any meaningful independent documentation.

After the informal conference McAlister authored a 2 page e-mail addressed to six CASA officers and copied to a further five. In part the e-mail gave a summary of the informal conference. Under the heading "Flying Operations Issues" McAlister wrote "*If Yanda Airlines was seeking issue of a LCRPT AOC after 31 January 2001, then on advice from Wayne Arthur a new AOC application would be required.*" The summary was dated 24 January, 2001

In an e-mail to Peter Ilyk dated 25 January, 2001 Wayne Arthur states:

"Peter

In Stewart McAlisiter's e mail of yesterday he indicated that the fact a new AOC application would be required was "on advise of Wayne Arthur".

It wasn't.

It was something which he had apparently already decided on about 9 January. See his e mail below. During a break in the meeting on when the Yanda camp were considering their position I indicated to him that I didn't think that a new AOC application was required while they already had one which they were seeking to renew. I said this because I was concerned the statement that he and Ian Priestly had made during the meeting was not correct."

The other issue from the above e-mail is that McAlister was clearly of the view **14 days prior to the informal conference** that my AOC would not be renewed. This is a man who was supposedly to review my response and future operating plans to consider the future of the company. He approached the meeting with a preconceived outcome in mind and, I believe, no event at the conference was going to alter the outcome.

One could conceivably allow that McAlister's actions were not with malignant intent but one must also invoke Al Capone's Law. "Once is happenstance, twice is coincidence

but three times is enemy action". With McAlister we are well into the enemy action territory.

My view, supported by the above issues, is that McAlister is a man with neither honor nor integrity. It is my view that there is a strong case for these matters to be investigated by an independent person who must have had no connection or contact with the regulator.

I have attached copies of correspondence and documents as Attachment B. It should be noted that my comments on the issue of McAlister also appear in Attachment A and Attachment E.

In the matter of Collins who was the decision maker in my AOC issue he advised me in a letter dated 1 February, 2001 that he agreed with the Area Manager's recommendation not to renew the AOC. I replied to him on the 21st March, 2001 with a three page letter critiquing his letter and with a requirement for him to furnish me, under Section 13 of the Administrative Decisions (Judicial Review) Act of 1977, with a "*statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving reasons for the decision*".

Subsection (2) of Section 13 states:

"Where such a request is made, the person who made the decision shall, subject to this section, as soon as practicable, and in any event within 28 days, after receiving the request, prepare the statement and furnish it to the person who made the request."

This is the law. I received no response from Collins within the 28 days required by law. On the 16th May, 2001, some 56 days (twice the time allowed by the Act) after the initial requirement, I wrote and facsimiled a letter to Collins. The pertinent sentence was "*Do you intend to furnish the statement willingly or do we have to resort to an order from the Federal Court to obtain the statement.*" I received a reply dated 15 May, 2001. Conveniently the date was hand written. The statement was basically a regurgitation of the show cause letter and, I believe, would not be considered to be the statement referred to in Section 13 of the ADJR. Included in the statement was a file note written by a Flying Operations Inspector Grahame Murray dated 2 February, 2001. As the original decision was dated 1 February, 2001 I was impressed by the foresight of Collins in his decision to have known the contents of a file note not dated until the subsequent day!

I believe Collins currently holds the acting position of Deputy Director of the Civil Aviation Safety Authority. I suggest it would be appropriate that these issues should be investigated adequately and independently if he is being considered for confirmation in that position.

The file note authored by Murray contained a number of what I consider to be deliberate inaccuracies. Consequently I replied to Collins asking how he could have used the content of a file note dated 2 February, 2001 for a decision dated 1 February, 2001. I further raised the probity of Murray based on the content of the file note. I am aware that Murray is the subject of an internal CASA investigation on other issues. I consider these points aim at the very heart of the integrity and moral standing of the regulator and are of enormous importance. Obviously Collins does not. I am still waiting for his reply.

I have attached copies of correspondence and documents as Attachment C.

In the case of Murray a significant number of my claims of lack of integrity and truthfulness are covered in the section on Collins. Additional items were covered in the section on MacAlister. These refer to a number of the Requests for Corrective Action (RCA) issued by Murray during the November 2000 pre AOC renewal audit. After this audit Murray issued 20 RCA's. He made no mention of his intention to do this at the exit briefing of the audit. The company claims the majority of these RCA's were plainly and clearly wrong. For example one stated that a section of the Check and training manual required 12 monthly refresher training for all the company's pilots, that this had not been done and that the Chief Pilot admitted it had not been done. At face value this is a damning indictment, however what Murray neglected, apparently deliberately or negligently to add, was that when the Chief Pilot agreed the training had not been done he added that as no pilot had been with the company for 12 months the training was not due. Murray apparently selectively used the available information to create a false impression of the company's affairs. It is interesting to note that while my show cause letter appeared to dredge up every Non Compliance Notice (NCN) and Aircraft Survey Report (ASR) for the previous four years not all the RCA's issue by Murray appear in the show cause letter. Perhaps even the regulator has some sense of shame.

While the information in this letter is not about the renewal or non renewal of our AOC I would point out that any decision maker within the regulator only has to rely on recommendations and internal information sources. At no stage does he have to verify or test the accuracy of the information used. Although this has been confirmed by a decision of the Federal Court I believe this sort of system is open to both mistake and abuse.

