

CIVIL AVIATION SAFETY AUTHORITY

and Polar Aviation and Clark Butson

BACKGROUND & CHRONOLOGY OF EVENTS

1. Clark Butson ['Butson'] is the Holder of an Airline Transport Pilot Licence ['ATPL'] and a Director Polar Aviation Pty Ltd ['Polar Aviation'].
2. Polar operates an aviation business based at Port Hedland, Western Australia.
3. Butson and Polar Aviation complain about the conduct of the Civil Aviation Safety Authority ['CASA'] in relation to its dealings with Butson and Polar Aviation in the period between May 2004 and June 2007.

Genesis of the problems with CASA

4. During a routine operational "audit" conducted by CASA at the premises of Polar Aviation in May 2004, Butson became involved in a heated argument with one of the CASA "audit" officers in relation to an operational matter concerning asymmetric practices (being a procedure involving flight with "one engine out" simulation) and training requirements in light multi engine aircraft, and in relation to the carriage of life jackets on certain flights.
5. The CASA officer was in error concerning the dispute with Butson, however, CASA subsequently commenced a series of unwarranted administrative actions and sanctions against both Polar Aviation and Butson, which resulted in the cancellation of the Air Operators' Certificate held by Polar Aviation, the cancellation of Butson's Chief Pilot Approval and Chief Flying Instructor Approval and the non-renewal of Butson's flight testing approvals.

Background facts and circumstances

6. Butson has been the Director of Polar Aviation since 1983. Polar Aviation has held an Air Operators Certificate ['AOC'] (or the predecessor of the AOC, the Charter and Airwork Licence) continuously for the entire 24 years of its operation. Section 27 of the *Civil Aviation Act 1988* prohibits the conduct of commercial flight operations without an AOC, which is issued by CASA.
7. Polar Aviation and Butson enjoy a long and excellent aviation safety record.
8. The commercial flight operations of Polar Aviation are conducted principally from Port Hedland and Newman in the Pilbara region of Western Australia, and consist of the carriage of passengers and freight (and until 18 January 2005 also flying training). During the Relevant Period, Polar Aviation operated 8 aircraft and employed six pilots (including myself), a Licenced

Aircraft Maintenance Engineer ['LAME'] and a third year aeroplane maintenance apprentice.

9. Prior to 18 January 2005, and after 14 September 2006, Butson was approved by CASA to be the Chief Pilot ['CP'] of Polar Aviation. Butson was also the Chief Flying Instructor ['CFI'] of Polar Aviation, and had been CFI since 1983. The *Civil Aviation Regulations* 1988 ['CAR'], the *Civil Aviation Orders* ['CAO'] and the Terms of the AOC issued by CASA mandate the appointment of a person approved by CASA to occupy the position of CP and CFI of a company which holds an AOC authorising commercial flight operations including flying training. The CAR and CAO provide the minimum experience and qualifications required before a person may apply to CASA for CP approval and CFI approval.
10. The Terms of the AOC held by Polar Aviation, which permit flying training and the conduct of charter flights in all weather conditions, required me to hold CP and CFI approvals, and to also hold a grade one flight instructor rating and a multi engine command instrument rating.
11. Until 2005 Butson was approved by CASA as an authorised test officer ['ATO'] to flight test candidates for the issue of the General Flying Progress Test ['GFPT'], private pilot licence ['PPL'] and flight tests on pilots to enable them to conduct flights at night in visual flight conditions ['NVMC'].
12. An instrument rating is valid for one year, and must be renewed annually subject to a successful re-examination and flight test. An instructor rating is valid for two years, and must be renewed biennially subject to a successful re-examination and flight test.
13. An AOC is issued by CASA for a period defined in its terms, however, no minimum or maximum period for the duration of an AOC is set down in any legislation. The duration of an AOC can range from a few months to three years. The renewal of an AOC is usually preceded by an inspection or "operational audit" of the AOC holder's operation which is conducted by CASA at a period in time sufficient to allow for the AOC to be renewed before its expiry.

Proficiency tests conducted on Butson

14. There have been many renewals of the flight instructor rating and multi engine command instrument rating held by Butson; each of which involved an extensive examination of his aeronautical and aviation legislative knowledge and practical flying ability to the standards required by CASA for the ratings.
15. Butson's CP and CFI approvals were assessed continuously in concert with the assessment of the AOC held by Polar Aviation throughout this period.

Safety and compliance record

16. Until the unfortunate argument which occurred between myself and the CASA officer in May 2004, neither Polar Aviation nor Butson were subjected to any administrative action taken by the Respondent (or its predecessors) in relation to cancellation, suspension or non-renewal of any of its licences, AOC, approvals or authorisations.
17. Indeed, Polar Aviation and Butson have a commitment to excellence in aviation safety and compliance; and they have received numerous requests for their services in respect of Search and Rescue ['SAR'] missions at an average of three to four times per year. A SAR operation depends, for its success, on good communications and co-ordination between the SAR centre and the operator, and a high level of aviation skill and experience on the part of the operator.
18. During the 24 years of Polar Aviation operating its charter and flying school business there has never been any accidents and there has been only two incidents. In the aviation industry, such is an enviable record; particularly in the harsh conditions of the Pilbara. Such a good safety record does not occur by chance but by the operator and its CP being safety conscious and by sound adherence to maintenance and airmanship.

The "operational audits" conducted by CASA

19. Prior to the incident in May 2004 referred to above, Polar Aviation underwent numerous operational audits with CASA and its predecessors without any problems.

July 2003 audit

20. The operational audit conducted by CASA on 7 July 2003 was found to be generally satisfactory, although CASA made note of some minor clerical and technical items which "required attention" and which would be identified in the course of an audit anywhere. Butson was described by CASA as having "adequate control and knowledge of day to day operations" in his capacity as CP and CFI; and CASA renewed AOC held by Polar Aviation.
21. Polar Aviation embarked on a number of innovations in January 2004, which included using the company web site as an operational hub for all manner of operational activity. Converting the Polar Aviation Operations Manual to (web based) HTML format was only one of many improvements. The then Operations Manager, Kyle Hargraves ['Hargraves'], was engaged by Polar Aviation to assist in the alignment of its flying school syllabus with the recently introduced Competency Based Training ['CBT'] requirements and to incorporate the CBT into Part E of the Polar Aviation Operations Manual.

May 2004 audit

22. In May 2004, Polar Aviation applied for a renewal of its AOC, to take effect on the expiry of its then current AOC which was due to expire in July 2004. CASA Flight Operations Inspectors ['FOI'] conducted an operational 'audit' of Polar Aviation during May 2004.
23. The audit for 2004 occurred over the period 12 - 14 May 2004. During the course of the May 2004 Audit, a CASA FOI, Mr Terry Robinson of CASA, commenced an argument with Butson on two occasions regarding a dispute concerning flights departing and arriving at Broome Aerodrome over water, and one aspect of flying training in multi engine aircraft. The arguments became quite heated, and the atmosphere between Butson and all of the CASA officers present subsequently became quite tense and with a lot of hostility directed towards myself by the CASA officers.
24. It is unfortunate that the argument occurred, which became very personal; and it is believed that the personal hostility of the officers from CASA was reflected in their Report. The CASA Report of the May 2004 opens with the observation that "the facilities at Polar Aviation are generally adequate", however, CASA refused to acknowledge the improvements and positive changes made to Polar Aviation, the details of which had occupied almost the entire "entry interview" for the May 2004 audit with the CASA FOIs.
25. It is believed that the hostility displayed towards Butson by the CASA FOIs during the May 2004 audit subsequently spread within CASA with the result that CASA took a "set" against Butson and Polar Aviation.
26. The May 2004 audit commenced with an "entry interview" between the CASA FOIs and Polar Aviation management. This interview allowed Butson to update the CASA FOIs in relation to changes, upgrades and innovations made to the Polar Aviation organisation. CASA audits conclude with an exit interview.
27. During the "entry interview", Butson emphasised the following innovations and upgrades made to Polar Aviation to the CASA auditors:
 - (a) A complete set of briefings (ground theory lessons) for the General Flying Progress Test ['GFPT'], which is, in essence, the "introductory pilot's licence", with 50% of these briefings converted to Web based (HTML) format.
 - (b) Revised procedures for rostering of pilots (as work in progress)
 - (c) The Polar Operations Manual (issued pursuant to CAR 215) converted to Web format and available to all pilots and nominated persons via a password on the Polar Web site (this upgrade allowed pilots to access the Polar Operations manual for reference as required from any remote area connected to the net)

