

Breakdown

Are they approved or not? In this story of regulatory confusion, **Steve Hitchen** outlines how CASA helped to set up a flight training organisation with Part 141 and 142 approvals only to then cast doubt over whether or not it actually complied.

Glen Buckley bet his house on CASA.

It was a huge risk, but he saw a market for an innovative type of flying training organisation tailored directly to the new and onerous requirements of CASR Part 142. In order to get it right, Buckley enlisted the help of CASA to write the many manuals and address the 600 dot-points the regulator needed to issue a Part 142 approval. What more can you do than have the people who are going to approve the organisation effectively help to set it up in accordance with the regulations?

Buckley's company, the Australian Pilot Training Alliance (APTA) was one of only 5% of flying schools ready to go the day CASA flicked the switch on Part 142. It had been a lot of work, but they opened their doors to the congratulations of a regulator that was heavily involved in making sure APTA was 100% compliant.

Late last year, the very same CASA that approved APTA effectively reversed their decision, stating that APTA should never have been allowed to get as far as it did, even though the journey was facilitated by CASA almost every step of the way.

Glen Buckley bet his house on CASA ... and lost.

Death by 600 paper cuts

For many flying schools, CASR Part 142 was bombshell regulation. One of CASA's cornerstone rule suites, it lays down the law for delivering integrated training for the Commercial Pilots Licence (CPL). Directed mainly at flying academies, it demands schools operate under a management regime the equivalent of a small bureaucracy, complete with the

"without any warning, APTA's world came crashing down."

added costs of doing so. The quid-pro-quo is that Part 142 schools alone can deliver the in-demand 150-hour CPL and conduct check and training.

Buckley had another idea, one which would enable his flying school Melbourne Flight Training (MFT) to stay afloat and also act as rescuer for other schools teetering on the brink of pulling the plug. APTA is described in detail in Australian Flying January-February 2018, but in precis, it provided management services to the schools that had no chance of putting their own in place, thus enabling those

schools to operate under Part 142 or in some cases, Part 141. Head of Operations (CFI), safety management, co-ordination; all taken care of for an annual fee.

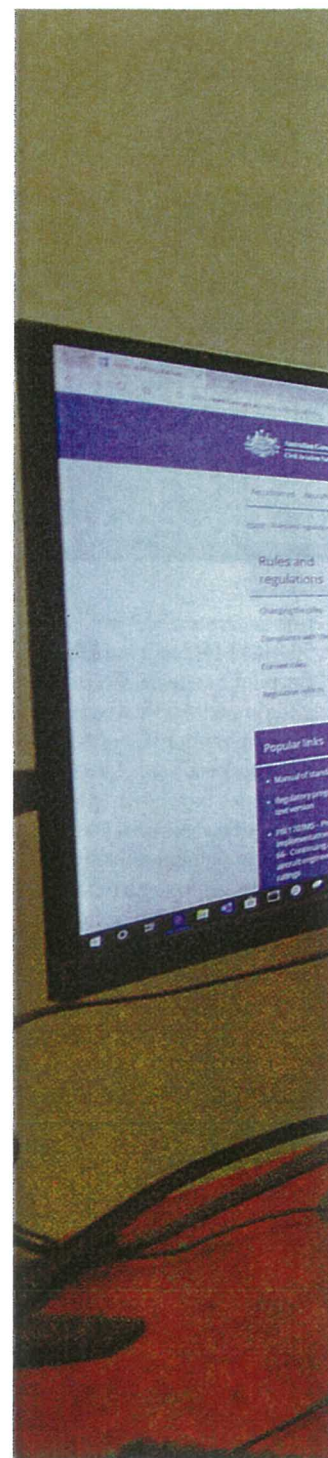
It was innovation that Buckley wasn't sure CASA would come at, so he got them involved from the outset.

"Becoming a Part 142 flying school is a very significant project," Buckley says. "In the design of APTA, we attended to CASA's 600 individual dot-point items. I sat down with CASA

