

Our Ref: SC:ZJ:989854
Your Ref: AJM:JX:51407

Attn: Jason Xue and Alan McDonald
McDonald Murholme
Barristers and Solicitors
Level 10, 90 Collins Street
Melbourne VIC 3000

Without prejudice save as to costs

Email: alan@mcdonaldmurholme.com.au; jasonxue@mcdonaldmurholme.com.au;

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Dear Mr Xue and Mr McDonald

**Offer to Make Amends pursuant to Division 1, Part 3 of the *Defamation Act 2005* (VIC):
Mr Glen Buckley**

We act on behalf of the Civil Aviation Safety Authority (**CASA**) and Mr Jason McHeyzer and Mr Jonathan Hanton in their capacity as employees of CASA (collectively **Clients**).

We refer to your letter of 27 May 2020, which purports to be a Concerns Notice within the meaning of Division 1, Part 3 of the *Defamation Act 2005* (VIC) (**Defamation Act**) and the corresponding provisions in other states and territories of Australia (**Concerns Notice**) and our letter of 12 June 2020 seeking particulars of that Concerns Notice (**Further Particulars Notice**).

We note that we have not received any response to the Further Particulars Notice.

Nonetheless, we are instructed to put an offer to make amends to your client pursuant to Division 1, Part 3 of the Defamation Act, the proposed terms of which are contained in this correspondence in relation to the following imputation contained in the Concerns Notice:

"Is not a fit and proper person to remain as Deputy Head of Operations of the Australian Pilot Training Alliance"

Our Clients' offer to amends (**Offer**) is comprised of the following:

1. CASA will provide Mr Buckley with a further written apology and correction of the email correspondence sent by CASA employee Mr Jason McHeyzer to Mr Naser

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1. CASA will provide Mr Buckley with a further written apology and correction of the email correspondence sent by CASA employee Mr Jason McHeyzer to Mr Naser Qushair on 27 August 2019 at 2.14pm (**Publication**) and will send a copy of the apology to Mr Qushair;
2. CASA will pay your client's expenses reasonably incurred before the offer was made and the expenses reasonably incurred by him in considering the offer. In that respect, our Clients offer to pay your client a sum of up to \$2,500, which we consider to be a reasonable amount to cover your client's expenses; and
3. CASA will pay the sum of \$5,000 to Mr Buckley by way of compensation.

This offer is subject to the parties entering into a Deed of Settlement and release on terms to be agreed.

In our Clients' view, the above offer is reasonable having regard to significant hurdles your client faces in successfully prosecuting a claim against our Clients.

In this regard we note that:

- The scope and breadth of the Publication was limited to only one recipient, Mr Naser Qushair of APTA. Accordingly, the gravity of the defamatory imputations complained of are significantly mitigated by the limited scope of audience - see *Piscioneri v Brisciani* [2015] ACTSC 106
- The Publication was sent without malice, and was simply intended to seek clarity around the person or persons authorised to speak on behalf of APTA.
- CASA took immediate steps to clarify, retract and mitigate the Publication by telephoning the recipient on the same day of the Publication and explaining the intention of the Publication and that explaining that CASA had no intention to interfere in the operations of APTA. The recipient, Mr Qushair, confirmed in a subsequent email that he understood that CASA was not directing him on what to do in relation to Mr Buckley's position at APTA.
- On 29 August 2019, Mr Craig Martin, Acting Executive Manager of CASA's Regulatory Services and Surveillance division, emailed Mr Qushair and stated that CASA has no issue with Mr Buckley being or remaining an employee of APTA. The email again clarified that when Mr McHeyzer had spoken to Mr Qushair on 27 August 2019, following the Publication, his intention had been to ensure that APTA were aware that Mr Buckley was representing his views as the views of APTA.
- In an email on 30 August 2019, Mr Qushair replied and confirmed that he considered the email and phone call of Mr McHeyzer to have been well intentioned, and that he did not take it the "wrong way". He further stated that he would not accept any interference from CASA into his own business unless it was a safety or breach issue. Mr Qushair confirmed that his decision to stand Mr Buckley down as the standby HOO was made on his own assessment as Mr Buckley would not be available full time and he considered that his attention may be diverted away from the role. Mr Qushair noted that Mr Buckley was still a casual employee of APTA delivering ground theory and other supporting roles.

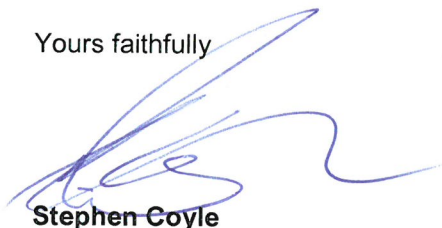
- Mr Buckley republished the Publication personally on 4 September 2019 on a website dedicated to pilots posting rumours about aviation-related matters and news globally.
- On 16 October 2019, CASA issued your client with a formal letter of apology in relation to the Publication from Mr McHeyzer. In that letter, Mr McHeyzer specifically apologised for the wording of the Publication identified as defamatory of your client in the Concerns Notice. Pursuant to section 38 of the Defamation Act, an apology for a defamatory publication is considered in mitigation of damages for publication of a defamatory matter.
- On 9 June 2020, Mr Buckley again posted a copy of the Concerns Notice, which includes an extract of the relevant allegedly defamatory comments made by Mr McHeyzer on the same website.

In addition to demonstrating our client's genuine remorse for the Publication, we consider these immediate steps to be mitigating factors in any claim for damages made by your client should proceedings be commenced against our Clients in relation to the Publication.

On acceptance of the Offer, our Clients are ready and willing to carry out the terms of the Offer.

Should this offer not be accepted, and proceedings are commenced against our Clients, they will rely on the Offer in defence to such proceedings pursuant to section 18 of the Defamation Act. Should that become necessary, and should our client be successful in defending such an action, our Clients will seek their costs of the proceeding be paid by your client.

Yours faithfully



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