- (d) An upgrade (as works in progress) to adopt an electronic format for internal administration (eg: in relation to flight and duty times, occupational health and safety, rostering of pilots, planning of aircraft maintenance and the like)
 - (e) The appointment of an additional employee as Operational Manager & pilot
 - (f) The recently introduced (by CASA) Competency Based Training Program ['CBT'] was being implemented into the flight training section of the Polar Operations training and was work in progress.
28. The CASA auditors acknowledged these upgrades and innovations in a favourable manner. A copy of the Polar Web page (on CD), which comprised of the Polar Operations Manual and the GFPT briefings, was given to CASA auditor Terry Robinson ['Robinson'] at the conclusion of the exit interview. The CD was presented by Hargraves to Robinson. Butson emphasised to Robinson that there was considerable work pending in relation to completion of the changes to a standard which was satisfactory to Polar and myself, but that the fundamental structure for the implemented changes was firmly in place.
29. The Report issued by CASA from the May 2004 audit possessed a very different tone to that of the CASA report issued after the July 2003 audit. In the May 2004 Report, CASA did not acknowledge any of the changes, upgrades and innovations which had occurred and which were occurring with Polar Aviation; and which occupied almost the entire "entry interview".

Subsequent to the May 2005 audit

30. Subsequent to the May 2004 "audit", CASA issued a number of Requests for Corrective Action ['RCA'], Audit Observations ['AO'] and Aircraft Survey Reports ['ASR'] in respect of perceived minor administrative and technical operational matters which, according to the CASA auditors, had to be addressed.
31. There is no legislative basis for an RCA, AO or ASR. These documents are but an internal administrative tool utilised by CASA for the purpose of bringing to the attention of an operator minor matters which should be considered and rectified if necessary. Whether or not it is "necessary" to rectify a matter raised in an RCA, AO or ASR is an objective test.
32. In June 2004, Polar Aviation reasonably responded to the RCA, AO and ASR matters raised by CASA, by electronic means.
33. On 9 July 2004 CASA subjectively objected to the responses made by Polar Aviation to the RCAs.
34. Butson subsequently contacted the Area Manager, West Area, of CASA, Terry Farquharson ['Farquharson'] in Perth regarding the objection to the responses to the RCAs, and advised him that CASA was being unreasonable.

Farquharson deferred to the objections raised by his subordinates and said that in his opinion, the RCAs remained outstanding and unrectified.

35. Polar Aviation received correspondence from the West Area of the Respondent dated 9 June 2004 which effectively said that CASA intended to close the Polar Flying School on the grounds that it was "not CBT compliant" (despite the information provided at the entry interview of the previous audit in May 2004).
36. Butson made some enquiries with CASA regarding the number of CBT compliant flying school, and found that only one other flying school in Western Australia was CBT compliant (being the Royal Aero Club WA Inc) and only 5% of flying schools Australia wide was CBT compliant. During a seminar convened by CASA in Perth in early September 2004, the CASA presenter announced that "only 5% of flying schools were compliant.
37. Butson complained to CASA about its conduct in proposing to impose the threatened administrative sanctions against the Polar Flying School. CASA then withdrew its intention to close the Polar Flying School, but it issued a number of "show cause" Notices against Butson and Polar Aviation.

The first "show cause" Notices

38. On 16 July 2004, CASA issued Notices to Polar Aviation and to Butson (3 in all) of proposed action to cancel or suspend and to refuse to re-issue Polar Aviation's AOC and to revoke Butson's Chief Pilot and Chief Flying Instructor Approvals ['the first "show cause" Notices'] subject to them showing cause why the proposed administrative action should not be taken. The basis of the first "show cause" notices was grounded primarily on an assertion that the RCAs issued by CASA after the May 2004 audit had not been responded to the satisfaction of CASA.
39. On 20 July 2004 CASA advised Polar that it would "allow the company to continue to operate..." while the "show cause" process continued. Farquharson, however, refused to grant an extension of time for Polar Aviation and Butson to further respond to the 14 RCAs which were issued by CASA following the May 2004 audit.
40. Butson engaged aviation lawyers Grundy Maitland & Co (now Maitland Lawyers), to deal with CASA..
41. On 30 July 2004 CASA extended the Polar AOC for a "further period of 2 months, expiring on 30 September 2004".
42. On 13 August 2004 CASA agreed to an extension of the time by which Butson and Polar Aviation should respond to the first "show cause" Notices to 31 August 2004.

43. On 30 August 2004, Polar Aviation and Butson comprehensively responded to the three “show cause” Notices through their legal advisers..

Response to the first “show cause” Notices

44. The letter to CASA dated 30 August 2004 included a comprehensive response to the RCAs in the format preferred by CASA.
45. CASA subsequently agreed that the minor matters raised by way of RCAs had been adequately addressed.
46. By letter dated 7 September 2004 CASA advised that it had “cleared” all but 3 of the RCAs . One of these RCAs related to the assertion by CASA that the Polar Flying School had not yet become compliant with the recently introduced CBT program.
47. The RCA concerning the CBT, which also formed a major “ground” upon which CASA issued the “show cause” notices, was issued at a time when only some 5% of flying schools in Australia had become CBT compliant; and when CASA was still conducting educational programs to flying schools as to the format of a CBT.
48. By 2 December 2004, only one RCA remained outstanding with CASA, being the RCA which related to the CBT program. The CBT program was submitted by Polar Aviation to CASA for assessment and approval, however, it remained unassessed by CASA, for almost two years !

Issue of “short term” AOC

49. On 30 September 2004 CASA confirmed the extension of the Polar AOC to 30 November 2004, and enclosed “a new AOC recording this extended term”.
50. In or about late September 2004, Butson sought to settle all differences between himself and his company and CASA.

18 October 2004 meeting

51. On 18 October 2004, at the invitation of CASA, Butson and Hargraves attended a meeting with 7 CASA officers at the Perth offices of CASA. During this meeting, some of the CASA attendees expressed ‘surprise’ at the innovations and upgraded operational procedures introduced by Polar Aviation.
52. The Chair of the meeting made very favourable comments and extended an invitation by CASA to continue to inform CASA of subsequent innovations”. At the conclusion of the meeting no items remained outstanding save for the matter of developing training materials for the CBT.

November 2004 audit

53. On 9 November 2004, a number of CASA officers attended the premises of Polar Aviation to conduct an “audit”. The purpose of this “audit” was stated to me by CASA “...to determine the progress of the implementation of operational procedures and changes to the Polar Operations Manual.”
54. In fact, the *real* purpose of this so-called “audit” by CASA was to try and find further faults in the operation and administration of Polar Aviation.
55. Far from the conciliatory attitude displayed by the officers of CASA during the 18 October 2004 meeting, the officers of the CASA audit team during the November 2004 “audit” was demonstrably hostile towards Butson and all of the employees of Polar Aviation.