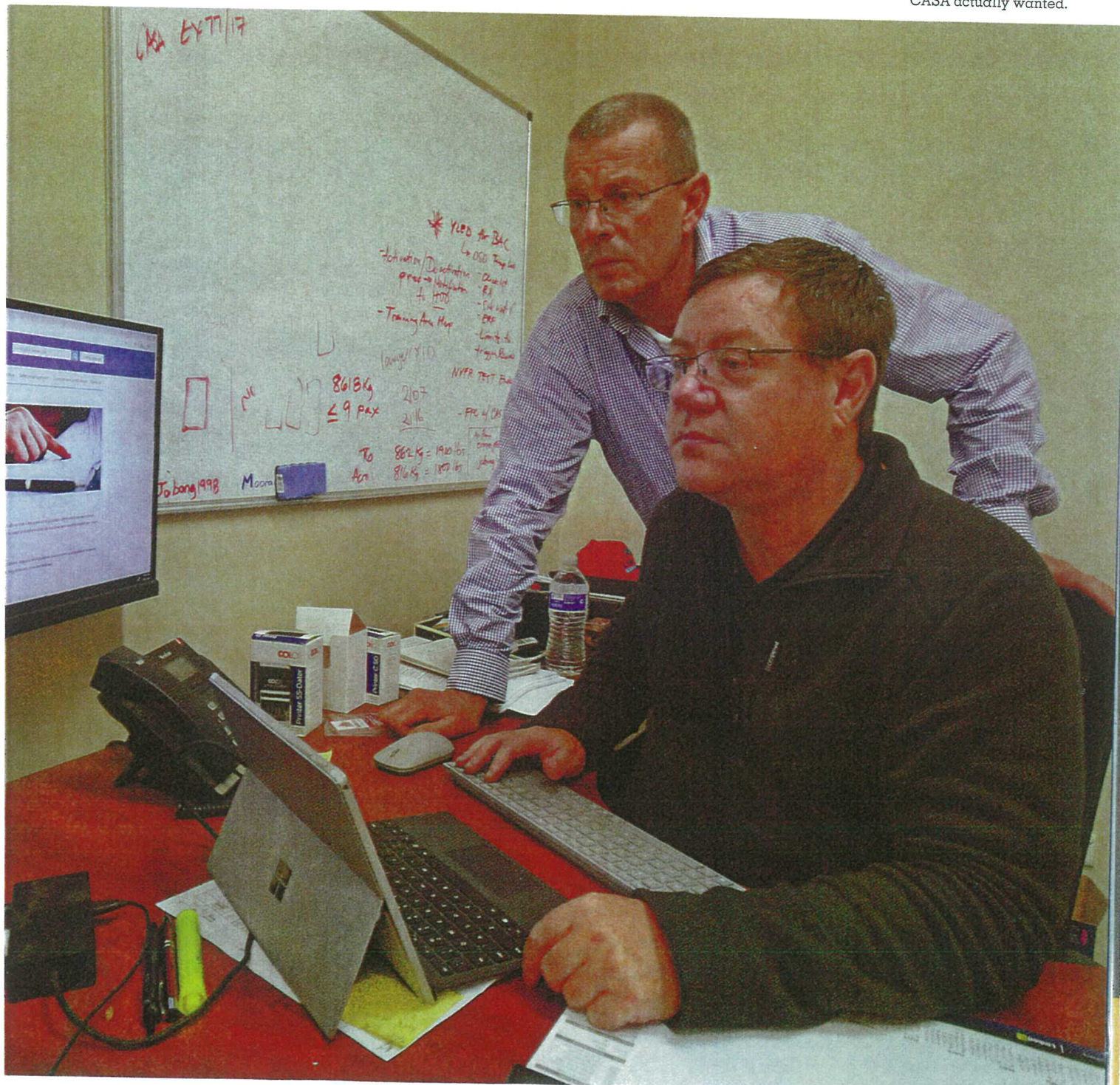
with the APTA concept; they had full knowledge of what we were doing. We spent years attending to those 600 dot points and writing our exposition in conjunction with CASA.

"CASA was very supportive. They made comments to other flying schools that Glen Buckley was the first person in Australia that actually understood what a Part 142 was. CASA agrees; they have said that they were integral in the design of APTA."

The CASA involvement in APTA was so deep and vital that in April 2017, Buckley wrote to Aviation Group manager



Glen Buckley and Group Head of Safety Andrew Warland-Browne (seated) spent countless hours trying to figure out what CASA actually wanted.





Graeme Crawford expressing his appreciation to the Southern Region team.

"Every person involved in the process was nothing less than exceptional," Buckley wrote. "I do appreciate that some direction did come from your office, and that required a number of CASA personnel to redirect their efforts. Could I respectfully request that you pass my thanks down the line."

Crawford replied with "I know it has been a long and stressful journey for you and I truly hope you can now enjoy the destination. Congratulations to you and your team."

