



Australian Government
Civil Aviation Safety Authority

INDUSTRY COMPLAINTS COMMISSIONER

18 July 2019

Mr Glen Buckley
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Dear Glen

Outcome of the ICC review

I refer to your submissions dated 13 May 2019, sent in response to the outcome of my preliminary review dated 12 April 2019.

I'd set out an outline of how I intended to respond to the 28 separate complaints you'd lodged in a letter dated 19 March 2019 following a meeting at APTA's premises on 14 March 2019. My correspondence of 12 April 2019 therefore reviewed the central theme in those complaints: dissatisfaction with the CASA's oversight of APTA following a change of Certificate Team in 2018.

My preliminary view was that CASA's correspondence of 23 October 2018 marked a significant change in how it had previously communicated with APTA. I set out why I proposed to conclude CASA hadn't treated APTA fairly in taking a different position about its business model without forewarning. I also explained why I didn't think CASA's visit to La Trobe Valley on 3 September 2018 had been a Level 2 audit; provided the information that had led to CASA's comments on potential flight and duty exceedances; and why I thought the time it had taken for CASA to assess regulatory services tasks wasn't unreasonable in the circumstances.

Having considered all the available information, I now confirm my preliminary findings: both the timing of any change in CASA's regulatory approach, and the manner it was communicated to APTA were likely to have been unfair. In reaching that conclusion, I've taken into account that CASA collectively was likely to have had sufficient information about APTA's business and operational model available prior to October 2018 to form a position and seek information or clarification.

I've set out below my response to APTA's submissions dated 13 May 2019. I don't propose to individually respond to every submission though. That's because my view remains APTA's 28 complaints are best addressed by considering the central theme within them.

Regulatory Service task, or a Level 2 audit?

I accept your recollection that CASA's then Southern Regional Manager David Jones (in the presence of Peter White) described the visit to La Trobe Valley as a Level 2 audit is accurate. In those circumstances, it's not unreasonable that APTA's expectation was that it would be receiving a Level 2 audit report.

However, I am not persuaded that the visit was a Level 2 audit, irrespective of how it was described by Mr Jones. Instead, I prefer the accounts of the visit organiser (Certificate Team Manager Will Nuttall) and CASA's contemporaneous records. I therefore now confirm the following extract from my preliminary review:

Reviewing all of the available information, at this stage I have insufficient basis to conclude the visit was a Level 2 audit as APTA allege, and instead conclude it was to assess a regulatory service task. In reaching that position, I note:

- There's no record of the documents I would expect to see if a Level 2 had been commenced in CASA's Sky Sentinel surveillance database. If the visit had been an audit, a number of mandatory documents and records are required to be produced.*
- Mr Nuttall's email of 27 August organising the visit was titled: 'Confirmed Dates - Regulatory Service Tasks AOC2018-2148 and AOC2018-2149' and specified CASA would be visiting La Trobe Valley on 3 and 4 September.*

Failure to provide audit results

APTA's view is that CASA failed to provide it with a right of reply as required by administrative law. Whatever the purpose of CASA's visit, APTA believes the outcome was used as the basis for seeking internal legal advice and it was therefore required to be offered a chance to correct what it considers to have been errors.

As I commented both in our meeting on 14 March 2019 and in the outcome of my preliminary review, I don't agree CASA's request for internal legal advice was an action taken against APTA that required CASA to offer APTA a 'right of reply'. That's the case even if the purpose of the visit was for a Level 2 audit or not.

It appears as if the legal advice was at the time CASA was forming a view on whether APTA's business model met regulatory requirements. My view is that the act of seeking legal advice isn't an action against APTA as alleged. On that basis, I now confirm my preliminary view:

....there are no audit findings to provide. At this stage I'm satisfied CASA's correspondence of 23 October and 20 November provides sufficient details of the reasons APTA's application to make significant changes wasn't approved at that point.

APTA's position is the results of Southern Region's visit to La Trobe Valley led to 'significant action' against it, given it was the basis for seeking internal legal advice. In my view, seeking internal legal advice can't be considered as commencing action against APTA, but is instead part of a prudent decision-making process. In any event, I note no changes to APTA's existing operations have eventuated from the visit of 3 September; CASA's assessment of the significant change application; or the 23 October letter. A notice that CASA intends or proposes not to approve something is not an action in of itself.

I also note APTA has been aware of the outcome of CASA's visit to La Trobe Valley since 20 November 2018 and has continued to operate in that period. APTA has provided multiple responses to the results of the La Trobe Valley visit.

Aviation Ruling and Flight and Duty Exceedances

Because APTA advised CASA has taken the Aviation Ruling *'off the table'* and has conceded there weren't any identified flight and duty exceedances, I continue to be of the view there is no utility in making an assessment of issues that are no longer in contention.

Regulatory services timeframes; AAT review rights

APTA submits that CASA's failure to process regulatory service tasks amounted to a 'freeze'. APTA's position is that freeze varied or suspended its AOC (or Part 141 certificate) meaning CASA was obliged to provide appeal rights to the Administrative Appeals Tribunal.

As you're aware, I received legal advice that there was no administrative action taken resulting in the variation, suspension or cancellation of APTA's authorisations. As we discussed on 1 April 2019, my view was APTA may not have required formal advice from CASA to initiate an AAT appeal. That was because CASA's 'delays' may be reviewable in their own right.

Summary

In the outcome of my preliminary review dated 12 April 2019, I set out my proposed conclusions in response to APTA's complaint about CASA's regulatory oversight since a change in CMT in 2018.

Having reviewed APTA's submissions in response, I believe I have insufficient information to change my provisional view. I therefore conclude didn't act CASA unlawfully, or unreasonably fail to provide information.

But the timing of CASA's change in regulatory approach, and the manner it was communicated to APTA were likely to have been unfair. Up until that point, APTA was likely to have relied on CASA's failure to highlight any concerns when conducting its operations and planning.

Referral rights

You're able to ask the Commonwealth Ombudsman to review the ICC's consideration of your concerns, or CASA's actions. Information about how to make a complaint can be found at www.ombudsman.gov.au. Alternatively, you can contact the Ombudsman on 1300 362 072.

Yours sincerely



Jonathan Hanton
Industry Complaints Commission