Hostile attitude displayed by CASA

56. On the night before the commencement of the “audit”, and on the lawn of the pilots’ house at Newman (W.A.), CASA audit team member and FOI, Gary Presneill, took it upon himself to advise two pilots (who had been employed with Polar Aviation for only about one week) to “get some rest because you are in for a roasting from CASA”.
57. The statement made by FOI Presneill to the two pilot employees of Polar Aviation confirmed the fact that CASA had already formed a view adverse to Polar Aviation before the so-called ‘audit’ commenced.
58. The CASA officers remained for 5 days and “trawled” through all available documents and items concerned with Polar Aviation in a transparent attempt to “find anything” which could be used adversely against Polar Aviation.
59. During the November 2004 audit, a CASA audit team member said to Hargraves that “Clark Butson is an impediment to progress in the company”. Despite this unfortunate comment, Butson ensured that the Polar Aviation and its employees extended the CASA “audit” officers with every professional courtesy and assistance.

The second “show cause” Notices

60. On 25 November 2004 CASA issued supplementary “show cause” Notices to Polar Aviation and myself regarding a number of minor points said to have arisen from the November 2004 audit [‘the second “show cause” Notices’].
61. On 29 November 2004 CASA issued a further AOC which extended the term of the AOC from 29 November 2004 to 31 January 2005.
62. On 2 December 2004, only one RCA remained outstanding, being the RCA relating to the CBT.

63. On 14 December 2004 Polar Aviation comprehensively responded to the second “show cause” notices through its legal advisers.

Cancellation of the AOC, Chief Pilot and CFI Approvals

64. On 14 January 2005, *two weeks before the AOC was to expire* by effluxion of time, CASA cancelled the AOC held by Polar Aviation and the Chief Pilot [‘CP’] and Chief Flying Instructor [‘CFI’] approvals held by Butson [‘The Notices of Cancellation’]. CASA advised of the Notices of Cancellation by letter dated 18 January 2005, a copy of which was handed to their lawyer at the AAT in Perth when he was appearing in another, unrelated matter. The Notices were not faxed to me by the Respondent, but sent by post.
- (a) The covering letter from CASA stated that the Decisions relating to the CP and CFI Approvals held by Butson were not automatically stayed, and took effect immediately upon my receipt of the Notices, which meant that Butson's business was immediately shut down with no right of automatic stay upon receipt of the CASA Notices.
- (b) In their letter dated 18 January 2005, CASA acknowledged that the facts and circumstances alleged in the Cancellation Notices largely repeated the facts and circumstances alleged in the first and second “show cause” Notices of July and November 2004. This was despite the fact that by 2 December 2004 only one RCA remained outstanding, being the RCA concerning the CBT program.
65. An examination of the grounds for the decision to cancel the AOC and to cancel Butson's approvals confirmed that the decision was founded largely upon an assessment of the facts and circumstances which were set out in the first “show cause” notices dated 16 July 2004, despite the fact that all but one of the RCAs upon which the first "show cause" notices were primarily based had been “cleared” by CASA by 2 December 2004. The remaining RCA, which related to the CBT program in the Polar Flying School, was being finalised. (The finalised CBT material was forwarded to CASA on 2 March 2005 and languished thereafter in the offices of the Respondent for a considerable time, awaiting an assessment by the relevant CASA FOI.).
66. The cancellation of the AOC and of Butson's CP and CFI approvals forced the immediate cessation of the business of Polar Aviation. By law (see: section 27 *Civil Aviation Act* 1988 and CAR 206) Polar Aviation cannot operate an aviation business without a current AOC. By law (See Order 82.0 of the CAO) Polar Aviation cannot operate at all without a CP, and it cannot operate a flying school without a CFI. They suffered irreparable harm as a result.
67. The business of Polar Aviation and Butson's life’s work in developing a successful general aviation business was unnecessarily destroyed by CASA on 14 January 2005 with the issue of the said Notices of Cancellation. The income of Polar Aviation (and that of Butson) ceased on 14 January 2005, however their financial obligations continued.

First Application to the AAT: January 2005

68. On 18 January 2005 Butson and Polar Aviation filed an application in the Administrative Appeals Tribunal [‘AAT’] in Perth seeking a review of the decision of CASA made on 14 January 2005 to cancel the Polar Aviation AOC and the CP and CFI Approvals held by Butson. Polar Aviation also sought an order pursuant to section 41(2) of the *Administrative Appeals Tribunals Act 1975* [‘AAT Act’] to stay the decision to cancel the AOC, to preserve the business of Polar pending the Review .

Negotiations to restore the AOC

69. On 21 January 2005 Butson and Polar Aviation, through their lawyer John Maitland, sought an agreement from CASA to allow the Polar operation to continue pending the Review by the AAT, and an assurance that CASA would re-issue the Polar Aviation AOC upon its expiry on 31 January 2005.
70. Farquharson said that CASA would not consent to Butson continuing as CP and/or CFI of Polar Aviation pending the Review, and that before the aviation business could be restarted under the AOC, Polar Aviation would have to seek the approval by CASA of an alternative Chief Pilot to be appointed to Polar Aviation before any flight operations resumed.
71. CASA said that it would not negotiate any deal to restart the Polar aviation business if Butson occupied the position of Chief Pilot or any managerial role in his own company. CASA had timed the Notices of Cancellation to take effect so close to the expiry of the Polar AOC by effluxion of time that Butson was left with no real option but to accede to the CASA demands if Polar Aviation was to be given any chance of having its AOC renewed by CASA by the expiry date of 31 January 2005.
72. In an effort to preserve his business, Butson commenced an immediate search to locate an appropriately qualified person to submit to CASA for approval to occupy the position of CP, to enable the Polar Aviation business to resume under the AOC. This was a very difficult task due to the location and nature of the business and the lack of suitably qualified pilots willing and able to work in the outback of the Pilbara, at such short notice.
- (a) CASA said it would consider re-issuing an AOC to Polar Aviation if Butson “stepped back” from his business and appointed an alternative CP to occupy his position.
- (b) CASA also indicated that an FOI would be made available at short notice to assess any proposed alternative CP.
- (c) I arranged for Matt Coram to be assessed by CASA and appointed as CP.

Conditional offer by CASA to renew the AOC

73. On 31 January 2005, which was the day of the expiry of the AOC, Farquharson advised Butson and Polar Aviation (by letter addressed to his lawyers) that following the acceptance by CASA of Coram as CP, that he would be prepared to recommend to the Delegate that CASA issue an AOC for 3 years from 31 January 2005 if:
- (a) Polar Aviation entered into an enforceable “voluntary” undertaking [‘EVU’] with CASA pursuant to section 30DK of the *Civil Aviation Act* on terms as were dictated by CASA, and
 - (b) On the additional condition that both Polar Aviation and Butson agreed to waive their rights to appeal to the AAT for a Review of the CASA Decision made on 14 January 2005 to cancel the AOC and the CP and CFI Approvals.
74. It was the practice of CASA at the time to post the details of any company subject to an EVU on the CASA Web-site under the title of "*Hot Topics*", whereby CASA would editorialise the justification for the EVU in quite disparaging terms. These editorialised comments posted by CASA would put only one side of the story, and would not publish any countervailing factors. Butson feared that if Polar entered into the EVU as proposed by CASA that it would be unnecessarily vilified to the detriment of his business.
75. Butson and Polar Aviation also wanted to continue to exercise their rights to seek a Review before the AAT.
76. The conditions dictated by CASA for Polar Aviation to enter into the EVU were intolerable, and Polar Aviation declined to enter into the EVU, however, as a compromise, Polar Aviation proposed a set of practical and realistic undertakings in lieu of the terms proposed by CASA. CASA refused.
77. CASA was quite happy to issue a three year AOC to Polar Aviation if Butson and his company withdrew their applications to the AAT and signed an EVU on the terms proposed by CASA, but CASA refused to renew the AOC if the Butson and Polar Aviation did not accede to the unreasonable demands made by CASA.
78. Butson was outraged at the conduct of CASA in cancelling the AOC and his Approvals and shutting down my business, and he was not prepared to be bullied into giving up his rights or those of Polar Aviation to make the appropriate Application to the AAT for a Review of the CASA Decisions.
79. CASA refused to re-issue an AOC to Polar to enable it to continue to operate its business after 31 January 2005.
- (a) On 4 February 2005, CASA issued a “Notice of Proposed Refusal to Issue an AOC” which alleged a number of things about Butson personally which were both offensive and untrue as “grounds” for the issue of the Notice.