The system works

APTA proved an immediate success. The concept of sharing the cost burden of the CASA-mandated bureaucracy showed benefits for companies such as Avia Aviation, Learn to Fly, Simjet and Buckley's own Melbourne Flight Training. Using common procedures and software, APTA Head of Operations Ermin Javier was able to extend his oversight to the member companies, ensuring those operations could continue to offer the precious 150-hour CPL and check and training services.

On 1 September 2018, at the end of a 12-year project and a one-year delay, CASA flicked the switch on Parts 141 and 142. Simply, if a school wasn't approved

by then options for continued existence were not very numerous. Several turned to APTA as their only real choice, whilst others had seen the benefits from a long way off and were on the APTA bus nearly from the outset.

In a world where flying schools straddle the divide between a training organisation and a business, accidental non-compliance with regulations is more common than you'd think. APTA put an end to that for members. Whilst the school concentrated on attracting customers and delivering a quality product, APTA's management team had their back when it came to compliance and safety.

Aero clubs that were traditionally restricted training to PPLs and 200-hour CPLs saw immediate advantages as well. Plagued by the constant battle to attract and keep Chief Flying Instructors, aero clubs turned to APTA.

Ballarat Aero Club (BAC) had their own Part 141 approval, but keeping it alive was proving too much of a strain on the club. The answer was to join APTA.

"APTA gave us an opportunity to be a Part 142 school and give us access to more instructors, more aircraft, more capability and we could then service our students to a greater degree without it costing us an arm and a leg," says BAC president Eddie Kuyper.

Ballarat Aero Club has been in existence for more than 50 years, and experienced a resurgency under the APTA umbrella.

"Suddenly, the club became more vibrant because the people APTA was sending us offered so much more. People were coming from further afield and they loved the club atmosphere and so our flying hours increased significantly. Students were achieving PPLs, endorsements, CPLs, instructor ratings, multi-engine IFR ...

"We've bought a flight simulator and have more aircraft on line; we've really gone ahead and it put a real buzz into the place."

Then, without any warning, APTA's world came crashing down.

The letter

When Glen Buckley ripped open the envelope from CASA he had no idea the tear was going to extend to his heart. Dated 23 October 2018, the letter outlined the regulator's proposal to refuse to allow new bases to be added to the APTA Air Operator's Certificate (AOC) and calling into question the legality of the bases that CASA had already approved.

Rewind time. The plaudits Buckley had sent through to Crawford were aimed at CASA's Southern Region Certification Management Team 2 (CMT2). This is the crew that did all the hard work to get APTA their Part 142, and the team that did a complete Level 1 audit in November 2017 and found no problems.

In May 2018, APTA was informed that it was being switched to CMT3, a team that had had nothing to do with APTA to that point.

"The next thing that happened, with absolutely no prior notice at all ... I got an extremely heavy-handed letter that made two allegations against me," Buckley says with great incredulity. "The first one was that I was in breach of the aviation national ruling, and that the second one was that my procedure for opening up my temporary locations was in breach of the regulations."

The heart-wrenching letter of 23 October effectively was CMT3 contradicting everything that CMT2 had approved.

The national aviation ruling. Signed in 2006 by then Director of Aviation Safety Bruce Byron, it is an advisory document that prevents CAR 206 (commercial) operators from franchising out their AOC to other operators. Initially, CAR 206 included flight training, but CASA removed flight training from CAR 206 in September of 2014.

It should have been a slam-dunk: as a flight training organisation, APTA was not bound by the ruling. However, it took Glen Buckley nine weeks to get CASA to admit that the ruling did, in fact, not apply to flight training. Further mud was added to the water when it became apparent that the temporary base procedure APTA adopted was CASA's own procedure.



Flight training was removed from CAR 206 in 2014, which meant the ruling on franchised AOCs no longer applied.

Glen Buckley: "The regional manager said to me that I've had legal advice that the temporary procedure isn't intended for flying schools.' That's bullshit! It's actually in CASA's how-to manual for Part 141/142 guidance material.

"So we had a situation where CASA has suggested I used the temporary location procedure, given me the temporary location procedure, I've put it into my manuals exactly as they gave it to me, they approved it, they've approved bases under it and done a Level 1 audit on the whole thing. Then I get a letter after the change to CMT3 that tells me I'm operating illegally for using it!"

The two allegations were seriously undermined, but CASA immediately raised another issue: contracts. CASA gave Buckley seven days to produce commercial contracts between APTA and its customers, after which CASA would make a "final determination" on the consequences of the letter.