I have attached copies of letters and the file note as Attachment D.

In the case of Toller and Elder my major complaint involved the actions of the CASA public relations manager Peter Gibson. When our AOC was suspended following the incident at Gunnedah Gibson was being interviewed by a journalist from Channel 10 National News about the Ansett Airlines incident. The journalist asked Gibson for his view of a comparison between Ansett and Yanda. Gibson replied with words to the effect that there was no comparison, our aircraft was seconds from crashing. This was totally untrue and made by a person not technically qualified to make it. He may have been briefed by someone who mischievously put the words in his mouth. I believe the comment was specifically designed to denigrate us in the eyes of the public and that Gibson and/or the person who briefed him should be appropriately disciplined.

At our informal conference on Tuesday 23 January, 2001 CASA advised what they required to be done for the airline to resume operating. I had considerable doubts as to whether we should attempt resumption. I advised the CASA representatives present that I would return home and consult my fellow director (my wife) and advise them of our decision. All CASA documents involved in a "show cause" are marked "in confidence" including the transcript of the informal conference. I think it is reasonable to assume so are any discussions. In my mind the conference had not finished as I was to respond after consulting my wife. I returned to Singleton from the meeting in Canberra late on the Tuesday afternoon and did not communicate with any media. The following morning details

of the informal conference were available in the press and on radio. I was very angry and contacted MacAlister who lead CASA at the informal conference. He assured me that no member of the CASA team at the conference had spoken to the media, however he had reported the conference to his superiors. Clearly this is where the media information was sourced. I considered this to be an unforgivable breach of faith on the part of the regulator, which among other issues should be investigated by an independent person with no prior contact with the regulator.

As a consequence of my annoyance I wrote to Toller requesting that Gibson be required to respect confidentiality and to restrict himself to matters of fact. I further requested that Gibson be instructed to apologise for the above matters. I wrote and facsimiled my letter on 25 January, 2001. I received Toller's reply hand dated 6 July, 2001. It had only taken 23 weeks. The reply was dismissive of my concerns, in fact it advised me that CASA was merely defending itself against my comments attacking it. I would point out up until I advised CASA we would never again hold or be involved with an entity holding an AOC did I publicly comment adversely on CASA. To do so would have been counterproductive in any settlement. So in fact it was all just poor little defenceless CASA protecting itself against the big nasty Paul Rees. I replied in detail to Toller in a letter dated 14 September, 2001 which challenged the assertions made in his belated reply. All this must have been a little too much for the Director because on 20 December, 2001 I received a letter from Rob Elder by facsimile. The letter basically sought to close any further debate on the very important issues that I had put before the Director. My reply to Elder was faxed to him on the 25th January, 2002. In my reply I expanded on my points to Toller and refuted his (Elder) response. I raised and commented on how the delegate was not given the entire facts and truth to ensure his decision was the best possible. I would offer in support of my view an e-mail sent by Wayne Arthur, who was the Office of Legal Counsel delegate at my informal conference, to Peter Ilyk dated 25 January, 2001 at 14.25. The third line of the e-mail states "*I am not convinced it an overwhelming case for non-renewal*". If a legal officer of CASA who was at the informal conference could not be convinced there was "*an overwhelming case for non-renewal*" I suggest that delegate could not make such a decision other than on misrepresented and biased information.

I had many telephone conversations with Elder, as well as sending three facsimiles, on the matters above and the fact I considered MacAlister to have been untruthful or incompetent in relation to his statement at the beginning of his standard form recommendation on my AOC renewal. All I have received is a facsimile dated 16 August, 2002 stating that the decision maker, Collins, did not rely on that section of the standard form recommendation to make his decision. This had nothing to do with my complaint concerning MacAlister as you will see from my subsequent responses.

I have attached the relevant documents as Attachment E.

All of the above merely proves that the regulator, CASA, must now be required to establish a system to guarantee accountability of all CASA officers for all their actions and comments. That accountability must be expeditious, cost effective and accessible. Further, when that accountability fails there must be a system of peer review, as well as a suitable avenue of discipline for officers whose negligence places operators under increased commercial and financial disadvantage. The original Air Navigation Regulations had a procedure for review of a decision of the Director-General of Civil Aviation concerning the

refusal to grant a licence or certificate or the variation, cancellation or suspension of the licence or certificate. Regulation 259 specifically dealt with the matter being reviewed by a board of review. Regulations 260, 261, 262 and 263 dealt with the procedures involved. In fact Reg 263 (1) stated "After making its investigation, a board of review may confirm, vary or reverse the decision of the Director-General and the Director-General shall take such action as is necessary to give effect to the decision of the board". Clearly the board of review was able to overcome any impediment to natural justice. I have a copy of the old Air Navigation Regulations if the committee needs any detail.

Until CASA has a similar or better scheme it will matter little if CASA is doing the absolute best job in the world if the industry as a whole believe it to be incompetent, biased, vindictive and unaccountable.

I trust the above is of assistance to the committee.

Yours faithfully



Paul Rees

ADDITIONAL INFORMATION HELD BY THE COMMITTEE

ATTACHMENT TO SUBMISSION NO. 191

**ATTACHMENTS, APPENDICES AND PHOTOGRAPHS PROVIDED WITH
SUBMISSIONS ARE HELD IN THE COMMITTEE OFFICE**