- (b) The “Notice of Proposed Refusal to Issue an AOC” issued by CASA on 4 February 2005 flew in the face of the negotiations and agreements reached with CASA, and the offer of the 3 year AOC which was made by CASA to Polar Aviation only three days earlier!
 - (c) The “Notice of Proposed Refusal to issue an AOC” was of itself a “nonsense” for the reason that CASA had already refused to renew the AOC of Polar Aviation at its expiry on 31 January 2005.
80. Butson formed a reasonable belief that CASA refused to re-issue the AOC to Polar not out of any genuine concern regarding its flight operations, but for the vindictive purpose of "punishing" Butson and Polar to "teach them a lesson".

Second Application to the AAT: February 2005

81. On 4 February 2005 Polar Aviation made a second Application to the AAT for review based upon a claim that as at 31 January 2005 it had a reasonable expectation that CASA would renew the AOC but that CASA had made a Decision to refuse to re-issue the AOC.
- (a) The AAT issued different case numbers to reflect an Application relating to each Decision under review, but linked the applications for review as follows:
 - (b)

Application No.	W2005/24:	Cancellation of AOC
	W2005/25:	Cancellation of CP
	W2005/26:	Cancellation of CFI
	W2005/52:	Refusal to Renew AOC
82. CASA initially denied to the AAT that it had actually refused to re-issue the Polar AOC. It was believed that the denial by CASA was made to frustrate the Second Application to the Tribunal on the basis that there was no "real decision" to refuse the re-issue the AOC. CASA eventually conceded that it had in fact made a Decision to refuse to re-issue the AOC.

CASA-approved operations under alternate AOC

83. In order to mitigate losses and to preserve, as much as possible, the business of Polar Aviation including its goodwill; on 4 February 2005 Butson obtained approval from the West Area of CASA pursuant to paragraph 3 of CAO 82.0 to enter into a short term commercial agreement with another Pilbara Operator, King Leopold Air Pty Ltd [‘KLA’], whereby KLA conducted some commercial flights sourced by Polar Aviation.
84. In addition to the CASA approved commercial agreement with KLA, and in order to avoid, as much as possible, the hardship and inconvenience suffered by the regular customers of Polar Aviation who depend upon air services to travel in the outback of the Pilbara region resulting from the cancellation of the Polar Aviation AOC; Butson also carried some of his former customers to

and from destinations pursuant to CAR 2(7) as private flights where he received no remuneration.

Stay Application 11 February 2005

85. On 11 February 2005 the Application for a stay was heard by the AAT in Perth by way of a telephone hearing. CASA vigorously opposed the application. Butson was outraged to hear CASA make unsubstantiated and untrue allegations that he had conducted a charter flight illegally while the Polar AOC had been cancelled. Butson was further outraged to hear CASA seek to support this untrue and scurrilous allegation with an affidavit sworn by a CASA legal officer, Mr. Adam Anastasi [‘Anastasi’], in which he misrepresented the facts concerning one particular flight. Despite being made aware of the true facts surrounding the alleged flight, Anastasi refused to withdraw the untrue allegations contained in his affidavit.
- (a) Anastasi deposed in paragraph 10 of his Affidavit sworn on 9 February 2005 and filed with the AAT in proceeding Nos. W2005/24,25,26,52 that:
- “The respondent has received a report that the applicant conducted a charter flight on 4 February 2005 for the Shire of East Pilbara Council. At this time the applicant did not hold an AOC. Annexed and marked with the letter “D” is a copy of a file note of a conversation with Alan Cochrane, the President of the Shire of East Pilbara on 7 February 2005 and an email from Alan Cochrane to Mr Farquharson of the respondent dated 8 February 2005.”*
- (b) Annexure “D” to the Affidavit sworn by Adam Anastasi on 9 February 2005 [‘the Anastasi Affidavit’] contains two documents:
- (i) The first document is a file note of Farquharson dated 7 February 2005. Paragraph 3 of this file note refers to a statement by Mr Cochrane that “Mr Butson advised the CEO that...he would be Able to provide a private service...”
- (ii) The second document is a copy of an email from Mr Cochrane To Farquharson dated 8 February 2005. The fourth paragraph of this email refers to a telephone call from Butson to the CEO of the Pilbara Shire Council concerning the flight conducted on 4 February 2005. Mr Cochrane confirms that Butson had advised the CEO that the flight” would simply be done as a private hire”.
86. The conduct of CASA in cancelling the Polar Aviation AOC just prior to its expiry by effluxion of time, and the and subsequent refusal by CASA to renew the AOC on the date of expiry was clearly designed to deprive Polar Aviation of the benefit of the stay afforded by operation of section 31A of the *Civil Aviation Act 1988*.
87. On 11 February 2005 the AAT made an order pursuant to s41(2) of the *Administrative Appeals Tribunal Act 1975* [‘AAT Act’] that the decision to

cancel the Polar Aviation AOC be stayed and that the AOC be extended until the decision of the Tribunal on the ultimate hearing of the Application for Review. In his reasons, Deputy President Hotop said that he had "no doubt that on the merits of the matter" the Tribunal should make such an order. The Tribunal found that there were "no overriding public safety considerations in this case". The Tribunal further determined that:

"Unless an order is made, the effect of which will be to continue the applicant's AOC in operation, the applicant will suffer commercial hardship – indeed it may even amount to the destruction of its business..."

88. CASA was very unhappy with the decision of the Tribunal which preserved the Polar Aviation AOC and which allowed the Applicants to continue their business. CASA was determined to shut down the Polar Aviation business, despite Farquharson earlier saying that CASA was prepared to grant a 3 year AOC to Polar Aviation (on the onerous conditions stated above and which were unrelated to flight or safety issues) only some 11 days earlier.

Federal Court proceeding [2005] FCA 1023

89. On 4 April 2005 CASA made an application to the Federal court of Australia in Perth seeking a judicial review of the decision by the Deputy President of the AAT staying CASA's decision to cancel the Polar Aviation AOC.
90. The Application was heard on 28 June 2005. In essence, CASA argued that there was no jurisdiction for the AAT to make an order extending the term of the Polar Aviation AOC, which had expired on 31 January 2005 and which had not been renewed by CASA.
91. Senior Counsel for CASA raised a number of technical points in support of the CASA application to have the stay set aside, and submitted to the Federal Court, among other things, that:
 - (a) There was no power in the AAT to make an order staying the cancellation decision and extending the AOC under section 41(2) of the *Administrative Appeals Tribunals Act 1975* ['AATAct'] because that power can only be exercised in support of an application for review where at the hearing of that application, the Tribunal can make a decision which can have a practical effect. Accordingly, by the time the application for an order under section 41(2) of the AATAct was heard, the AOC had already expired by effluxion of time with the consequence that any order at the hearing reversing the decision of 14 January 2005 was, for all intents and purposes a non operative decision by that time;
 - (b) There was no scope under section 41(2) of the AATAct to make an order extending the term of an already expired AOC as that was not an order affecting the operation or implementation of the cancellation of 14 January 2005, but rather an order affecting the operation of a much earlier decision,

namely, the decision fixing the term of the AOC to expire on 31 January 2005, which was not a decision the subject of any application to the Tribunal;