But CASA already had the contracts and had had them for months, and no final determination has, to date, eventuated. CASA began approving APTA on a three-month basis only, driving them into a very damaging limbo. Without a secure future, APTA was not able to attract new clients

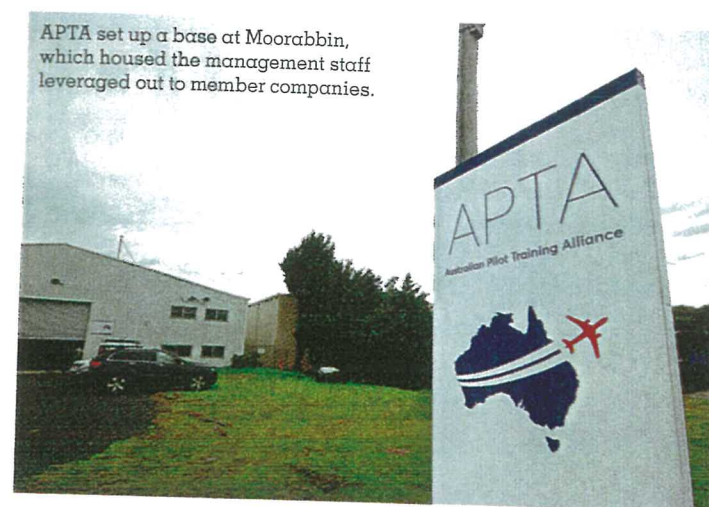
and several schools that had already signed on were forced to re-evaluate their positions.

Buckley was faced with outgoings of \$10,000 per week and no income of any certainty. The issue, whatever it really was, had to be resolved fast.

When is an audit not an audit?

The APTA model relied on new bases being added to the AOC. The concept worked best for Part 142 schools, but had Part 141 schools salivating as well. In particular, three joined the group: Ballarat Aero Club, Latrobe Valley Aero Club and White Star Aviation in Ballina, NSW. The regulations required CASA to process Significant Change Requests on APTA's AOC. After visits to BAC and LVAC, CASA informed Buckley that they were refusing to allow the schools to be added. The reason is still unclear, given CASA had used the aviation national ruling on CAR 206 as the basis for the evaluation, which was not the correct document to use.

In writing, CASA stated that it found evidence of flight and duty times being exceeded at LVAC; however, Buckley's requests to see the evidence did not bear any fruit. More curiously, APTA had not been given any



APTA set up a base at Moorabbin, which housed the management staff leveraged out to member companies.

audit results at all as required by CASA's own process.

But CASA had an answer: the visits were part of the change approval process and not a Level 2 audit; therefore, there was no obligation to supply Buckley with the results. After intervention from Peter White, CASA's Executive Manager of Regulatory Services, Buckley was made privy to the results of the LVAC "audit."

"There was a complete contrast between the exit interview on-site and what we were told were the issues," Buckley says. "I had a meeting in the head office at CASA, which was completely different from the on-site interview. A week later CASA actually produced the audit results, months after the audit happened, not dated, obviously written up after the head office meeting and now they're completely different: there's 10 allegations of regulatory breaches that I've never seen before!"

Buckley's rat-smelling faculties went into over-drive. It seemed to him that the breaches were fabricated after the head-office meeting and not part of the original audit. It came to light that CASA's legal team was asked for an opinion that APTA was in fact illegal. It prompted Buckley to make a Freedom of Information (FOI) claim on the CASA auditors' original notes. In response, CASA FOI Officer David Gobbit supplied Buckley with eight pages of documents 100% redacted. Big

black blobs are what Buckley got. CASA had escaped because they considered the information was legally privileged and therefore exempt under the FOI act.

Back to the contracts

CASA soon switched back to the contracts as the issue. In response to Buckley's assurance that he would do anything CASA wanted to get APTA's full approval back, White provided necessary wording that would for all intents satisfy the regulator. But it seems even that wasn't enough.

"I took CASA's wording in its entirety and put it into the contracts. For some reason that wasn't acceptable and they came back with an alternative set of guidance material, which I fully adopted into my contracts. They wrote to me and said it was fine. Hours later I got another e-mail that retracted that. They then outsourced that to an external legal firm and came back with a *third* set of guidance material.

"I read their guidance material and I had already covered all of that in my contracts! It shows me that CASA has got no idea. The things they asked me to do were already happening at APTA. This just supports my contention that they don't know enough about APTA because they haven't asked."

CASA was asking for more without making it clear what "more" actually was. In the meantime, APTA began to wither on the vine commercially because



LVAC sought to join the APTA group, but after an "audit" CASA refused to approve the base.

