

2020-713834

25 June 2020

Mr Glen Buckley  
6 Susan Court  
MOUNT WAVERLEY VIC 3149  
(By email only to: defendapta@gmail.com)

Dear Mr Buckley

I am writing to provide you with an update on my investigation into the matters you raised about the Civil Aviation Safety Authority (CASA).

As previously advised, I have broken the investigation into manageable elements. The first of these was to assess the regulatory setting in which you made your Air Operator's Certificate (AOC) application, the arrangements under which you developed the exposition, and how CASA supported and responded during that process.

**Conclusion of phase 1 of my investigation**

On 23 June 2020 this Office sent a concluded view to CASA as follows:

The entry into force of the 1 September 2014 compilation of the Civil Aviation Regulations 1988 (CAR) removed the former CAR 206(1)(a)(vi) related to flying training organisations (FTO) from CAR 206.

CASA's ruling *Franchise AOC Arrangements* (the Ruling) issued on 21 February 2006 refers explicitly to its application to commercial operations conducted for CAR 206 purposes. CAR 206(1)(a)(vi) referred to flying training, other than conversion training or training carried out under an experimental certificate.

With CAR 206(1)(a)(vi) removed from the CAR, I note CASA's view that the policy objectives reflected in the Ruling have remained applicable to the conduct of FTO activities under the post August 2014 regulatory regime, irrespective of the explicit reference to CAR 206.

The Ruling was not amended to reflect that legislative change from 1 September 2014 meaning that the CAR and the Ruling were no longer aligned in material ways.

Conceptually, I accept CASA's view that the Ruling may reflect broader policy considerations. Nevertheless in my concluded view there was an administrative deficiency due to an absence of a direct relationship between the activity being regulated and the policy said to regulate it. This gave rise to ambiguity and uncertainty with the potential to cause detriment to those relying on the accuracy of the regime or, conversely, prevent detriment from occurring.

In the circumstances, it is my concluded view that CASA should have made a concurrent amendment to its Ruling at the entry into force of the 1 September 2014 compilation of the CAR because of the practical effect of the change to those relying on the regulatory regime.

Thank you for your advice that CASA will amend the Ruling to confirm the intent of the breadth its application.

Please note that this is the Ombudsman's opinion and CASA may disagree with it, or parts of it.

***CASA's other points of agreement***

CASA agreed with the following propositions put to it by this Office:

- As of October 2016, no Australian legislation prohibited 'franchising' of an AOC, subject only to the exclusivity of the AOC holder's operational control, and that remained the case as of 25 March 2020.
- There would be no legal or regulatory impediment to Mr Buckley or APTA selling or licencing intellectual property in the form of its AOC exposition to other FTO. And there would be no legal or regulatory impediment to CASA issuing part 142 Permissions on submission of those expositions by other FTO.

**Commencement of phase 2 of my investigation**

I am proposing to continue this investigation in order to consider issues giving rise, and Subsequent, to CASA's notice of 23 October 2018 to you (APTA) to cease all operations within 7 days and matters leading up to 27 August 2019 intervention by Mr Jason McHeyzer in your Work-place.

**Consultation**

If you wish to discuss this investigation, please contact me.

Yours sincerely

Michael Buss  
Assistant Director of Investigations  
Office of the Commonwealth Ombudsman

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