- (c) In any event, section 41(2) of the AATAct did not permit the AAT to make an order that was positive in effect;
 - (d) By extending the AOC until the hearing of the Application for Review, the Tribunal had in effect granted an AOC without any regard to section 28 of the *Civil Aviation Act* which sets out the requirements for the grant of an AOC.
92. The Federal Court rejected the submissions made by CASA and dismissed the application by CASA, with costs.
93. In his reasons for judgment published on 27 July 2005, His Honour Justice Sipois held that:
- (a) There is authority to the effect that section 41(2) of the AATAct must be given broad interpretation;
 - (b) There is nothing in the language of the section that precludes the Tribunal from making an order in positive terms;
 - (c) The argument advanced by Senior Counsel for CASA would substantially undermine the Tribunal's capacity to provide effective relief in cases where the operation of the impugned decision would result in the applicant for review having to cease carrying on an existing business pending the hearing of an application for review;
 - (d) The purpose of the AATAct is to afford a review applicant an effective means of obtaining a merits review of an administrative decision; and
 - (e) The effect of the decision that CASA made on 14 January 2005 was not only to cancel the AOC but also to refuse the application made by Polar Aviation in May 2004 for the issue of a long term replacement AOC.
 - (f) His Honour also made note that in the unsuccessful negotiations which subsequently took place, CASA offered Polar Aviation an AOC for 3 years.
94. The amount of costs actually paid by CASA fell way short of the actual costs incurred by Polar Aviation in defending its rights.

AAT hearing 5 August 2005: Perth

95. On 5 August 2005 the AAT in Perth heard the Applications for Review.
96. In the course of the hearing, CASA raised various conceptual models relating to safety management and alleged that Butson and Polar Aviation were deficient in respect of their management and operational procedures when compared to the conceptual models adopted by CASA.

97. During cross examination in the AAT hearing, and after having earlier asserted that CASA applied the conceptual models relating to safety management to identify operators who were, in effect, "dangerous to the industry",. CASA area manager, West Area, Farquharson was asked to explain the principles underlying the conceptual models relating to safety management adopted by CASA. Farquharson could not do so.
98. Despite his severe criticism of Butson and Polar Aviation, Farquharson was unable to identify to the Tribunal even one principle of the conceptual model relating to safety management which was relied upon by CASA in imposing the crippling administrative sanctions on Butson and Polar Aviation.
99. The Tribunal was cognisant that the hearing would be lengthy and protracted.
100. On 8 August 2005, and *before* all of the evidence in relation to the issue of the cancellation of Butson's Chief Pilot approval had been heard, Senior Member Allen, whilst critical of CASA's attitude and approach, was minded to have the matter expeditiously disposed of by way of agreement between the parties. The Tribunal had already indicated to both the Applicants and to CASA that the AOC was not going to be cancelled.
101. The Senior Member was also mindful of the fact that Polar Aviation had in place a new Chief Pilot (Matt Coram) approved by CASA, to replace Butson.
102. On 8 August 2005 the AAT determined that the AOC of Polar and the Chief Flying Instructor approval of Butson should not be cancelled, and directed that CASA issue an AOC with flying school approval by 2 September 2005. The Tribunal did not direct that Butson's CP approval should not be cancelled.
103. CASA had agreed that there would be no "unusual" features or conditions imposed on the AOC which the Tribunal had directed be re-issued to Polar.
104. The AAT directed that CASA "...will, in good faith, do all things necessary..." in causing an AOC to be issued to Polar Aviation which covered charter and aerial work operations including flying training.

Issue of AOC with conditions: 2 September 2005

105. On 2 September 2005 CASA issued an AOC to Polar for the duration of 1 year only. The AOC contained numerous onerous conditions which had not been agreed to by the Applicants or their Counsel during the negotiations with CASA at the AAT hearing held 5-8 August 2005.
106. The onerous conditions imposed by CASA on the AOC went against the spirit and intent of the agreement discussed at the Tribunal, and, despite the Order of the Tribunal made on 8 August 2005, did not allow Polar Aviation to conduct any flying training at all despite Butson retaining his CFI Approval.
107. The conditions imposed by CASA on the AOC included, among other things, strict Reporting conditions to CASA concerning all flight and duty operations

and a condition that Butson was not to occupy the position of Chief Pilot or any management position in his own company, Polar Aviation.

108. Rather than use its "best endeavours" in the spirit and intent of the agreement discussed at the Tribunal on 8 August 2005, CASA went out of its way to impose conditions which would prevent the Polar flying school from operating, and which would increase the burden on Butson and Polar Aviation

Conduct of CASA post the issue of the AOC on 2 September 2005

109. Butson and Polar Aviation objected to the conditions imposed by CASA on the Polar Aviation AOC.
- (a) On 5 September 2005 a letter of complaint was sent to CASA requesting it remove the prohibition concerning flying training and Conditions 3 and 4 from the AOC.
- (b) By facsimile dated 8 September 2005 CASA refused to remove any of the conditions placed on the AOC.
110. In order to preserve his company and its employees to the maximum extent possible in the circumstances, and in order to prevent, as much as possible, any allegation from CASA that he might be meddling in the affairs of his company in breach of the terms imposed by CASA on the AOC, Butson moved away from Port Hedland and relocated to Perth to allow Polar Aviation to operate under the directions of the new Chief Pilot and of Hargraves, the operations manager.
111. Butson kept in direct communications with Hargraves and the Chief Pilot, however, in keeping with the onerous conditions imposed on the Polar AOC, he did not attempt to have any input into the company operations contrary to the conditions imposed on the AOC.

Open hostility displayed by CASA towards Applicants

112. Despite Butson's departure from Polar Aviation and moving to Perth, CASA continued with a campaign of overbearing and officious targeting of the staff of Polar Aviation.
113. The conduct of CASA against Polar Aviation was intimidating. In particular:
- (a) CASA adopted a pedantic and overly officious approach to compliance on the part of Polar Aviation with the onerous Reporting conditions imposed on the AOC, despite the problems involved resulting from the logistics of providing all of the detail to CASA within the times demanded, when much of such information had to come from pilots who were far out on flights in the outback of the Pilbara and unable to return to base within time.

(b) On 7 October 2005, CASA FOI Pressneill sent an email to the CP of Polar Aviation which alleged that the Reports required to be sent by Polar Aviation to fulfil the conditions on its AOC were “overlooking a number of details required”. The “details required” were Pressneill’s own view of what details he suggested should be included in the Reports. The “details “demanded by Pressneill in his email dated 7 October 2007 were pedantic and very onerous. These “details” did not appear in the Conditions imposed on the AOC. Pressneill further imposed very short times by which responses to further RCAs issued by CASA should be made by Polar Aviation.

(c) On 14 October 2005, CASA wrote to the CP of Polar Aviation, Brad Manning [‘Manning’] and alleged that “Polar Aviation Pty Ltd has not complied with the reporting conditions on Polar’s Air Operation [sic] Certificate (AOC), and has not responded adequately to various Requests for Corrective Action (RCAs)” . Pressneill acknowledged that Manning had taken over as CP of Polar Aviation only 17 days beforehand, however, he stated (in paras 2 & 3):

“In my email of 7 October, you were alerted in detail to the deficiencies in the reports you had submitted. These deficiencies meant the reports were insufficient to satisfy the AOC conditions. This means Polar is in breach of the conditions. The deficiencies in the report should be corrected, and the correct version re-submitting [sic] as soon as possible, but no later than Monday 17 October 2005.