CASA wouldn't offer an approval beyond three months and Buckley himself was plunged into a financial abyss.

Taking on city hall

Buckley was presented with a brick wall to climb, but he pulled up his boots and set about the task. He bombarded CASA with e-mails exercising his right to answers. He asked for supporting documentation for CASA's contentions, he asked for details of the alleged breaches, he made sure CASA knew what the financial impact on APTA was, he made multiple official requests to allow the new members to start operating, he asked several times for a change of CMT, echoing his original reservations about CMT3.

CASA's response was to not respond. By March 2019, five months after all this started, it was still going on. Up to that point, Buckley had expressed

a desire to resolve the issue amicably, but it seemed the only way forward was to go hard. He turned to Industry Complaints Commissioner Jonathon Hanton and submitted 28 matters for investigation. It included a failure on CASA's behalf to achieve clear and concise regulations, breaches of the *Public Governance, Performance and Accountability Act 2013*, breaches of CASA's own

"Is the APTA model legal as it was originally approved or not?"

regulatory philosophy, CASA's refusal to substantiate allegations, a failure to act in accordance with the minister's *Statement of Expectations* and CASA's misuse of the CAR 206 aviation ruling. There were a lot more.

At the time of writing, Hanton had not released the official conclusions from his

investigation, but portions of a preliminary report that passed over the desk of *Australian Flying* seemed to indicate that Hanton was coming down more on the side of APTA than CASA. Hanton dismissed several complaints, but said this on the subject of fair treatment.

"I don't consider CASA treated APTA fairly when its approach changed on 23 October," Hanton

wrote. "That's because collectively as an organisation, CASA had an awareness of the APTA business model for a significant period of time prior to its compliance with regulation being called into question. In changing its position so drastically, the circumstances were such that CASA's actions weren't fair, given APTA's likely

to have relied on CASA's failure to highlight any concerns when conducting its operations and planning."

CASA's view

Between 31 May and 6 June this year, *Australian Flying* sent CASA 37 specific questions relating to the way they have dealt with APTA. Despite originally agreeing to provide information as requested, none of these questions were ever answered. Requests for interviews with CEO Shane Carmody and Stakeholder Engagement Manager Rob Walker were also turned down. Instead, CASA offered this simple statement.

APTA was granted its flying training authorisations (under CASR Part 141 and Part 142) in 2016/17 following a significant collaboration with CASA in the development of suitable operations manuals.

At the time, CASA had assessed

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that APTA key personnel did in fact have full operational control of activities being conducted at Moorabbin and Bacchus Marsh. The same assessment was made when APTA sought two additional Moorabbin facilities in 2017.

In June 2018, APTA sought to expand its operations significantly to Ballarat and Latrobe Valley. During CASA's review of those requests, it became apparent that they were for independent business entities that had significant operational autonomy.

Since that time, CASA has sought to assist APTA in establishing appropriate arrangements with its affiliated organisation to ensure that its safety accountabilities under the regulations could be effectively discharged.

At the time of writing, CASA has stated that it has been waiting for Buckley to provide information so they can lift the three-month approval, but according to Buckley, everything they are asking for is already in

the APTA manuals. Is this a case of stone-walling until CASA gets their way via the complete surrender of the opponent? The lack of information from CASA makes assessment very difficult.

The breakdown

Sorting through all the available documentation leads not to clarity, but to frustration and confusion.

However, three basic questions precipitate from analysis.

1. Is the APTA model legal as it was originally approved or not?
2. Are CASA's CMTs properly trained and competent enough to have full knowledge of the CASRs and the intent of the regulations?
3. Why has CASA elected to answer none of the questions posed by an episode that can only be described as a cruel fiasco?

Buckley is still waiting on one thing: a determination from CASA that the structure of APTA as CASA assisted in setting up is


Buckley is not a person to go gently into the good night as he demonstrated to CASA at an industry summit at Tamworth in 2016.



either legal or not legal. There has been nothing forthcoming from the regulator. There is no getting around the question of the integrity of either CMT2 or CMT3: if one was right, the other was wrong, and either way such disparity of opinion within the same office is concerning.

Glen Buckley no longer owns APTA. It was sold for the value of the debts accrued, which means that the company itself was

valueless in monetary terms. In real terms, APTA could have been the most valuable asset the Australian general aviation industry had. It could also have been a great asset for CASA because the systems it offered were superior to other AOC-sharing models.

No doubt CASA will be wanting the whole APTA thing to quietly go away, but no-one has ever accused Glen Buckley of going gentle into the good night. 

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