However, whilst an AOC condition is not complied with, section 28BA(2A) of the Civil Aviation Act provides that “The AOC does not authorise any flights while the breach continues”. This means where a reporting condition is not complied with, until it is, any flight conducted by Polar will not be authorised by the AOC, and therefore is not lawful”

(d) In his letter dated 14 October 2005 (at paragraph 8), Pressneill acknowledged the telephone discussion that Butson had had with him concerning the unreasonableness of the onerous demands made by CASA relating to the Reporting Conditions and the short times imposed for responses to RCAs, however, he was arrogant and dismissive of the administrative burdens imposed on Polar Aviation in attempting to comply with his unreasonable demands, stating words to the effect that a “lack of available personnel to complete the task required was no excuse”. Pressneill stated (at [paragraph 10) to the CP:

“Therefore, if you find yourself unable to avoid flying duties – at times when your priorities should be directed to your Chief Pilot responsibilities – then you may have to raise the issue of “adequate staff numbers” with the AOC Holder.”

(e) Butson was constantly advised by the Chief Pilot and Hargraves that all of the employees feared for their licences as a result of the attitude of CASA.

- (f) Indeed, on 1 March 2006 the Polar Aviation Chief Pilot, Pilot Brad Manning had finally had enough of the bullying from CASA, and he sent a letter of resignation to Polar Aviation in which he stated, *among other things*, that:
- “...over the past 5 months I have feared for my licence and career on a daily basis due to what I felt was unnecessary pressure from CASA, from almost day 1.”*
- (g) Butson was distressed at the letter dated 14 October 2005 in which CASA claimed that the operations of Polar Aviation under the AOC were illegal if the Reporting conditions imposed by CASA were not strictly adhered to. CASA had subjectively imposed pedantic and bureaucratic sub-conditions onto the Reporting Conditions imposed on the AOC, and then CASA subsequently asserted that Polar Aviation had not complied with these Reporting conditions and that all flights conducted by Polar Aviation were unlawful and would remain so until the Reporting condition was complied with by Polar Aviation.
- (h) On 25 October 2005 an objection was sent to CASA to the unnecessary and unduly onerous Conditions imposed on the AOC. The letter explained the logistical difficulties in Polar Aviation complying with the onerous reporting conditions within the unreasonably short times demanded by CASA. The letter to CASA also raised concerns that CASA's officers had behaved unreasonably and with an apparent bias towards the Applicants, which was evident from the open hostility and aggression displayed by FOI Pressneill towards Polar Aviation. Butson's lawyer suggested to CASA that due to the unacceptable degree of animosity displayed by the West Area office of CASA, that there should be a change of location of the office of CASA assigned to the surveillance of Polar Aviation to the adjacent Kimberley and Northern District of CASA.
- (i) By facsimile dated 27 October 2005 CASA refused to remove the onerous Conditions on the AOC, refused to change the identity of the CASA inspectors or field office concerned with the surveillance of Polar Aviation, and denied that it was engaging in a petty and bureaucratic bullying campaign against Polar Aviation. In the same facsimile, however, the office of legal counsel for CASA asserted that:
- “If a reporting condition imposed on an AOC under section 28BB is not complied with, the clear and unmistakable effect of this will be that the AOC no longer authorises any flight or operation while the breach continues.”*
- (j) On 4 November 2005, CASA manager Farquharson wrote to Manning as CP of Polar Aviation and alleged, among other things:

That the reports made by Polar Aviation “were inadequate”

That Polar Aviation was in breach of its AOC conditions as a result

That “it is no excuse to assert that there are logistical difficulties in providing

The information and documents to CASA"

That CASA legal counsel had advised that "if a reporting condition imposed on an AOC under section 28BA(2A) is not complied with, the clear and unmistakable effect of this will be that the AOC no longer authorises any flight while the breach continues

That the reports sent in to CASA by Polar Aviation did not comply precisely with the exacting and pedantic requirements demanded by CASA to the satisfaction of Farquharson

That Polar Aviation was placed "on Notice that, while these breaches continue, any flight purported to be conducted under the company's AOC will be unlawful, as the AOC does not now authorise any such flights"

That "if Polar Aviation Pty Ltd conducts further flights before full compliance with the AOC conditions, CASA will take action against the AOC and/or your Chief Pilot approval and will also refer these matters to the Commonwealth Director of Public Prosecutions"

This letter was copied to a number of senior persons in CASA.

- (k) The three letters sent by CASA to Polar Aviation and its agents on 14 October 2007, 27 October 2005 and on 4 November 2005 referred to and exhibited to my Affidavit significantly misstated the law, and made unsustainable threats of serious criminal consequences if flying operations at Polar did not cease. The authors of the letters were Mr Presneill, a CASA FOI, Mr Anastasi, a legal practitioner of the Office of Legal Counsel of CASA and Mr Farquharson, Manager, General Aviation Field Office of CASA in Perth. These letter were copied by CASA to other senior persons in CASA.
- (l) These letters were clearly intended to intimidate Polar Aviation and to induce the Chief Pilot of my company to cease all flight operations immediately.
- (m). The serious errors contained in the letters from CASA which were not sustainable at law were pointed out to CASA by Grundy Maitland & Co by letter dated 10 November 2005, however, no explanation of any sort has been proffered by any person, nor has any apology or a retraction been forthcoming in relation to these letters.

Third Application to the AAT: November 2005

- 114. On 7 November 2005, and as a result of the conduct of CASA, Butson and Polar Aviation made an application to the AAT for the matter to be brought back before the Tribunal constituted by the same Senior Member which constituted the AAT on 5 August 2005.

115. The application was brought before Senior Member Allen in Sydney on 9 December 2005. After considering the facts and circumstances of the matter, the Tribunal ordered that CASA and Polar attend a Conciliation Conference on 16 December 2005 in Melbourne before Member Fice.

Oppressive Requests for Corrective Action ['RCA'] relating to maintenance

116. On 7 December 2004, Polar Aviation received an extraordinary RCA issued by the Respondent, RCA No. 309455, which required Polar Aviation to ensure to the satisfaction of the Respondent that each and every aircraft directive ['AD'] and each and every aircraft manufacturer's Service Bulletin has been applied to each and every aircraft in the whole fleet of 8 aircraft operated by Polar Aviation from the date of manufacture of these aircraft, and notwithstanding:
- (i) any previous ownership of the aircraft prior to Polar Aviation, or
 - (ii) when Polar Aviation may have purchased these aircraft, or
 - (iii) any maintenance releases which have been issued in respect of each of these aircraft by licenced aircraft maintenance engineers ['LAME'] over the many years since the aircraft were first registered in Australia, and notwithstanding that none of these LAMEs are or were known to Polar Aviation.
117. To Butson's knowledge and after conducting reasonable enquiries, an RCA of this type and extent has not been issued to any other general aviation operator.
118. The compliance of this RCA which has not been imposed on other operators, and which was issued by CASA under the cloak of "safety compliance, cost Polar Aviation many tens of thousands of dollars.

AAT Conciliation Conference 16 December 2005: Melbourne

119. At the AAT Conciliation Conference in Melbourne on 16 December 2005, the officers from CASA, which included Farquharson, refused to speak with Butson directly.
120. Butson and Polar Aviation made a realistic offer to CASA in a *bona fide* attempt to settle the impasse, however, CASA remained recalcitrant and refused to move from its position with respect to the onerous and unwarranted conditions imposed on the Polar Aviation AOC, and the matter did not settle.
121. Member Fice set the application down for a hearing in Sydney before a Tribunal constituted by the same Senior Member which constituted the AAT on 5 August 2005.

February 2006 audit

122. On 20 February 2006, CASA conducted yet another “audit” of Polar Aviation.
123. CASA stated to Polar Aviation that “the purpose of this ‘audit’ was for the renewal of the Polar Aviation AOC”, which was due to expire on 30 September 2006. In reality, the "audit" was an information-gathering exercise for the use by CASA at the forthcoming further AAT hearing.
124. It had been pointed out to CASA by Polar Aviation prior to 20 February 2006 that the Chief Pilot had taken leave from 6 February 2006 and that he would not be back at the Port Hedland office of Polar Aviation until after 20 February 2006. CASA refused Polar Aviation’s request to adjourn the ‘audit’ to a date when the Chief Pilot had returned from leave.
125. At the conclusion of the audit, and during the “exit” interview with the CASA FOIs, Hargraves asked the CASA audit team to what purpose the accrued information gathered by CASA during the ‘audit’ might be put. The response by the CASA audit team was to the effect:

“We (CASA) are mainly looking at how you (Polar) have corrected the processes which caused RCAs to be issued at the last audit, and we have also checked your reports (as conditions on the AOC) against actual data; and we have found the reports that you have sent to be accurate.”
126. The CASA audit team did not disclose any matters adverse to Polar Aviation during the "exit" interview other than minor clerical matters.
127. The ‘audit’ conducted on 20-21 February 2006 was the fifth intensive audit conducted on Polar Aviation since July 2003. The other ‘audits’ were conducted in July 2003, May 2004, November 2004 and June 2005.
128. The true and substantive intent of the so-called ‘audit’ by CASA in February 2006 was revealed during the AAT hearing in March 2006, when CASA produced and used the material gleaned from the February 2006 ‘audit’ by the CASA audit team, who had “trawled” through the operational records of Polar Aviation, seeking to find as many faults as possible, no matter how small, which could be used adversely as evidence against Butson and Polar Aviation in the March 2006 hearing in the AAT.

AAT hearing 9 March 2006: Sydney

129. The Application was heard by Senior Member Allen on 9 March 2006. CASA sought to adduce material which had been obtained during the so-called “audit” conducted on 20 – 21 February 2006 in an adverse manner against Butson and Polar Aviation. CASA again raised spurious further allegations.
130. On 24 March 2006 the Tribunal determined in favour of Butson and Polar Aviation and directed that the conditions on the AOC be relaxed and amended,

ironically, to reflect the same conditions as had been proposed by Butson and Polar Aviation at the AAT Conciliation Conference held on 16 December 2005. CASA again proved to be most difficult in relation to these orders:

- (a) On 30 March 2006, and in order to give efficacy to the Orders made by the Tribunal on 24 March 2006, CASA was requested to exercise its discretion pursuant to paragraph 4.3 of CAO 82.0 to allow the flying school at Polar Aviation to operate with Butson as CFI.
- (b) Notwithstanding the Directions of the AAT that CASA was to allow the resumption of the flying school of Polar Aviation, CASA did not comply with the request. Instead, on 4 April 2006 CASA advised that Butson should "*make a submission*" to Farquharson by 14 April 2006, and that CASA will make a decision thereafter.

The third "show cause" Notice

- 131. In a clear display of dissatisfaction with the AAT processes, on 20 March 2006, CASA issued a further Notice of Proposed Action to vary, suspend or cancel Air Operator's Certificate W073061-12 held by Polar Aviation ['the Third "show cause" Notice']. A Notice of Proposed Action to Suspend or Cancel Approval of Appointment of Brad Manning as Chief Pilot of Polar Aviation was also issued by CASA on 20 March 2006, the details of which were in virtually identical terms as were set out in the Third "show cause" Notice issued against Polar Aviation's AOC. The Notices attempted to dress up the "findings" of the February 2006 'audit' as new matters and as matters of 'consequence and seriousness' such as warranted the closure of operations of Polar Aviation, when such characterisation was not supportable on any reasonable and informed view.
- 132. The grounds relied upon by CASA in the third "show cause" Notice for the threat of suspension or cancellation of the AOC were essentially the same as those relied upon in the AOC cancellation of January 2005.
- 133. CASA was well aware that in respect of the January 2005 cancellation of the AOC, that CASA was prepared to grant a 3 year AOC if an EVU was entered and other AAT proceedings withdrawn, and that in any event the AAT decided, in August 2005, on the basis of the same facts as were subsequently set out in the third "show cause" notice, that the AOC held by Polar Aviation should not be cancelled but that it should be reissued.
- 134. Further, CASA relied on matters of such antiquity (some matters were over 13 years old !) that they could not possibly bear any relevance to events in 2006.

The fourth "show cause" Notice

- 135. On 6 April 2006, CASA issued a further supplementary "show cause" Notice ['the fourth "show cause" notice'] signed by Farquharson which further

attempted to dress up findings against the Applicants, and which stated, among other things:

“So serious is my concern now in relation to Polar Aviation's safety performance that, in respect of this and the 20 March 2006 Notice, I am allowing you until the close of business on 13 April 2006 to provide me in writing reasons why, on the basis of facts and circumstances set out above and in the 20 March 2006 Show Cause Notice, why I should not recommend to a delegate of CASA that he or she cancel, suspend or vary the Air Operator's Certificate”.

136. The fourth "show cause" Notice contained allegations against Polar Aviation which were replete with hyperbole and bias, untrue statements and a pedantic reliance by CASA upon minor clerical errors and other minutiae to support the issue of the notice. CASA total disregarded the performance of Polar Aviation and its officers in the total context of their operations.
 - (a) The grounds for the threatened cancellation of the AOC relied upon by CASA in the third and fourth "show cause" Notices were not supportable on any reasonable and informed view.
 - (b) A further supplementary “show cause” Notice was also issued against the Chief Pilot Approval of Brad Manning in virtually identical terms.

Strong rebuttal of CASA's conduct by Applicants

137. On 12 April 2006 Butson and Polar Aviation comprehensively responded to CASA to the third and fourth "show cause" Notices through their lawyers which was forceful but fair and accurate, and pressed home to CASA a number of points, which included:

There is no proper basis to shut down Polar Aviation

The AAT has recently decided that Polar Aviation should continue to operate

Criminal contempt of the AAT by CASA in its actions

The conduct of CASA amounted to an abuse of process

The consequences of CASA's abuse of process

A demand that CASA stop its nonsense

Formal response to the Third and Fourth “show cause” Notices

The fifth Notice issued by CASA

138. On 13 June 2006, CASA issued a Notice of Proposed Action [the fifth Notice] to Polar Aviation and Butson, which was 15 pages long and which

generally went over very old ground and in which CASA avoided accepting the matters raised by the Applicants in their Response to CASA dated 11 April 2006.

139. In an extraordinary reaction to the Response to the third and fourth “show cause” notices, CASA gave a further Notice of proposed administrative action in the form of what it termed a “*Deferred Decision*”.
140. CASA asserted that :

"not only do the conditions noted in the Show Cause Notices prevail, but due to its lack of safety culture and systems, Polar Aviation has so far been unable to rectify these problems and as a result, at least until early 2006, continued to conduct operations that are not compliant with the Civil Aviation Act, the Regulations and the Orders...."

DEFERRED DECISION

...I consider that up until the time the company appointed its current chief pilot there are grounds to cancel Polar Aviation's AOC..... As a result of (the appointment of a new Chief Pilot, Davyd Skeen) I intend to defer making a decision on the show cause notices until Polar Aviation has had time to demonstrate whether under its new operational management it is able to correct the deficiencies that have been noted".

August 2006 audit

141. On 1 August 2006 a further audit, classified by CASA as a "special audit" was conducted on Polar Aviation over two days by CASA officers other than from the West Area office. A proposal for the involvement of an office other than the West Area office had been put forward by Polar Aviation and its legal representatives at least 12 months prior. The results of the audit were satisfactory to CASA, albeit some RCAs were issued in respect of some minor matters as a result of the audit. The RCAs were responded to on 12 September 2006.
142. It is significant that the attitude displayed by CASA and the approach displayed by its officers during this last audit was significantly more positive and constructive than the previous dealings experienced with the West Area office of CASA.

Issue of 3 year AOC: No special conditions September 2006

143. The threatened administrative sanctions by CASA did not occur.
144. On 14 September 2006 CASA Service Centre Officer Andrew Cole ['Cole'] advised Butson and Polar Aviation that:

"The AOC has been recommended for the 3 year period and without the conditions regarding the reporting requirements and Chief Pilot condition. The only condition that will remain on the AOC in Schedule 4 are standard conditions relating to Special Design Features (appears on every AOC that is issued) and Flying Training (appears on Flying Training AOCs only)."

145. On 14 September 2006 CASA issued an AOC to Polar for a 3 year period and without any specific conditions attached other than those identified by Cole.

Return of Chief Pilot Approval to Clark Butson

146. At the expiration of 12 months from the date of the August 2005 AAT hearing, Butson attended a short CASA seminar regarding Chief Pilots, and made an application to the Respondent for the return of his CP Approval.
147. On 5 October 2006 CASA advised Butson that he had successfully completed the Chief Pilot assessment process. CASA did not conduct a flight test on Butson in the course of making the CP assessment.

Flight testing approvals ['ATO']

148. Butson's own flight testing (Authorised Test Officer ['ATO'] approvals), which he held without incident for over 20 years, were not renewed until very recently by CASA, which determined unilaterally that Butson did not need them, despite the remoteness of the location of his business at Port Hedland.
149. Contrary to the subjective opinion of CASA, the remote location of Port Hedland is such that Butson does need ATO approvals. Without the ability to conduct flight testing, Polar Aviation training customers simply go elsewhere. There is no ATO based north of Perth in Western Australia.
150. On 11 May 2006 I Butson requested CASA review the Decision to refuse to renew Butson's ATO approvals. The letter also requested CASA provide a full and detailed statement setting out the questions of fact relied upon by CASA in making the Decision. No response was ever received from CASA to this correspondence.
151. The conduct of CASA has destroyed Polar Aviation's flying school. The refusal of CASA to renew Butson's ATO approvals exacerbated this problem.

The sixth CASA Notice

152. On 5 October CASA issued a Decision Notice to the Applicants regarding the Polar Aviation AOC ['the sixth Notice'] which stated that this Notice

"will conclude the administrative action commenced on 20 March 2006", and wherein the author asserted that:

"...Mr Skeen appears to have put in place suitable systems and has apparently supervised the company's flying operations to an acceptable standard. "

153. Although Davyd Skeen is a competent Chief Pilot, nothing was implemented that was not in place or planned to be in place when either Butson, Matt Coram or Brad Manning were Chief Pilots of Polar. The improvements to the operation of Polar were made clear to CASA during the audit of May 2004 and reiterated during the formal meeting between Butson and CASA on 18 October 2004.

The conduct of CASA

154. The conduct of CASA since May 2004 has caused Butson to form the belief that:
- (a) CASA formed an adverse view against Butson and Polar Aviation arising from the incident which occurred during the May 2004 audit,
 - (b) In an escalation of commitment on the part of the Respondent, CASA expanded the hostilities against the Applicants and imposed unwarranted further administrative sanctions and burdens,
 - (c) In January 2005, CASA wrongfully and maliciously cancelled the AOC held by Polar Aviation and the CP and CFI approvals held by Butson for the purpose of shutting the Polar Aviation business down and in the knowledge that the cancellation of the AOC and the CP and CFI approvals would cause Butson and Polar Aviation substantial and irreparable financial harm,
 - (d) Shortly after the AOC was cancelled on 14 January 2005, Farquharson was prepared to approve an AOC for the normal 3 year period, on the conditions that an enforceable voluntary undertaking ['EVU'] be provided and other AAT proceedings against CASA be withdrawn,
 - (e) In a further attempt to destroy Polar Aviations' business, CASA timed the cancellation notices to prevent the Applicants from obtaining the benefit of the stay provisions of section 31A of the Civil Aviation Act, and vigorously opposed the Applicants' stay application with the support of an affidavit which contained allegations which CASA knew were false,
 - (f) In a further attempt to keep the Polar Aviation business closed CASA made Application to the Federal Court of Australia seeking orders that the stay granted by the AAT be set aside, on grounds which were spurious and which sought to substantially undermine the Tribunal's capacity to provide effective relief in a case where the operation of the impugned decision would result in the applicant for review having to cease carrying on an existing business pending the hearing of an application for review;

- (g) CASA has misused its power and its position to conduct a vendetta against Polar Aviation and Butson through unwarranted and overbearing administrative action and sanctions:
 - (i) CASA refused to accept the findings of the Tribunal, and misused its power to issue further notices of proposed administrative action in respect of both matters which had already been considered and determined by the Tribunal, and upon other alleged matters which were both erroneous and put out of context, with a view to causing Butson and Polar Aviation harm; and
 - (j) When seriously challenged by Butson and Polar over its conduct, CASA did not carry out its threatened administrative action, but returned the AOC and CP approvals to Polar Aviation and Butson without further argument, and in the case of Butson's own CP approval, without even a flight test.
155. Since January 2005 the operations of Polar have continued to improve, and there has not been a single occurrence much less a combination of occurrences in the company's operations since that time of the nature which would justify the threat of suspension or cancellation of the AOC, much less than the actual taking of any such step. The systems to improve Polar were implemented by Butson from early 2004.
 156. The AAT decided in August 2005 that the AOC of Polar Aviation should not be cancelled but be reissued prior to it expiring by effluxion of time in early September 2005.
 157. The threat by CASA in its "show cause" notice of 20 March 2006 (and the subsequent supplement to it dated 6 April 2006) to vary, suspend or cancel the AOC held by Polar Aviation on the grounds therein which were essentially the same as the grounds relied upon in respect of the decision to cancel the AOC in January 2005 which was the subject of review by the AAT arguably constituted a contempt of the AAT pursuant to section 63(d) of the AAT Act, punishable by fine or imprisonment.
 158. The threat by CASA in its "show cause" notices dated 20 March 2006 and 6 April 2006 caused Butson and Polar to respond in the strongest of terms on 12 April 2006 ['the Response']. Although CASA avoided accepting the matters raised by Butson and Polar Aviation in their Response, it did not carry out its threat to cancel the Polar AOC; however, the unwarranted actions of CASA in carrying on what can reasonably be described as a machiavellian campaign to harm both Polar Aviation and Butson has caused them immense and irreparable harm and economic loss.
 159. CASA remained silent in relation to its threats set out in the "show cause" Notices of 20 March and 6 April 2006 for 8 weeks after the strong response.
 160. In the Notice to Polar dated 13 June 2006, and in a continuation of the "nonsense" identified in our response dated 12 April 2006, CASA attempted to characterise its clear incontrovertible decision to permit Polar to continue

operating, as something other than a Decision, and called it a “deferred decision”, purportedly to be made at some later date.

161. CASA’s attempts to dress up “findings” as matters of consequence and seriousness such as warrant the closure of the Operations of Polar Aviation, when such characterisation is not supportable on any reasonable and informed view, CASA's pedantic reliance on minutiae, with a total failure to consider the performance of Polar Aviation and its officers in the total context of its operations to ‘bully’ Butson and Polar and impose administrative sanctions upon them, and the failure and refusal of CASA to allow Butson and Polar to operate and develop their business; have had a cumulative effect which supports the claim that CASA has embarked on a Machiavellian style vendetta against Polar Aviation and Butson.
162. Polar Aviation has made two formal complaints to CASA in relation to the conduct of some of its officers quite apart from the issues raised before the AAT and the Federal Court. To this day, some years later, these complaints remain unaddressed by CASA..
163. Butson raised his grievances with his local Federal Member of Parliament, and a number of my complaints were put to the Senior Management of CASA by the Senate Committee hearing for Rural and Regional Affairs and Transport on 23 May 2006. The responses put forward by CASA to the questions raised by the Senate Committee on 23 May 2006 were most unsatisfactory.
164. CASA should be brought to account for its conduct.

30.6.08
